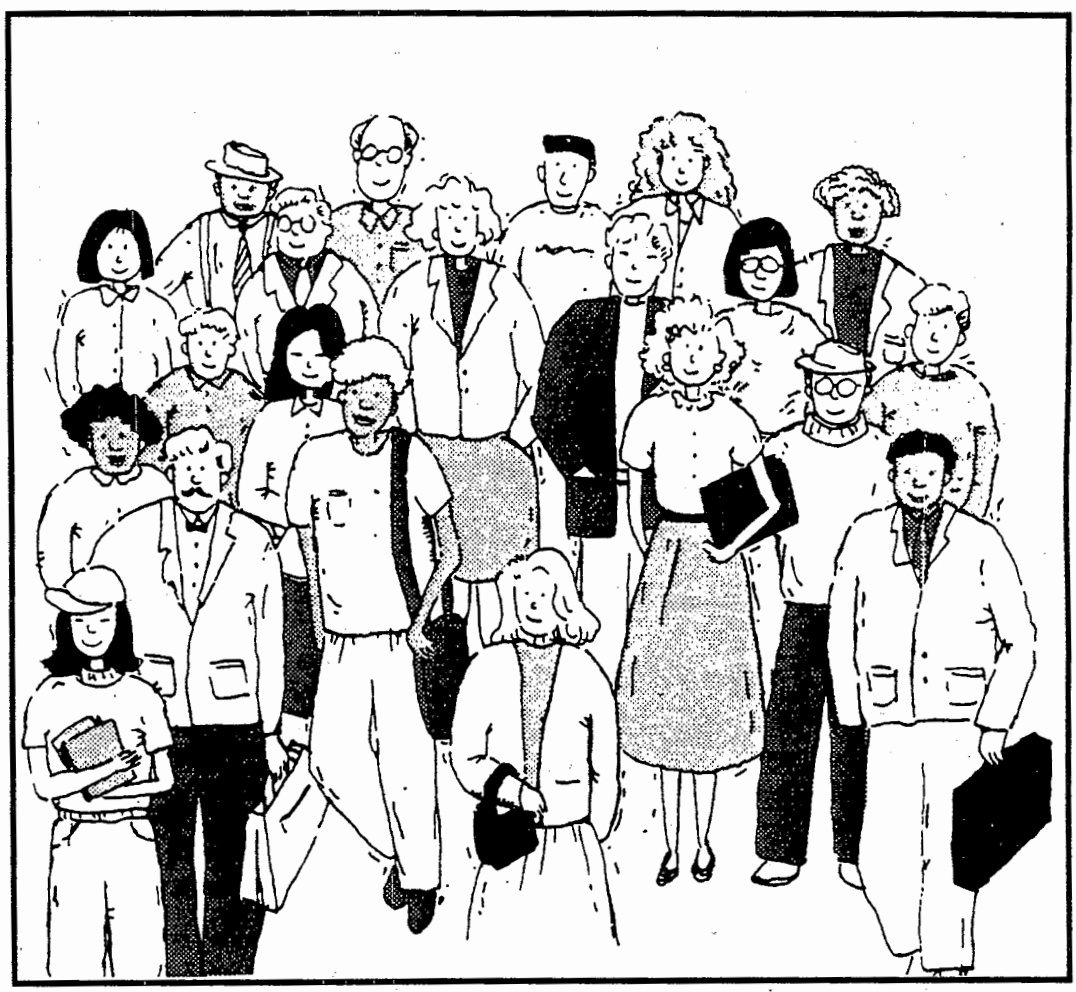
United States
Environmental Protection
Agency

Solid Waste and
Emergency Response
(5305W)

EPA530-R-96-007
September 1996

EPA

RCRA Public Participation Manual



RCRA Public Participation Manual

1996 Edition

United States Environmental Protection Agency
Office of Solid Waste, Permits Branch
Mail Code 5303 W
401 M Street,, SW
Washington, DC 20460

Statement

This manual reviews regulatory requirements and provides policy guidance to help implement the RCRA program. The policies set forth in the attached manual are not final agency action, but are intended solely as guidance. They are not intended, nor can they be relied on, to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the guidance provided, or to act at variance with the guidance, based on an analysis of specific site circumstances. The Agency also reserves the right to change this guidance at any time without public notice.

This manual replaces and supersedes the 1993 RCRA Public Involvement Manual *(EPA 530-R-93-006). This manual is designed for use by agency staff, public interest organizations, private citizens, and owners/operators of hazardous waste management facilities.*

Acknowledgments

The RCRA Public Participation Manual was developed by the Office of Solid Waste with the invaluable help of a task group comprised of EPA and State regulators, industry representatives, and representatives of public interest groups. EPA would like to thank the members of the task group who provided their able services to this effort. For a full listing of participants, please refer to Appendix Q.

Table of Contents

What This Manual Can Do For You

A Handbook for All Stakeholders

This document is a user's manual for public participation activities in the permitting process. In the same way that a user's manual explains how a car or an appliance works, this manual explains how public participation works in the RCRA permitting process and how citizens, regulators, and industry can cooperate to make it work better.

EPA teamed up with a diverse group of stakeholders from the environmental community, industry, and government agencies to produce this manual. The manual emphasizes the importance of cooperation and communication, and highlights the public's role in providing valuable input during the permitting process. The manual also furthers EPA's commitments to early and meaningful involvement for communities, open access to information, and the important role of public participation in addressing environmental justice concerns.

EPA wrote this manual to help all stakeholders in the permitting process. Here is how the manual can help you:

If you are a citizen...
This manual provides a clear description of the many public participation activities that are required by federal regulations. The manual also points out steps that agencies, company owners, and public interest groups can take to provide more public input into the process. In this manual, you will also find a list of people and organizations that you can contact to learn more about the permitting process and about community organizing.

If you are a government regulator...
This manual provides specific details about public participation requirements and outlines EPA's current policies. The manual also explains activities that you can conduct to provide better information to the public and to invite more public input into your RCRA permitting work. By reading this manual, you will learn how to open a dialogue with other stakeholders, how to assess communities and be sensitive to their concerns, how to plan for public participation, how to fulfill all the regulatory requirements, and how to go beyond the requirements.

If you are a member of a public interest or environmental group...
Reading this manual will let you know what public participation events are required under federal regulations, and how your organization can get involved. It provides useful tips, based on the experience of public participation practitioners, on how to interact with other stakeholders and

how to conduct public participation activities. The manual also provides contacts and publications that you can tap into for more information.

If you own or operate a hazardous waste management facility...
This manual describes when and how to conduct the public participation events involved in the permitting process. It points out the events you are responsible for and lets you know how the permitting agency will conduct other activities. By reading the manual, you will find out how to interact with the community around your facility, and how to be sensitive to their concerns, and how to cooperate and communicate with all stakeholders. The manual also describes public participation opportunities you can provide that go beyond the requirements.

Other Sources of Information

EPA is compiling a reference list of public participation and risk communication literature. For this list, EPA is interested in the following subjects areas: community organizing, community involvement and participation, environmental justice, risk communication, creative problem-solving, alternative dispute resolutions, participatory activities, environmental activism, and information-sharing. EPA is not interested in technical documents or data related to permitting. To initially solicit items for the reference list, EPA published a notice in the Federal Register (61 FR 15942). EPA intends to update the list periodically; any additional items people wish to propose for inclusion in the reference list may be submitted to the attention of the RCRA Permits Branch, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Please do not send the original document. Include the full names of all authors, full titles, publisher, date of publication, city where the work was published, an abstract, and an address and/or phone number where one can write or call to obtain the publication (if applicable).

An initial draft of this reference list is available through the RCRA Hotline, or through the RCRA Information Center, in Docket Number F-95-PPCF-FFFFF, (see Appendix A for the appropriate telephone numbers).

If you are not trying to find out about public participation in the permitting process for facilities that store, treat, or dispose of hazardous wastes, then this manual will not be the best one for you. The following are suggestions of places to look for related information:

- If you are trying to learn more about public participation in the Superfund program, refer to *Community Relations in Superfund: A Handbook* (USEPA, EPA/540/R-92/009, OSWER Directive 9230.0-3C, January 1992).

- If you are trying to learn more about the siting of hazardous waste management facilities prior to permitting, you will most likely need to contact your local or state officials. See Appendix B for a list of state agency contacts. EPA is planning to issue guidance on this

topic during 1996. Contact the RCRA Hotline (see Appendix A for the number) for more information.

- If you are trying to learn about hazardous substances (other than wastes) stored by facilities or amounts of toxic substances released to the environment, you will want to find out more about the Emergency Planning and Community Right-to-Know Act (EPCRA), or and the Toxics Release Inventory (TRI). Call EPA HQ, your Regional Office, or the RCRA/Superfund Hotline (see Appendix A for phone numbers) for more information. Information on accessing EPA data is available in Appendix R.

- If you are trying to find out about how the public can participate in siting municipal waste landfills, refer to *Sites for Our Solid Waste: A Guidebook for Effective Public Involvement* (USEPA, EPA/530-SW-90-019, March 1990).

If you are unsure about whether a facility in your area will need a RCRA permit, you can contact your State agency or your Regional EPA office (see the Appendices A and B for numbers).

Chapter 1
Introduction

Overview of this Manual

This manual covers federal public participation requirements. States may have additional requirements.

This manual is a guide to improving cooperation and communication among all participants in the RCRA permitting process. Like the September 1993 RCRA Public Involvement Manual (EPA530-R-93-006), this manual outlines public participation procedures and what staff in EPA and RCRA-authorized state programs can do to ensure that the public has an early and meaningful role in the process. However, this new manual goes beyond the scope of past manuals by providing public participation guidance to regulated industries and the communities that interact with them.

The broader scope of today's manual reflects EPA's belief that all stakeholders have a role in providing for meaningful public participation. Permitting agencies, public interest organizations, community members, and regulated facilities are all stakeholders in RCRA permitting actions. Each group has an interest in the permitting process and, moreover, can take steps to increase public participation and improve communication. This manual provides guidance for all RCRA stakeholders who seek to achieve these goals. Of course, the Federal and State agencies still administer RCRA and its public participation activities, but EPA acknowledges that members of communities and owners and operators of hazardous waste management facilities also play an integral role in the permitting process.

One reason for the broader scope of this guidance document is that facility owners and operators have more formal responsibilities than ever in RCRA public participation. This trend in EPA's approach, demonstrated through regulations such as the permit modifications procedures in 40 CFR 270.42 (52 FR 35838, September 23, 1987) and the part 124 changes in the "RCRA Expanded Public Participation" rule (60 FR 63417-34, December 11, 1995), has made facility owners and operators responsible for a number of public participation activities -- from public notices to meetings and information repositories. These new regulations underscore EPA's support for strengthening the link between facilities and their host communities.

This manual will also be helpful to many private companies that have adopted, or are establishing, public participation programs as part of their commitment to good corporate citizenship. While these activities often take place outside of the official RCRA permitting process, EPA supports

facilities in their efforts to inform and involve the public. This manual will guide facility owners and operators as they implement the public participation requirements of the RCRA program, especially those in the RCRA Expanded Public Participation rule. The manual will help facility owners and operators go beyond the regulatory requirements, expand their public participation activities, and build lasting relationships with surrounding communities.

Citizens are an essential component of the RCRA permitting process. The formal public participation activities, required by regulation, aim to provide citizens with both access to information and opportunities to participate in the process. Some citizens and other groups have expressed concerns about barriers to involvement in RCRA permitting. EPA was also concerned -- as are many members of the public -- that formal public participation begins too late in the permitting process and that RCRA permitting information is not always accessible to people. In response to these concerns and others, EPA promulgated the RCRA Expanded Public Participation rule. We hope that this rule and its accompanying policy statement will improve access to permitting information and enhance public participation.

Some of the most meaningful involvement for citizens may occur outside of the official process.

EPA recognizes that valuable public participation can take place outside of the formal procedures mandated by regulation. Through informal channels, citizens communicate and interact with other citizens, public interest groups, regulated facilities, and permitting agencies. EPA supports communities in their efforts to carry out informal means of participation that go beyond regulatory standards. Some of the most meaningful and informative involvement for citizens may come through activities not organized by permitting agencies or regulated facilities. We hope that this manual will be a valuable resource for communities and public interest groups that are concerned about RCRA facilities in their area.

Following this introductory chapter, the manual is organized as follows:

Chapter 2, “Guidelines for a Successful Public Participation Program,” introduces some basic public participation concepts and points out principles of public participation that we encourage all RCRA stakeholders to follow.

Chapter 3, “Public Participation in RCRA Permitting,” covers the basic steps in the RCRA permitting process and the public participation activities that accompany them. After reviewing the requirements, the chapter provides a list of additional participation activities to supplement the requirements.

Chapter 4, “Public Participation for RCRA Corrective Action Under Permits and §3008(h) Orders,” details EPA’s public participation guidelines for the corrective action program. This chapter reflects the

current agency position on these issues as the corrective action program continues to evolve.

Chapter 5, “Public Participation Activities: How to do Them,” provides detailed descriptions for dozens of public participation techniques -- required and optional, formal and informal. The chapter explains all of the public participation methods mentioned in the previous chapters and provides information on additional methods.

The Appendices provide resources that will help any participant in the RCRA permitting or corrective action programs. Included in the Appendices are: phone numbers and addresses for contact persons at all state agencies, the 10 EPA Regional offices, and EPA Headquarters; current permitting fact sheets; example notices and press releases; and EPA policy memoranda.

If you already have a general knowledge of the RCRA permitting program, you may want to skip ahead to Chapter 2 at this point.

The Big Picture

The RCRA program involves many people and organizations with roles that vary greatly. Congress writes or amends the Act which, when signed by the President, becomes law. After the Office of Solid Waste and Emergency Response (OSWER) at EPA develops the regulations that more specifically define and explain how the law will be implemented, the RCRA program is implemented by both EPA Headquarters (OSWER) and staff in EPA regional offices. The states may, in turn, apply to EPA for the authority to run all or part of the RCRA program. In doing so, a state may adopt the federal program outright or develop its own program, as long as it is at least as stringent and as broad in scope as the federal program. The regulated community is involved with the RCRA program because it must comply with the law and its regulations. Finally, the general public participates by providing input and comments at almost every stage of the program's development and implementation.

RCRA and its 1984 Amendments

The Resource Conservation and Recovery Act, an amendment to the Solid Waste Disposal Act, was enacted by Congress in 1976 to address a problem of enormous magnitude -- how to safely manage and dispose of the huge volumes of municipal and industrial solid waste generated nationwide. The goals set by RCRA were:

- To protect human health and the environment;
- To reduce waste and conserve energy and natural resources; and

RCRA GOALS

- To protect human health and the environment
- To reduce waste and conserve energy and natural resources
- To reduce or eliminate the generation of hazardous waste as expeditiously as possible

- To reduce or eliminate the generation of hazardous waste as expeditiously as possible (also referred to as waste minimization and pollution prevention).

The Act continues to evolve as Congress amends it to reflect changing needs. It has been amended several times since 1976, most significantly on November 8, 1984. The 1984 amendments, called the Hazardous and Solid Waste Amendments (HSWA), significantly expand the scope and requirements of RCRA. The HSWA provisions related to corrective action at RCRA facilities are described later in this chapter.

The program outlined under Subtitle C of the Act is the one most people think about when RCRA is mentioned. Subtitle C establishes a program to manage hazardous wastes from cradle to grave. The objective of the Subtitle C program is to ensure that hazardous waste is handled in a manner that protects human health and the environment. To this end, EPA established regulations under Subtitle C regarding the generation; transportation; and treatment, storage, and disposal of hazardous waste. These regulations are found in Title 40 of the Code of Federal Regulations (CFR), in Parts 261-266 and Parts 268-270. [Note: The CFR contains all the general and permanent rules published by the Executive departments and agencies of the Federal Government.]

The Subtitle C program has resulted in perhaps the most comprehensive regulatory program EPA has ever developed. The Subtitle C regulations first identify those solid wastes that are "hazardous" and then establish various administrative requirements for the three categories of hazardous waste handlers: (1) generators; (2) transporters; and (3) owners or operators of treatment, storage, and disposal (TSD) facilities. This manual applies only to the TSD facilities, and the term "facilities" in this manual refers only to TSD facilities. The Subtitle C regulations set technical standards for the design and safe operation of hazardous waste facilities. These standards are designed to minimize the release of hazardous waste into the environment. Furthermore, the regulations for RCRA facilities serve as the basis for developing and issuing (or denying) permits to each facility. Issuing permits is essential to the Subtitle C regulatory program because it is through the permitting process that the regulatory agency actually applies the technical standards to facilities.

RCRA Facility Permitting

Owners or operators of TSD facilities are required to submit a comprehensive permit application covering all aspects of the design, operation, maintenance, and closure of the facility. Owners and operators are also required to certify annually that they have a waste minimization program in place. Many companies have found waste minimization is often a cost-effective alternative or supplement to waste management. Facilities in existence on November 19, 1980, operate under interim status until a final permit decision is made. Similarly, facilities that are in

existence when new regulations are promulgated that subject them to RCRA Subtitle C may also operate under interim status while they proceed through the permitting process. New facilities are ineligible for interim status and must receive a RCRA permit before construction can commence.

The permit application is divided into two parts: A and B. Part A is a short, standard form that collects general information about a facility. Part B is much more detailed and requires the owner or operator to supply detailed and highly technical information about facility operations. Because there is no standard form for Part B, the owner or operator must rely on the regulations to determine what to include in this part of the application. Existing facilities that received hazardous waste on or after November 19, 1980, or subsequently fell under Subtitle C due to new regulations, submitted their Part As when applying for interim status. Their Part B applications can be either submitted voluntarily or called in by the regulatory agency. Owners or operators of new facilities must submit Parts A and B simultaneously at least 180 days prior to the date on which they expect to begin physical construction; however, construction cannot begin until the agency has issued the permit. Permit applications are processed according to the procedures found in 40 CFR Part 124.

The RCRA Corrective Action Program

RCRA requires owners and operators of RCRA facilities to clean up contamination resulting from present and past practices, including those practices of previous owners of the facility. These clean up activities are known as corrective action. HSWA added three provisions for corrective action, thus significantly expanding EPA's authority to initiate corrective action at both permitted RCRA facilities and facilities operating under interim status. Section 3004(u) of HSWA requires that any permit issued under RCRA §3005(c) to a facility after November 8, 1984 address corrective action for releases of hazardous wastes or hazardous constituents from any solid waste management unit (SWMU) at the facility. If all corrective action activities cannot be completed prior to permit issuance, then the permit must include a “schedule of compliance” establishing deadlines and financial assurances for completing the required corrective actions. Section 3004(v) authorizes EPA to require corrective action beyond the facility boundary, if necessary. Finally, §3008(h) authorizes EPA to issue administrative (i.e., enforcement) orders or bring court action to require corrective action or other measures, as appropriate, when there is, or has been, release of hazardous waste or hazardous constituents from a RCRA facility operating under interim status.

Corrective action is typically carried out by the facility owner or operator under the requirements or conditions stated in the RCRA permit or administrative order. In some cases, the owner or operator is required, through an order, to begin corrective action prior to permit issuance. If the regulatory agency issues a permit to the facility prior to completion of all activities specified in the order, then the agency may require the owner or

operator to continue all or some of the activities under the order, or may incorporate the requirements of the order into the RCRA permit schedule of compliance.

Public Participation in the RCRA Program

Section 7004(b) of RCRA gives EPA broad authority to provide for, encourage, and assist public participation in the development, revision, implementation, and enforcement of any regulation, guideline, or program under RCRA. In addition, the statute specifies certain public notices (radio, newspaper, and a letter to relevant agencies) that EPA must provide before issuing any RCRA permit. The statute also establishes a process by which the public can dispute a permit and request a public hearing to discuss it.

In fulfilling its statutory mandate, EPA has written regulations to implement the RCRA program. To carry out its public participation responsibilities under the Act, EPA has used its authority to develop specific public participation activities in the RCRA permitting program. As we explain in more detail in the following chapters, EPA's RCRA regulations provide for public participation at all hazardous waste management facilities -- from before permit application, through the permitting process, and during the permit life.

Chapter 2
Guidelines for a Successful Public Participation Program

What is Public Participation?

The RCRA permitting process brings government, private industry, public interest groups, and citizens together to make important decisions about hazardous waste management facilities. These groups and individuals have a stake in the facility under consideration, its operations, corrective action, or changes in its design or administration. As "stakeholders" they will communicate and interact throughout the permitting process and possibly throughout the life of the facility.

Public participation plays an integral role in the RCRA permitting process. Officially speaking, EPA uses the term "public participation" to denote the activities where permitting agencies and permittees encourage public input and feedback, conduct a dialogue with the public, provide access to decision-makers, assimilate public viewpoints and preferences, and demonstrate that those viewpoints and preferences have been considered by the decision-makers (see 40 CFR 25.3(b)). "The public" in this case refers not only to private citizens, but also representatives of consumer, environmental, and minority associations; trade, industrial, agricultural, and labor organizations; public health, scientific, and professional societies; civic associations; public officials; and governmental and educational associations (see 40 CFR 25.3(a)). When one considers "the public" in this broad sense, public participation can mean any stakeholder activity carried out to increase public's ability to understand and influence the RCRA permitting process.

Public participation increases the public's ability to understand and influence the process.

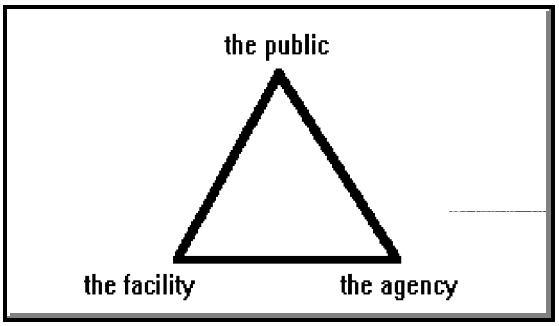


Figure 1 -- The Public Participation Triangle

We can represent the relations between these stakeholders as a triangle with the regulators, the facility owner/operator, and the interested public each forming a corner. Out of each corner runs a

Public participation is a dialogue.

line that represents each group's communication with the other participants in the process.

In the best case, the stakeholders interact well, the lines of communication are strong between all the parties, and information flows in both directions around the triangle. This last point is important: *public participation is a dialogue*. You will read more about this dialogue later in this chapter.

Why Bother With Public Participation?

There are a number of reasons why agencies, facilities, and interest groups should provide for RCRA public participation and why citizens should make an effort to participate in RCRA decision-making. The first, and most obvious reason, is that facilities and permitting agencies are required to conduct public participation activities under the Act and its implementing regulations. Additional activities provided by facilities, agencies, and other organizations in the community can complement the required activities.

The second reason to bother with public participation is "good government." Permitting agencies are charged with making many controversial decisions, which should not be made by technical expertise alone. Public participation in controversial decision-making is an essential element of the good government philosophy. Community members have a right to be heard and to expect government agencies to be open and responsive.

Public input can help the agency and the permittee make better technical decisions.

In addition to providing good government, the third reason for encouraging public input is that it can help agencies reach better technical solutions and, thus, make better policy decisions. Public input can also help permittees or prospective applicants make better business and technical decisions. A community is most qualified to tell you about its own needs, and people who live with a facility every day will have the familiarity to provide useful insights. Experience has shown that RCRA actions often benefit from public participation. With public input, permitting decisions can gain a breadth and an appreciation of local circumstances that technical staff alone could not provide.

The fourth reason to bother with public participation is that RCRA actions are more likely to be accepted and supported by community members who can see that they have had an active role in shaping the decision. Showing community members that the regulatory agency or the facility is willing to address community concerns will establish the foundation for improved understanding and community involvement in the process, even if members of the community do not always agree with the outcome of that process. By promoting public participation, permitting agencies can reduce the potential for concern over less consequential risks and dedicate more

resources to addressing serious risks and issues. Many companies have also found that promoting early and meaningful public participation can save resources in the long run by avoiding delays and lawsuits based on public opposition.

What Makes A Successful Public Participation Program?

A successful public participation program is inclusive. It allows members of the community to have an active voice in the RCRA decision-making process. Agency staff, facility personnel, and citizens will be able to talk openly and frankly with one another about RCRA-related issues, and search for mutually-agreeable solutions to differences.

In addition to the paragraph above, a successful public participation program will meet the targets set out in the subsections that make up the remainder of this chapter. The principles in these following subsections are applicable to all public participation activities.

Dialogue and Feedback

A vital and successful public participation program requires a dialogue, not a monologue. In other words, information must flow in loops between any two stakeholder groups. For example, the regulators should not just release information to the facility owner/operator, who passes it to the community, who then contacts the regulators. The regulator should make the information available to everyone and ask for feedback. Each corner of the triangle must keep the two-way conversation going with the two remaining corners.

The address and phone number of a contact person should appear on fact sheets, notices and other outreach materials.

Open communication lines require participants to be accessible to the other stakeholders. An effective way to make your group accessible is to designate a **contact person** for every permitting activity. The contact person should make his or her address and phone number available to the other stakeholders by printing it on any fact sheets or other informational materials produced by the organization. The contact person will field all inquiries on the permitting activity at hand. Other people involved in the process will appreciate this single and accessible point of contact.

Public participation should encourage “feedback loops.”

Without an active two-way communications process, no party will benefit from the "feedback loop" that public participation should provide. For example, if the regulatory agency sends out a fact sheet about an upcoming permit action, that fact sheet alone does not constitute public participation. Missing is the "feedback loop," or a way for the agency to hear from those who read the fact sheet. To get feedback, the agency might name a contact person in the fact sheet and encourage telephone or written comments, place calls to civic or neighborhood associations, visit a community group, or hold a meeting or workshop to discuss material in the fact sheet. Feedback loops enable the agency to monitor public interest or concern,

adjust public participation activities, and respond quickly and effectively to changing needs. The feedback loop is a useful tool for all stakeholders in the process.

Members of the public have valid concerns and can often improve the quality of permits and agency decisions.

Even if a feedback loop operates successfully, public participation cannot be successful if the permitting agency or the facility is reluctant or unable to consider changes to a proposed activity or permit action based on public comment or other input. While the decision-makers at the agency or the facility need not incorporate every change recommended by the public, they should give serious consideration to these suggestions and respond by explaining why they agree or disagree. Members of the public, like other stakeholders in the process, have valid concerns and can often contribute information and ideas that improve the quality of permits and agency decisions. Regulators and facility owner/operators should take special notice of this point and make available more opportunities for public participation.

Honesty and Openness

As we emphasized in the section above, participants in the RCRA permitting process should make all efforts to establish open paths of communication. Being honest and open is the best way to earn trust and credibility with the other stakeholders in the process. Making information available to the community and providing for community input can improve public perception of the permitting agency or the facility and lead to greater trust and credibility. Trust and credibility, in turn, can lead to better communication and cooperation and can focus the public debate on issues of environmental and economic impacts.

Establishing trust should be the cornerstone of your public participation activities. The following is a list of things to remember when establishing your credibility:

1. Remember the factors that are necessary for establishing trust -- consistency, competence, care, and honor.
2. Encourage meaningful involvement by other stakeholders.
3. Pay attention to process.
4. Explain the process and eliminate any mystery.
5. Be forthcoming with information and involve the public from the outset.
6. Focus on building trust as well as generating good data.
7. Follow up. Get back to people. Fulfill your obligations.
8. Make only promises that you can keep.
9. Provide information that meets people's needs.
10. Get the facts straight.
11. Coordinate within your organization.
12. Don't give mixed messages.
13. Listen to what other stakeholders are telling you.

14. Enlist the help of organizations that have credibility with communities.
15. Avoid secret meetings.

This list was adapted from the manual *Improving Dialogue With Communities* (New Jersey Department of Environmental Protection, 1988). This manual and a number of other sources produced by states, EPA, trade groups, and public interest groups are available for more information on trust and credibility factors.

A Commitment to the Public

Public officials have ethical obligations to the public that have a practical value in building the foundation necessary for successful communication:

* informing the public of the consequences of taking, or not taking, a proposed action;

* showing people how to participate so that interested people can;

* keeping the public informed about significant issues and proposed project changes;

* providing all segments of the public with equal access to information and to decision-makers;

* assuring that the public has the opportunity to understand official programs and proposed actions, and that the government fully considers the public's concerns; and

* seeking the full spectrum of opinion within the community, not only from the business community and other agencies, but also from neighborhood and community groups, environmental organizations, and interests with other points of view.

(Adapted from *Sites for our Solid Waste*, Environmental Protection Agency, EPA/530-SW-90-019, March 1990 and 40 CFR 25.3(c)).

An Informed and Active Citizenry

If you are a citizen who is interested in a permitting issue, the regulations provide a number of opportunities to access information and get involved. The following activities are some things citizens can do to be influential and well-informed participants.

C Contact the permitting agency early. Identify the designated contact person for the project (the name should be on fact sheets and notices, or available by calling the agency).

C Do background research by talking to local officials, contacting

research or industrial organizations, reading permitting agency material, and interacting with interested groups in the community.

- Perform an assessment. Request background information from the permitting agency, local officials, and the facility ownership. Ask about day-to-day activities, the decision-making structure, and current policies and procedures; inquire about how the proposed project fits into larger political issues, local planning, and the facility's business plans. Request special information that may open up additional solutions, including pollution prevention approaches that may reduce or recycle the amount of waste that is managed in the facility.

- Ask to have your name put on the facility mailing list for notices, fact sheets, and other documents distributed by the agency. Add your name to mailing lists maintained by involved environmental groups, public interest and civic organizations.

- Tell the permitting agency, the facility owner/operator, and other involved groups what types of public participation activities will be most useful for you and your community. Inform them about the communication pathways in your area (e.g., what newspapers people read most, what radio stations are popular), the best locations for information repositories and meetings, and other information needs in the community (e.g., multilingual publications).

- Submit written comments that are clear, concise, and well-documented. Remember that, by law, permitting agencies must consider all significant written comments submitted during a formal comment period.

- Participate in public hearings and other meetings; provide oral testimony that supports your position. Remember that a public hearing is not required unless someone specifically requests one in writing.

- If any material needs further explanation, if you need to clear up some details about the facility or the permitting process, or you would like to express specific concerns, then request an informational meeting with the permitting agency or the appropriate organization, such as the State's pollution prevention technical assistance office.

- Follow the process closely. Watch for permitting agency decisions and review its responses to public comments. Be aware that you have an opportunity to appeal agency decisions.

- Remember that your interest and input are important to the agency

and other concerned stakeholders.

- To get tips about community organizing, information about how to participate in the regulatory process, or possible referrals to other involved groups in your area, you can contact the local League of Women Voters chapter. If you cannot contact a local chapter, or one does not exist, you can contact the state chapter. Phone numbers and addresses are provided in Appendix C.

EPA encourages citizens to consider these recommendations and follow them where applicable. At the same time, EPA recognizes that the best way to participate will be different in every situation. Citizens should contact other concerned persons, community organizations, and environmental groups to determine how citizens can best influence the permitting process.

Starting Early

A good public participation effort involves the public early in the process, encourages feedback, and addresses public concerns before initial decisions. The permitting agency, the facility owner/operator, and public interest organizations involved in the RCRA permitting process should make all reasonable efforts to provide for early stakeholder participation and open access to information. These efforts should include informing and seeking feedback from impacted communities before any significant actions. You should avoid the appearance of making decisions before public input. Even in cases where the facility and the agency meet privately in the early stages of the process, they should keep up the lines of communication with the public. One State agency has found success by making a meeting summary available to the public in an information repository whenever the regulators meet with facility staff. Such gestures can increase public faith while reassuring people that the agency will seek public input before making major permitting decisions.

EPA encourages public participation activities throughout the RCRA permitting process, especially when the activities foster an early, open dialogue with potentially affected parties. This can be particularly effective in exploring alternatives to treatment or that go beyond compliance, including for example, pollution prevention.

Early outreach and straightforward information can establish trust among the other stakeholders while reducing misinformation and rumors. Key contacts in the community should always know about planned activities that will be visible to members of the community, such as construction work or excavation related to facility expansions or corrective action. Interested people or groups in the community can use early participation activities to

make their concerns and suggestions known before major decisions take place. Since early participation activities may be the first word that people hear about a permitting activity, EPA is requiring expanded notice efforts before the facility submits a permit application (see "Notice of the Pre-Application Meeting" in Chapter 3). All stakeholders should use their knowledge of individual communities and local communication channels (e.g., contacts in the community, the media, civic and religious organizations) to foster effective information-sharing.

RCRA regulations require facilities and agencies to start public participation activities prior to application submittal, and continue them through the entire life of the permit. In essence, the facility owner or operator cannot put off public participation. EPA encourages permit applicants and permit holders to take early public participation activities seriously -- early activities can set the tone for the permitting process and even the entire life of the facility.

Start early and plan ahead: public interest in a facility can grow rapidly and unexpectedly.

Setting up an effective public participation program is a valuable use of time and resources. External pressure to start public participation work may not be present at the outset of a project, because members of the public may be unaware of the facility's operations and the regulatory agency's activities. However, public interest in a facility can grow rapidly and unexpectedly. Participants can best prepare for such situations by assessing their communities, taking proactive steps, and preparing for contingencies.

Getting the news out early gives people time to react. Other stakeholders can offer better information and suggestions when they have some time to think about it. For example, a facility can better incorporate community concerns into its permit application if it hears public concerns well before application submittal. Agencies and facilities owe the public the same courtesy, allowing citizens adequate time to review, evaluate, and comment on important information. By the same token, citizen participants should do their best to make their interests known early. If a citizen is invited to participate early, but decides not to and raises issues at the end of a process, then that citizen risks losing credibility with other stakeholders in the process.

Finally, extensive early outreach (as we point out in the following section) will make the permitting process or the corrective action smoother over the long run. Early outreach brings issues to the surface before stakeholders have invested great amounts of time and resources in a project; these issues are easier to address at an early stage. Moreover, early outreach minimizes the possibility that the public will feel like the agency or the facility is surprising them with an undesirable project. By providing early notice, agencies and facilities can avoid the public reactions that have "blind-sided" some projects in the past.

Assessing the Situation

Community assessments are an important step to take before preparing or revising a public participation strategy. Assessments are essential tools for facility owners who are applying for a RCRA permit (including interim status facilities), seeking a major permit modification, or undertaking significant corrective action. Permitting agencies should focus their assessments on communities where a major new facility is seeking a permit, or in other cases where permitting activity or corrective action has the potential to evoke public interest. Additionally, assessments may be appropriate at any stage during the life of a facility, especially in situations where the level of public interest seems to be changing.

Community assessments allow agencies, facility owners, and public interest groups to tailor regulatory requirements and additional activities to fit the needs of particular communities. Each community is different and has its own way of spreading information and getting people interested. Important institutions and groups will also vary from place to place, as will socioeconomic status, culture and traditions, political and religious activity, and values. The facility owner, public interest groups, and the agency should make all reasonable efforts to learn the facts about the affected community. These data are essential to choosing public participation activities that will be useful and meaningful for the community.

Every community is different. What works in one community may not work in another.

Determining the Level of Public Interest

Some permitting activities do not generate much interest or concern among community members. Other activities will evoke strong interest and will require a much greater public participation effort. Although there are no hard and fast rules that make a facility a low- or high-profile facility, the level of interest will depend on a number of factors, such as (1) the type of RCRA action and its implications for public health and welfare; (2) the current relationships among the community, the facility, the regulatory agency or agencies, and other groups; and (3) the larger context in which the RCRA action is taking place, including the political situation, economics, and important community issues. Exhibit 2-1 (at the end of this Chapter) provides a guide for determining a facility's potential to be low-, medium-, or high-interest to the public.

Public participation activities should change over time to suit the level of interest in a facility.

While these guidelines can be useful as an early planning tool to predict public interest, agencies and facility owners should be flexible and prepared for rapid changes in the level of public interest in a permitting activity. The apparent level of public interest does not always reflect the potential for public interest. In some cases, the regulatory minimum will be sufficient. In other cases, the agency or facility should be prepared to provide additional input and information, as needed. Public participation activities should correspond to the level of community interest as it changes over

time.

Public interest, environmental, and civic organizations also assess their communities to determine the amount of interest in a permitting activity. These organizations can take steps to encourage public participation in the permitting process. Door-to-door canvassing, public information sessions, flyers, fact sheets, neighborhood bulletins, and mailings are all methods of sharing information with the public and encouraging citizen involvement. Organizations that are attempting to encourage public participation may find the rest of this section useful. In addition, more information for such groups is available by contacting the League of Women Voters (see Appendix C for contacts).

Community Assessment Methods

Facility owners should gather background information about the community before seeking a permit or a permit modification. Regulators should find out about community concerns at the outset of a major project or any project that seems likely to raise significant public interest. Public interest groups may want to perform similar background work. As emphasized in the previous section, understanding a community is essential to creating a successful public participation effort.

The facility owner is responsible for collecting his or her own information about a community before initiating any permitting activity (e.g., before requesting a permit modification or applying for a permit). Permitting agencies, on the other hand, should dedicate their resources, using their own judgment, to learning about concerns in the community and assessing communities where there is a high level of interest in a permitting activity. In some cases, permitting agencies and facility owners have cooperated to do joint outreach activities, and believe that the agency presence has made members of the community more comfortable during interviews or other activities. EPA does not recommend such cooperation as a rule (because, for example, other stakeholders could perceive this as "taking sides"). Permitting agencies should use their discretion and maintain the agency's proper role during any such activities.

EPA recommends the following steps for gathering information about the community. Although facility owners may want to follow these steps before every major permitting activity (e.g., applying for a permit or a major modification), permitting agencies should focus on major activities at facilities that have the potential to raise significant public interest :

- Reviewing news clippings and other information that indicates how the community is reacting to the facility or the permitting activity.

- Talking to colleagues or anyone who has experience working with members of the particular community.

- Contacting companies, universities, local governments, civic groups, or public interest organizations that already have experience in the community. These groups may be able to provide useful information about community concerns, demographics, or reactions to other industry in the area. They may be able to point you towards other existing sources of community information.

If it seems like there is a low level of interest in the facility at this point, and things are not likely to change, the agency and the facility owner can begin planning the required public participation activities.

If, however, the facility shows indications of being a moderate- to high-interest level facility, a more detailed analysis of the community might be necessary, and additional public participation activities planned.

EPA recommends community interviews when there is a high level of public interest.

- To get a fuller picture, staff from the agency or the facility should consider contacting community leaders and representatives of major community groups to talk about the facility and the planned RCRA action. These interviews should represent a fair cross-section of viewpoints in the community. The community representatives may have a feel for how much community interest there is in a permitting activity. They also may be able to provide advice on how to handle the situation.

- If there are indications of likely high interest from the outset (e.g., a facility that is likely to be controversial is seeking a permit), the agency or the facility owner should consider conducting a broad range of **community interviews** with as many individuals as possible, including the facility's immediate neighbors, representatives from agencies that will participate in the RCRA action, community organizations, and individuals who have expressed interest in the facility (e.g., people on the agency's mailing list, newspaper reporters, local officials). A detailed discussion of how to conduct **community interviews** is provided in Chapter 5.

- After collecting the necessary information, the agency or the facility may wish to prepare a brief summary of major community concerns and issues (no more than five pages). The summary can be integrated into the public participation plan document or used as the basis for developing a "Question and Answer"-type **fact sheet** to distribute back to the community. See Chapter 5 for additional information on these activities.

Exhibit 2-2 at the end of this Chapter summarizes the steps to take in

determining the level of public interest in facilities and gathering background information.

Targeting Public Participation in Communities

The scope of the affected community will vary from facility to facility.

This initial assessment should provide a good idea about the scope and makeup of the "affected community." Pinpointing the affected community can be a difficult process; everyone has a different definition. EPA will not try to define the affected community here because its composition will vary with the particular characteristics of each facility and its surrounding community. *In some cases*, however, it may be appropriate to target a segment of the population that is broader than the "affected community." For instance, the appropriate target for early public notices and some other activities may go beyond people who are directly affected, to include citizens who are potentially interested or concerned about the facility. EPA recognizes that the distinction between "affected" and "concerned" or "interested" will not be completely clear in all cases. Permitting agencies should use their best judgment.

EPA realizes that resources will limit the breadth of any public participation program and that focus is necessary. It is clear that some people will have a more direct interest than others in a particular permitting activity. Given practical resource limitations, public participation activities should focus first on people with a more direct interest in a RCRA facility, while also realizing that "direct interest" is not always determined by physical proximity to a facility alone. It is impossible to point out all people who have a direct interest, but, as a general guideline, people with the most direct interests will live in the general vicinity of the facility, or have the potential to be affected by releases to groundwater, air, surface water or the local environment (e.g., through game, livestock, or agriculture or damage to natural areas). Direct interests may also include people who live on or near roads that will accept increased traffic of hazardous waste-carrying vehicles. EPA acknowledges that people residing a significant distance from the facility may have legitimate and important concerns, but EPA thinks it is reasonable to focus limited public participation resources on communities with direct interests. See the section on "The Mailing List" in Chapter 3 for a list of organizations that you should consider when thinking about the interested or affected community.

The Citizen's Role

Citizens in the community may want to assess the permitting situation, the agency (or agencies) involved, and the facility owner/operator. As we pointed out in the section above, citizens can get background on a permitting issue by talking to local officials, contacting research or industrial organizations, reading permitting agency material, and interacting

with interested groups in the community. Citizens may also want to find out about day-to-day activities at the facility or the agency, the decision-making structures they use, and their current policies and procedures. Citizens may want to get more information on the owner's/operator's involvement with other facilities or other activities. The contact persons for the facility and the agency are also good to know. Citizens can also talk to local officials, the agency, or the facility to find out how the proposed project fits into larger political issues, what local planning issues are involved, and what the facility's business plans are.

Individual community members can take part in the assessment process by providing input to other stakeholders through interviews, focus groups, or other methods used in community assessments (also see the section on "An Informed and Active Citizenry" earlier in this Chapter). This guidance manual gives an overview of the RCRA permitting process which individual community members may find helpful. The Appendices at the end of this manual provides other resources and contacts (the RCRA Hotline, agency phone numbers, and League of Women Voters' contacts) that citizens can access. EPA is also compiling a reference list of public participation and risk communication literature. The list is available through either the RCRA Information Center, in Docket Number F-95-PPCF-FFFFF, or through the RCRA Hotline (see Appendix A for appropriate telephone numbers). Members of the public can find out about permit activities in their area by contacting the permitting agency, talking to environmental groups or public interest organizations, reading state, federal, and private environmental publications in the library, looking for zoning signs or other announcements, attending public meetings and hearings, watching the legal notice section of the newspaper or checking display advertisements, listening to local talk shows, or keeping up with local events through town bulletins, associations, or council meetings.

Valuable public interaction can take place outside of the formal permitting process.

In addition, members of the community can contact the permitting agency or the facility -- outside of any formal activity -- to give early input and to share their concerns. Community members should suggest public participation activities, meeting locations, or means of communication that will work well in their community. This sort of informal communication, via letter or interview, can be very helpful, especially in terms of establishing a public participation plan (see Chapter 5 for a description of public participation plans). EPA also recognizes that valuable public interaction takes place outside of the formal permitting process. Citizens may choose to contact other groups in the community that have an interest in the permitting activity. Environmental, public interest, and civic organizations often play a role in the RCRA permitting process. These groups can provide interested citizens the opportunity to participate in efforts to influence the permitting process through collective action.

Alternatively, citizens may see fit to create new organizations to discuss issues related to the permitting process or to provide input into the process.

Planning for Participation

A good public participation program avoids misunderstandings by anticipating the needs of the participants. It provides activities and informational materials that meet the needs of, and communicate clearly to, specific community members and groups. The public participation plan is the agency's schedule and strategy for public participation during the initial permitting process, significant corrective actions, and other permitting activities at facilities receiving high levels of public interest.

After assessing the situation, the agency should have an approximate idea of how interested the public is in the facility. Based on the information from the community assessment, the agency should draft a plan addressing public participation activities throughout the prospective permitting process and the life of the facility. For permitting activities and corrective actions that do not raise a high level of public interest in the community, the public participation plan will be a simple document, outlining the regulatory requirements. Major permitting activities and other high-interest activities will require a more detailed plan with participation opportunities that go beyond the requirements. Agency staff should keep in mind that community interest in a particular facility can change at any time; good plans will prepare for contingencies.

EPA recognizes that permitting agencies do not always have the resources they need to perform all the public participation activities they would like to perform. Agency staff must consider resources in all stages of the process, but particularly when developing a public participation plan. To make fewer resources go further, agencies should consider working with community groups, public interest organizations, and facility owners/operators to plan public participation events. Some relatively inexpensive activities can be very effective. More information on making use of additional resources is available in Appendix M. Information on the resources needed to perform specific public participation activities is available in Chapter 5.

The plan should create a structure for information to flow both to and from the public.

The goal of the public participation activities in the plan is to meet the specific needs of members of the community by creating a structure for information to flow both to and from the public. Anyone who plans public participation activities should strive for useful and timely exchange of information with the public. Again, EPA strongly encourages anyone conducting public participation activities to solicit public input on the types of communication and outreach activities that will work best in each

community. The agency, facility, civic and public interest groups should coordinate their public participation efforts, emphasizing two-way information exchange and avoiding unnecessary duplication in their activities.

To identify activities for the public participation program, the agency should go through the following steps:

1. list the major community issues and concerns;
2. list the community characteristics that will have a bearing on how you address these issues; and
3. list the activities that will address the community's concerns during the permitting process and, if applicable, corrective action.

Once the agency has outlined activities for the facility at hand, it should put together a strategy for implementing the activities. In general, the following are the areas of responsibility for public participation that the agency should consider:

- **Interacting with the media, especially on high-profile facilities.** If there is a high degree of interest in the facility, it will be important to have a media contact person who can get information out quickly, accurately, and consistently. The assistance of a public affairs office is often necessary (where applicable).

- **Interacting with elected officials.** For facilities receiving a moderate to high level of interest, it is often beneficial to work with elected officials to provide them with information they need to answer their constituents' questions. Put together a team of people who can fill the information needs of public officials. This team should include senior people who can answer policy questions when necessary.

- **Answering telephone and written inquiries.** It is important to follow up on all requests for information that you receive from stakeholders. Designate one person to be responsible for putting together the answers to questions in a form that is understandable to the public. This "contact person" should be named in all fact sheets and public notices. Remember the importance of two-way communication and the public participation triangle.

- **Coordinating public participation with other stakeholders.** It is crucial that all the people who are working on public participation be aware of what activities are being planned for the facility and any other facilities in the area, so that activities can complement each

other whenever possible. At the least, try to avoid conflicts between competing activities. Be sensitive to major events (e.g., celebrations, other meetings, religious revivals, fundraisers, elections) and important dates (e.g., local holidays, graduations) in the community.

- **Maintaining the mailing list and information repositories.** A mailing list is required under RCRA and the agency should update it to include new people or organizations who have expressed an interest in the facility. The facility and other organizations should refer to the agency any requests to be on the official facility mailing list. If public information repositories are established for the facility, they should be indexed and updated at least quarterly, or as required by the permitting agency. The facility may want to obtain a copy of the mailing list to use for distributing information.

- **Planning and conducting public meetings.** Set-up and coordination are critical to the success of public meetings. Public participation staff will need to choose a location for meetings based on public input and the need for comfort and accessibility. The public participation coordinator will need to schedule speakers, plan the agenda, and provide a mediator (if necessary) at the meeting. Chapter 5 provides more detail on public meetings, hearings, workshops, etc.

- **Handling production/distribution/placement of information, including fact sheets, public notices, news releases, meeting handouts and overheads, etc.** Much of your public participation time will be spent developing and producing information for interested stakeholders. Permitting agency staff may want to refer to Appendix M for a list of resources that can ease fact sheet and information production. Sometimes you may need to refer stakeholders to other agencies that have information readily available, such as the State pollution prevention technical assistance office, which often have fact sheets and technical experts available. A list of pollution prevention contacts is included in Appendix S.

Public participation activities should coincide with major steps in the permitting process.

The next step is to figure out a schedule of public participation activities. This schedule should include activities that are required by EPA regulations. In general, the timing of additional public participation activities should correspond to the completion of major steps in the technical process (e.g., application submittal, draft permit issuance, completion of the RFI). These are the times when members of the public may have new questions or concerns about the proposed action or the facility in light of new information, especially during corrective action. The regulators and the facility owner/operator should also be prepared to notify the public when any major activity will be taking place at the facility (e.g., start of construction for corrective action) or has taken place (e.g.,

emergency response to releases).

Permitting agencies should take the lead in writing and revising public participation plans, while allowing for input from other stakeholders and coordinating with activities held by the facility, public interest groups, and community organizations. The agency may want to involve other stakeholders in a group process to form a comprehensive plan. Depending on the amount of public interest in a facility, the plan could be an informal one- or two-page document or a formal public involvement plan that will be available to members of the community for comment. At a minimum, the plan should include a list of the specific public participation activities for the facility and a schedule for when they will occur. We encourage agencies to make these plans -- formal and informal -- available to the public.

Developing a written public participation plan will help staff account for all the necessary steps in the permitting or corrective action process. A formal plan will also let the public know what type of activities to expect during the process. EPA recommends that a formal plan contain the following sections:

- executive summary;
- introduction/overview;
- facility history;
- the RCRA action taking place;
- summary of community interviews, outlining concerns;
- a description of any early consultation (e.g., interviews with group leaders) that led to development of the plan;
- a list of the major issues likely to emerge during the process;
- an estimation of the level of public interest likely to be generated by the decision under consideration;
- public participation activities and schedule;
- a list of the agencies, groups, and key individuals most likely to be interested in the process;
- a list of key contacts; and
- information on meeting and repository locations, where applicable.

Communities can provide valuable advice on what public participation activities will work best.

EPA encourages permitting agencies to seek public input on the plans; final plans should be available for public review. This sort of input is important for getting the public involved early in the process. In addition, communities can provide useful advice on what channels of communication will work best in the area and what sort of activities will provide the most effective participation. Communities can provide practical solutions that improve communication and may even save resources. For example, in one community where rumors spread easily, citizens suggested that the agency put status reports on voicemail so that people could call in for

regular updates.

There are numerous ways that the community can contribute during the planning stage. Citizens can decide how interested they are in a particular activity by discussing issues with other stakeholders, accessing relevant documents, or calling hotlines or other experts. Those who would like to participate in the formal process can use this time to raise questions or develop their ideas. Some citizens may want to submit comments to the agency on the public participation plan. Moreover, EPA encourages interested citizens to meet together to discuss the potential impact of RCRA actions on their communities. Citizen groups may want to invite experts from the facility, the permitting agency, engineers, environmental contractors, scientists, health experts, and attorneys to speak at their meetings.

Understanding and Interaction Between Stakeholders

While each stakeholder shares the responsibility of providing open and two-way communication, the roles and responsibilities of the different stakeholders differ substantially. Participants in the RCRA permitting process should acknowledge these differences and account for them as they approach the process. We encourage participants to do their best to understand the interests and concerns of the other participants by following the principles below:

* Strive to respect other stakeholders and their opinions. Avoid personal attacks.

* Understand that people have different levels of understanding of RCRA. Not everyone is an expert, but everyone should have the chance to know all the facts.

* Realize that decisions made during the permitting process can have profound economic and social impacts. These decisions are very real and important; people will live and work with them every day.

* Acknowledge that statutory and regulatory requirements limit what can happen during the permitting process. Remember that everyone -- citizens, regulators, facility owners/operators, and public interest workers -- has resource and time constraints

* Recognize that people have concerns that go beyond the scientific or technical details. These concerns deserve respect.

* Build your credibility by being fair, open, and respectful.

* Try to understand the values and interests of other stakeholders before jumping to conclusions.

Promoting Environmental Justice

Environmental justice refers to the fair distribution of environmental risks across socioeconomic and racial groups. Some groups and individuals associated with environmental justice issues have raised the concern that EPA and some State environmental agencies do not provide equal protection under the nation's environmental laws. With regard to the RCRA permitting program, most of the concern surrounds the potential additional risk that hazardous waste facilities may pose when located near low-income or minority communities that already face an environmental burden from multiple sources.

On February 11, 1994, the President issued Executive Order 12898, directing federal agencies to identify and address the environmental concerns and issues of minority and low-income communities. EPA is committed to the principles in this Executive Order. Furthermore, in an effort to make environmental justice an integral part of the way we do business, the Agency issued a policy directive, in September 1994 (OSWER 9200.3-17), that requires all future OSWER policy and guidance documents to consider environmental justice issues.

EPA is committed to equal protection in the implementation and enforcement of the nation's environmental laws. Moreover, providing environmental justice for all U.S. residents is a major priority for EPA.

In the area of public participation, the Agency has made changes that will empower communities and potentially increase their voice in the permitting process. In the "RCRA Expanded Public Participation" rule (60 FR 63417-34, December 11, 1995), EPA created more opportunity for public involvement in the permitting process and increased access to permitting information. The rule gives all communities a greater voice in decision making and a clear opportunity to participate in permit decisions early in the process.

New EPA rules will empower communities by giving them a greater voice in the permitting process.

EPA strongly encourages facilities and permitting agencies to make all reasonable efforts to ensure that all segments of the population have an equal opportunity to participate in the permitting process and have equal access to information in the process. These efforts may include, but are not limited to:

- **Providing interpreters, if needed, for public meetings.** Communicating with the community in its language is essential for the two-way information flow required to ensure the public an equitable voice in RCRA public participation activities.

- **Providing multilingual fact sheets and other information.** Making sure that the materials presented to the public are written clearly in

the community's primary language.

- **Tailoring your public participation program to the specific needs of the community.** Developing a program that specifically addresses the community's needs will demonstrate to community members your interest in achieving environmental equity and fostering a sense of cooperation.

- **Identifying internal channels of communication that the community relies upon for its information, especially those channels that reach the community in its own language.** Examples of these "channels" are a particular radio show or station, a local television station, a non-English newspaper, or even influential religious leaders. By identifying and making use of these valuable communication channels, you can be sure that the information you want to publicize reaches its target audience.

- **Encouraging the formation of a citizens advisory group to serve as the voice of the community.** Such groups can provide meaningful participation and empowerment for the affected community (see Chapter 5 for more detail).

(Additional steps you can take to promote environmental justice are available in Appendix D).

Although EPA has taken steps on a national level to address environmental justice issues, many of these issues can be addressed more effectively at a local level and on a site-specific basis. Local agencies and leaders have an important role to play in addressing environmental justice concerns.

The RCRA permitting process is intended to ensure that facilities are operated in a manner that is protective of human health and the environment. Environmental justice concerns are often broader in scope, going beyond the technical design and operation of the facility to include socio-economic, ethnic, and racial factors for the surrounding community. Within the context of public participation in RCRA permitting, the best way to address environmental justice concerns is through active communication. Keeping open lines of communication among permitting agencies, facility owners, and community members is a good way to promote awareness and understanding of the permitting process, the facility operations, and the community's concerns. Providing frequent opportunities for community participation empowers the community to play an important role throughout the process.

Permitting agencies should be forthright in explaining the scope and limitations of permitting regulations to the community. Agencies should

also make sure that citizens understand their rights within the permitting process (e.g., submitting comments, requesting a public hearing, appealing permit decisions). Facility owners should strive to establish good relations with the community and routinely interact with community members and organizations, seeking input and feedback when making significant decisions. Communities should gather information about other rights, outside of the permitting process, such as those afforded under Title VI of the Civil Rights Act.

Supporting Community-Based Environmental Protection

In its May, 1995 Action Plan, EPA's Office of Solid Waste and Emergency Response (OSWER) endorses community-based environmental protection (CBEP). CBEP is a method of solving environmental problems in the context of the community in which they occur. OSWER's plan points to CBEP as a method that "brings the government closer to the people it is meant to serve." It also heralds CBEP as "a new way of accomplishing traditional tasks in a more effective, more responsive manner."

Stakeholder involvement is one of the keys to CBEP. OSWER's plan points to CBEP efforts as ones that "must empower and equip the community to participate in environmental decisions, taking into account not only the human but also the ecological and socioeconomic health of a place." Thus, the involvement and cooperation of the community, facility owners and operators, and agency personnel in the permitting process will fuel CBEP efforts. Moreover, increased access to information and opportunities for participation in the permitting process (like those in the RCRA Expanded Public Participation Rule) will empower communities and enable them to practice CBEP.

We encourage permitting agencies, facility owners and operators, public interest groups, and members of the community to carry out the spirit of this manual. As we emphasized in the section on “Promoting Environmental Justice” above, the best solutions to many environmental challenges are available at the local community level, and no problem can be solved without input from local stakeholders. Only by cooperating, communicating, and providing feedback and equal opportunities can community-based programs reach their potential for solving environmental problems.

The best solutions to many environmental challenges are available at the community level.

Permitting agencies can take a lead role in promoting a CBEP approach by discussing RCRA issues in coordination with other environmental concerns in a given area. Program distinctions between water, air, waste, and toxics are less important to stakeholders outside of the agency. Agency staff should be prepared to address RCRA concerns in the context of air and water issues that may reach beyond a particular facility. Many companies are particularly interested in finding opportunities to reduce process wastes

through pollution prevention and recycling that affect air, water, and waste permit requirements. Several states are embarking on "whole facility" approaches to permitting to take advantage of this approach. Permitting agencies should consider using **fact sheets** and **availability sessions** to explain RCRA's relationship to other programs. Combining public meetings across program lines could also make the entire environmental picture more clear to stakeholders.

Re-evaluating and Adjusting the Public Participation Program

As RCRA activity increases at a facility and becomes more visible, public interest in a site can increase dramatically. Interest can also fade away without warning. Participants in the permitting process should anticipate and plan for sudden changes in the level of interest in a facility. Periodic communication with key community contacts can help to anticipate changes in the attitude or interest of other stakeholders. All participants should make sure to keep their key contacts informed of all planned activities -- especially activities that are highly visible and tend to raise a lot of interest, such as construction work or excavation related to cleanups.

In addition, at facilities that are receiving high levels of public interest, the agency or the facility may want to conduct follow-up community interviews at a key point (or points) in the decision-making process. These interviews will help predict major shifts in public interest or concern. The agency should also encourage members of the community to submit comments throughout the process and especially during formal comment periods. Agency staff should make clear to the public (e.g., through fact sheets) how the comment and response process works.

Permitting agencies, facility owners, and other involved organizations should evaluate the effectiveness of public participation programs regularly through the process. The permitting process is complex and the best way to measure the success of a public participation plan is not always clear. The following are indicators that a public participation program is working:

- stakeholders are not asking the same questions over and over again;
- stakeholders are not raising concerns about a lack of information;
- the appropriate contact person is handling inquiries in a timely manner;
- most of the public participation time is not devoted to correcting breakdowns in the information-sharing triangle (see above) between the community, the agency, and the facility;
- the channels of communication are well-defined and open;
- interested parties are providing informed comments on the project; and

- members of the public are bringing their concerns to stakeholders that are actively involved in the process, rather than taking them directly to the press or elected officials.
- Creative, more flexible, technical solutions, including pollution prevention solutions, are being explored.

The best way to evaluate the success of a public participation program is to ask other stakeholders what is and isn't working.

If the program is not achieving these objectives, then the agency, facility, and involved groups need to assess their techniques and determine what changes will improve the program. If members of the community are dissatisfied, then public participation activities may not be reaching the right target audiences. The community may not have adequate access to information or may not be understanding it because it is too complex. In some cases, the public may need more detailed information. The community may feel uncomfortable in relations with the facility or the agency, or the agency or the facility may be uncomfortable relating to the community. The facility may not understand its role in the process in relation to the agency's role. All of these difficulties can reduce the effectiveness of the public participation program. The best way to find out what is going wrong is to talk to the community and the other stakeholders. Ask them what is working and where improvements are needed. Modify public participation activities based on their suggestions and your own time and resource limitations.

Members of the community should have a chance to evaluate the public participation activities that the agency, the facility, and public interest or other groups are employing. EPA encourages participants to solicit feedback from the public, going beyond the regulatory requirements where necessary. **Surveys**, **interviews**, or **informal meetings** are all effective ways to gather feedback. In addition, the agency, facility, and involved groups should explain the permitting process to the community, update the community on significant activities, and provide information that community members can access and understand. If these standards are not being met, then the community should communicate its concerns to the appropriate contact person. Citizen input is the feedback that makes two-way communication work. All involved organizations should create a means for citizens to let them know if public participation activities are not working (e.g., use of a contact person, suggestion boxes, hotlines, surveys, etc.). Once these organizations know where the breakdown is occurring, they can adjust their programs to address community concerns.

Chapter Summary

Public participation, defined broadly, is any stakeholder activity carried out to increase public input or understanding of the RCRA permitting process.

The public participation triangle represents the communication between the public, regulators, and the facility.

Public participation is based on a dialogue.

Public participation is required, it can lead to better technical decisions, and it can engender public support for a project.

A successful public participation program allows members of the community to have an active voice in the process and to have free access to important information. Participants in a successful program will also pursue the following benchmarks:

- Creating a dialogue that provides for feedback;
- Establishing trust and credibility in the community through honesty and openness;
- Fostering an informed and active citizenry that follows the process, gives input to other stakeholders, and discusses issues with other concerned groups and people;
- Ensuring that public officials meet their obligations to the public;
- Involving the public early in the process, receiving feedback, and addressing public concerns before making decisions;
- Assessing the community to find out from citizens what types of activities would best allow them to participate;
- Planning your public participation activities ahead of time, allowing flexibility for changing interest levels in the community;
- Understanding and respecting the values and limitations of other stakeholders;
- Taking steps, such as issuing multilingual fact sheets or encouraging the formation of citizen advisory groups, to ensure that all segments of the interested community have an equal opportunity to receive information and participate in the process;
- Supporting efforts to respond to environmental challenges on a community level; and
- Periodically evaluating the effectiveness of your program in the community and adjusting as community attitudes and interest levels evolve.

Exhibit 2-1
Determining the Likely Level of Public Interest in a RCRA Facility

Level of Interest	Type of RCRA Action	Community Members' Relationships With Facility/Regulatory Agency	Larger Context
Low Level of Public Interest in a Facility	C The RCRA activity is unlikely to be controversial (e.g., a routine modification) C There is no contamination at the facility that could come into direct contact with the public	C People do not live near the facility C There is a history of good relations between the facility and members of the community C Members of the community have expressed confidence in the regulatory agency and/or the facility	C The facility receives very little media attention and is not a political issue C Community members have not shown any past interest in hazardous waste issues
Moderate Level of Public Interest in a Facility	C The RCRA action may involve activities, such as §3008(h) corrective action activities, that contribute to a public perception that the facility is not operating safely C Examples may include permits for storage and on-site activities and routine corrective actions. C Highly toxic and/or carcinogenic wastes may be involved (e.g., dioxins)	C A relatively large number of people live near the facility C There is a history of mediocre relations between the facility and members of the community C The facility is important to the community economically, and the action may affect facility operations C Members of the community have had little or poor contact with the regulatory agency C Local elected officials have expressed concern about the facility	C Community members have shown concern about hazardous waste issues in the past C The facility receives some media attention and there are organized environmental groups interested in the action C There are other RCRA facilities or CERCLA sites in the area that have raised interest or concern
High Level of Public Interest in a Facility	C The RCRA action includes a controversial technology or is high-profile for other reasons (e.g., media attention) C Highly toxic and/or highly carcinogenic wastes are involved (e.g., dioxins) C There is potential for release of hazardous substances or constituents that poses potential harm to the community and the environment C There is direct or potential community contact with contamination from the facility (e.g., contaminated drinking water wells or recreation lake)	C The nearest residential population is within a one-mile radius C A relatively large number of people live near the facility C There is a history of poor relations between the facility and the community C The facility has violated regulations and community members have little confidence in the regulatory agency to prevent future violations C There is organized community opposition to the facility's hazardous waste management practices or to the action C Outside groups, such as national environmental organizations, or state or federal elected officials have expressed concern about the facility or action C The economy of the area is tied to the facility's operations	C Community members have shown concern about hazardous waste issues in the past C Facility activities are an issue covered widely in the media C There is interest in the facility as a political issue, at the local, state, or federal level (e.g., statewide and/or national environmental groups are interested in the regulatory action) C There are other issues of importance to members of the community that could affect the RCRA action (e.g., concern over a cancer cluster near an area where a facility is applying for a permit to operate an incinerator) C There are other RCRA facilities or CERCLA sites nearby that have been controversial

Exhibit 2-2
Steps in Evaluating Facilities and Gathering Information

Step 1: Review the RCRA Action

Is it:

☐ Likely to be a controversial action (e.g., permitting a commercial waste management facility)
☐ Unlikely to be a controversial action

Step 2: Talk to colleagues who have worked in this community about their interactions with members of the public

C Has there been a large degree of public interest or concern about other projects?
C Have members of the public shown confidence in the regulatory agency?

Step 3: Review regulatory agency (or any other) files on the facility

Are there:

☐ A lot of inquiries from members of the public
Major concern(s)_____
Any organized groups?_____
☐ Few inquiries from members of the public
☐ Clippings from newspapers or other media coverage

Step 4: Formulate your preliminary impression of the community based on the above information

Step 5: Talk with several key community leaders to confirm your impression

People to interview:

1. _____
2. _____
3. _____

Step 6: Determine the anticipated level of community interest based on the above information

☐ Low (go to Step 7)
☐ Moderate (next step: conduct additional community interviews with one member of each community subgroup)
☐ High (next step: conduct a full set of community assessment interviews)

Step 7: Write a brief summary of any major community concerns/issues

Chapter 3
Public Participation During the RCRA Permitting Process

Introduction

The previous chapter examined the importance of public participation and the information-sharing triangle, while reviewing the critical components for building a successful public participation program. Chapter 3 describes the specific public participation activities that EPA requires or recommends during each phase of the RCRA permitting process, beginning before submission of the RCRA part B permit application, continuing through the preparation of draft and final permit decision, and throughout the life of the RCRA permit.

States may have their own public participation requirements in addition to the federal

Section 7004(b) of RCRA and EPA's permitting regulations, found in 40 CFR Parts 124 and 270, form the foundation for mandatory public participation activities during the permitting process for both operating and post-closure permits. The reader should note that the corrective action schedule of compliance and other corrective action provisions are typically part of the RCRA permit under 40 CFR Part 270 (unless carried out under an enforcement order). Changes to these sections of the permit must follow the permit modifications procedures of 40 CFR Part 270.41 or 270.42. We review the corrective action public participation procedures in Chapter 4.

RCRA permitting regulations require an array of public participation procedures during the permitting process and the life of the permit. However, situations often occur where the facility and the agency will need to go beyond the requirements in 40 CFR Parts 124 and 270. Following the assessment and planning guidance we provided in Chapter 2, participants in the permitting process will discover whether a certain permitting activity deserves greater public participation. Regulators, facility staff, or community groups may want to consider expanded public participation activities (described in this chapter and in Chapter 5) -- if resources allow -- at priority facilities, controversial facilities, or at facilities where the affected community has a particular need for greater involvement or access to information. Participants in the process should seek input from other stakeholders to determine if the public participation activities are adequate. The permitting agency may suggest that the facility or public interest

groups conduct additional activities to supplement required activities and strengthen communication and trust among stakeholders. In addition, EPA encourages the community to suggest additional public participation activities to the permitting agency, the facility, or community and public interest groups.

In December 1995, EPA expanded the public participation requirements in the RCRA program by promulgating new regulations. The new regulations, known as the "RCRA Expanded Public Participation" rule (60 FR 63417, December 11, 1995), require earlier public involvement in the permitting process, expand public notice for significant events, and enhance the exchange of permitting information. The new requirements, which we describe more fully in this chapter, include: (1) a public meeting held by the facility prior to submitting the part B RCRA permit application; (2) expanded notice requirements, including use of a posted sign, a broadcast notice, and a newspaper display advertisement to publicize the meeting; (3) notification of the public when the agency receives a permit application and makes it available for public review; (4) permitting agency discretion to establish an information repository, which will be supplied and maintained by the applicant or permit holder; and, (5) additional notices during the trial burn period for combustion facilities.

In addition to the new regulatory requirements, EPA is taking steps to ensure equitable public participation in the RCRA permitting process. On December 20, 1995 EPA Office of Solid Waste and Emergency Response (OSWER) Assistant Administrator Elliot Laws issued a memorandum to the EPA Regional Administrators stating the Agency's policy to ensure equal access to permitting information and provide an equal opportunity for all citizens to be involved in the RCRA permitting process (see Appendix N). In this manual, we are strongly encouraging facilities to meet the same standard of equitable public participation. EPA is committed to equal protection of our citizens under the nation's environmental laws and urges all participants in the RCRA permitting process to strive for environmental justice, equal opportunity to participate in permitting, and equal access to information.

Public participation activities should fit the diversity, character, and culture of the affected community.

To meet this standard, EPA (when it is the permitting agency) will issue multilingual notices and fact sheets and use translators, where necessary, in areas where the affected community contains significant numbers of people who do not speak English as a first language. In addition, the Agency recommends that facilities make efforts to tailor public participation activities to fit the diversity, character, and culture of the affected community. When communicating with a community, participants in the permitting process should take into account the particular pathways and methods of information transfer that are used by that community. These principles are applicable to all public participation activities, and EPA

encourages their adoption by all participants in the RCRA permitting process. See the section entitled "Promoting Environmental Justice" in Chapter 2 for more information.

Public Participation During the Permit Decision Process

The permit decision process is composed of a number of steps. Each step is accompanied by public participation requirements. As we have mentioned, the regulatory minimum for public participation may not be sufficient in all cases. Permitting agencies and facilities should consider going beyond the regulatory requirements, where necessary, to provide for meaningful and equitable public participation.

For the sake of simplicity, in this manual we will divide the permit decision process into four steps:

- the pre-application stage;
- application submittal, agency notice and review;
- preparation of the draft permit, public comment period, and the public hearing; and
- response to public comments and the final permit decision.

Stakeholders should keep in mind that the permit decision process is lengthy and can be complex and confusing. Keeping the lines of communication open during the process takes effort on the part of all participants. This effort is especially critical during the long periods of time while the agency is reviewing the permit or the facility may be responding to a Notice of Deficiency (which we describe later in this Chapter). The agency, the applicant, and other interested groups should take steps to keep the community involved and informed during these "down" times.

We also encourage stakeholders to learn about the process, ask questions, and discuss it with the other participants. Permitting agencies in particular, should make efforts to disseminate fact sheets and information packages about the permitting process. Agencies, public interest groups, or facilities may want to perform other public information tasks (see chapter 5 for descriptions) to ensure that all stakeholders understand, and are comfortable with, the permitting process.

Step One: The Pre-Application Stage

Required Activities

The RCRA Expanded Public Participation rule requires a new permit applicant (or a facility that is applying to renew a permit while making significant changes) to hold a public meeting prior to submitting the part B RCRA permit application. This meeting is the earliest formal step in the

RCRA permitting process.

Early public input can improve the quality of any permitting activity; the public can contribute information and recommendations that will be helpful to agencies as they make permitting decisions and to facilities as they develop their applications and proposals.

The Pre-Application Meeting

The most important goal EPA hopes to achieve from the pre-application meeting requirement is the opening of a dialogue between the permit applicant and the community. We believe that the applicant should open this dialogue at the beginning of the process. The meeting will give the public direct input to facility personnel; at the same time, facility personnel can gain an understanding of public expectations and attempt to address public concerns before submitting a permit application. We hope that this requirement will help address the public concern that public participation occurs too late in the RCRA permitting process.

Conducting the Meeting

The pre-application meeting will allow the facility to hear and respond to public concerns.

The pre-application meeting should provide an open, flexible, and informal occasion for the applicant and the public to discuss the various aspects of a hazardous waste management facility's operations. Discussion at the pre-application meeting need not concern the technical aspects of the permit application in extensive detail; such technical examination is more suited to the draft permit stage (which we describe later in this Chapter). We anticipate that the applicant and the public will use this meeting to share information, learn about each other's concerns, and start building the framework for a solid working relationship. The pre-application stage is also an excellent time to explore the facility's level of expertise in waste minimization and pollution prevention, and the potential for involving the facility's waste minimization experts in the public participation process.

While a formal meeting style (i.e., like a public hearing) may suit some permitting situations, EPA realizes that it will not fit in all cases. With this idea in mind, EPA has written the regulations to allow flexibility in the type of "meeting" held by the permit applicant. For instance, an applicant may decide to hold an availability session or open house (see Chapter 5) in place of a traditional meeting. As long as this approach meets the requirements and the spirit of § 124.31 (as presented in this section), EPA will not preclude applicants from tailoring meeting styles to fit particular situations.

Regardless of the type of meeting that the applicant decides to hold, the applicant (as well as the other participants in the process) should strive for equitable participation and access to information during the pre-application meeting and the notice of the meeting (see "Promoting Environmental

Justice" in Chapter 2 and the Introduction to this Chapter).

At the meeting, permit applicants should address, at the level of detail that is practical (based on available information), the following topics: what type of facility the company will operate; the location of the facility; the general processes involved and the types of wastes to be generated and managed at the facility; and the extent to which waste minimization and pollution prevention may supplement or replace waste treatment needs. The discussions should also include the transportation routes to be used by waste transporters and planned procedures and equipment for preventing or responding to accidents or releases.

Addressing community concerns at the start of a project can prevent misunderstanding and opposition in the long run.

These are examples of the types of issues that might be of particular concern to a community and about which the community might be able to provide useful suggestions to the applicant. The applicant might then be able to incorporate that information into the proposed facility design or operations, either as part of the initial application, if time allows, or at subsequent stages in the process (e.g., in submitting revisions to its application, or in responding to a Notice of Deficiency issued by the permitting agency). By learning about and addressing public concerns up front, the applicant may be able to prevent misunderstanding from escalating into community opposition. Moreover, the public will have a clear and open opportunity to interact and communicate with the potential applicant.

The applicant should make a good faith effort to provide the public with sufficient information about the proposed facility operations. While we do not expect applicants to go into extensive detail at the pre-application stage, they should provide the public with enough information to understand the facility operations and the potential impacts on human health and the environment. We encourage applicants to provide **fact sheets**, information packets, or other materials (see Chapter 5) that explain the proposed operations, company policies, waste minimization proposals, or other information that is relevant to the proposed facility.

The permitting agency may choose to make permitting and pollution prevention fact sheets available at the meeting. One such fact sheet is included as Appendix J of this manual. EPA recommends that permit applicants distribute this fact sheet (or a similar one produced by the state agency) at the pre-application meeting, especially in cases where a representative of the permitting agency does not attend. EPA does not expect permit applicants to answer questions about the RCRA permitting process at the pre-application meeting -- particularly where the applicant is not sure of the answer. We advise the applicant to let a representative of the permitting agency answer such questions. If an agency representative is not available at the meeting, then the applicant should provide the name of

an agency contact person and the number of the RCRA Hotline (available in Appendix A) or an applicable State information line.

Some applicants may want to consider inviting or hiring a moderator to conduct the pre-application meeting. The moderator should be a neutral third party (e.g., a civic organization, non-profit community group, or a consultant) that is not a stakeholder in the permitting decision process. A moderator can lend objectivity to the proceedings and help to keep the discussions fair, under control, and on track. Regardless of whether a third party conducts the meeting, facility representatives should be present to answer questions and interact with the community.

EPA regulations are flexible with regard to conducting the pre-application meeting. One of the few requirements is for the applicant to post a sign-in sheet, or a similar mechanism, to allow participants to volunteer their names and addresses for inclusion on the facility mailing list (see § 124.31(b)) . The applicant should understand that attendees may not want to put their names on a mailing list; the sign-in sheet always should be voluntary. The applicant should make clear at the meeting that people can contact the permitting agency directly to add their names to the facility mailing list at any time.

The applicant must submit the list of attendees, along with a "summary" of the pre-application meeting, as a component of the part B permit application. We do not intend for the meeting summary to be a verbatim account of the meeting. EPA recognizes how difficult it is to keep a word-for-word record of a public meeting. Applicants should make a good faith effort to provide an accurate summary of the meeting. While the regulations do not indicate a particular format for the meeting summary, we recommend a type-written document that identifies major issues, points made in support of those issues, and any response made by the applicant or other attendees.

As mentioned above, the applicant must submit the summary as a component of the part B application. This component should be a typewritten hard-copy. Since the part B application is available for review by the public, attaching the summary as part of the application assures that people who are unable to attend the meeting will have an opportunity to find out what happened. We encourage applicants to make the summary available in other formats where a community has special needs (e.g., on audio tape for visually impaired residents).

The facility must conduct the pre-application meeting.

The RCRA Expanded Public Participation rule requires the facility to conduct the pre-application meeting. We believe that the applicant should conduct the meeting in an effort to establish a dialogue with the community. EPA encourages permitting agencies to attend pre-application

meetings, in appropriate circumstances, but *the facility must conduct the pre-application meeting*. Agency attendance may, at times, be useful in gaining a better understanding of public perceptions and issues for a particular facility, and for clarifying issues related to the permitting process. However, agency staff should ensure that their attendance does not detract from the main purposes of the meeting, such as opening a dialogue between the facility and the community, and clarifying for the public the role of the applicant in the permitting process.

The regulations do not preclude State agencies and permit applicants from working together to combine State siting meetings with pre-application meetings. EPA encourages them to do so, provided that the combined meetings fulfill the requirements in § 124.31. If meetings are combined, the portion of the meeting that is dedicated to the RCRA facility permit must be run by the applicant; the regulatory agency must give the applicant the floor for a sufficient time period. In notifying the public of the meeting, under § 124.31(d), the applicant must make clear that the RCRA portion of the meeting is separate from the general siting discussion.

The pre-application meeting will provide the community with a clear entry point for participation at an early stage in the permitting process. We encourage members of the community to become involved at the pre-application stage. Public comments and suggestions are easier for the facility to address at this early stage than later on in the process. For this reason, public input can have a greater impact at this stage. Interested citizens should attend the meeting and participate in the informal dialogue.

The public can learn more about the facility and the company seeking a permit before attending the meeting by contacting the facility, or by contacting other stakeholders in the community. Some community members may want to research to learn more about the planned (or already existing) facility. If you are interested in obtaining more information on the facility or the permitting process, you may want to contact the permitting agency or the corporation that owns the facility. Additional information about past and present owners, past waste spills and releases, complaints, and the status of other state, local, and federal permits may be available from the following: the planning board, City Hall or the town council, the county health department, local newspapers, the library, and local fire and rescue departments. These sources will give you access to information such as deeds and environmental testing results.

Meeting attendees can become part of the facility mailing list by adding their names and addresses to the sign-up sheet at the meeting or by sending their names directly to the permitting agency. People on this list will receive any significant information sent out by the agency or the facility regarding the facility.

Citizens should note that not all aspects of the permit application will be clear at the pre-application stage, in part, because EPA is encouraging facilities to meet with the public before making all final decisions on their permit applications. This way, the facility owner/operator will be more flexible and can react more effectively to suggestions and concerns raised in the meeting. Participants at the meeting should note that the facility owner/operator will not know the answer to all questions about the permitting process. The permitting agency and the RCRA/Superfund Hotline will be available to answer questions about the permitting process and other RCRA requirements (remember that States may have different procedures than EPA)..

Date, Time, and Location of the Meeting

The timing of the meeting is flexible. EPA believes that flexibility is necessary because the optimal timing for the meeting will vary depending on a number of factors, including the nature of the facility and the public's familiarity with the proposed project and its owner/operator. The applicant should choose a time for the meeting while considering the following factors: (1) the community must receive adequate notice before the facility submits a permit application; (2) the facility's plans for construction or operation need to be flexible enough to react to significant public concerns and to make changes to the application, if necessary; (3) the meeting should not take place so long before submittal of the application that the community will forget the facility. We encourage applicants to make a good faith effort to choose the best date for the pre-application meeting.

While the final rule requires the facility to hold *only one pre-application meeting*, cases may arise where more than one meeting is preferable. For instance, if a facility holds one public meeting and takes several months to a year to submit the application, then the facility owner/operator should consider holding a second meeting. In other cases, the facility may want to hold a few meetings of different types (e.g., a **public meeting** as well as an **availability session**). Of course, permitting agencies or other stakeholder groups may decide to hold additional public meetings where appropriate.

The applicant should avoid scheduling the meeting at a time that conflicts with other important community activities.

The permit applicant should encourage full and equitable public participation by holding the pre-application meeting at a time and place that is convenient to the public. The applicant should schedule the meeting at a time when the community is most likely to be available. Many communities, for instance, may prefer a meeting held after normal business hours. Meeting schedulers should avoid holding the meeting at a time that will conflict with important community activities (e.g., social, religious, or political events, other meetings, school activities, or local occasions). The applicant should also make sure that the meeting place has adequate space and is conducive to the type of meeting that the applicant will conduct.

Finally, the meeting location should have suitable access for all persons; if such a location cannot be procured, then the applicant should make all reasonable efforts to provide for equitable participation in the meeting (e.g., by responding to written comments).

Some members of the affected community may not feel comfortable with meetings held on facility property. Applicants should address community concerns in this area. EPA encourages applicants to hold the pre-application meeting on neutral public ground, such as a local library, a community center, a fire station, town hall, or school.

Notice of the Pre-Application Meeting

EPA developed the pre-application meeting notice requirements with the goal of encouraging facilities to reach as many members of the public as possible, within reasonable means. The expanded notice requirements are intended to reach a broad audience and to encourage as many people as possible to attend the meeting. Attendance at the meeting may also provide an indication of the level of public interest in the facility, although low attendance does not necessarily equal low interest. Using the list of attendees from the meeting will allow agencies to develop larger mailing lists; these lists, in turn, will help the facility and the agency to update more people more often about the permitting process.

The new rule requires the applicant to provide notice of the pre-application meeting to the public in three ways:

- *A newspaper display advertisement.* The applicant must print a display advertisement in a newspaper of general circulation in the community. The display ad should be located at a spot in the paper calculated to give effective notice to the general public (see the example in Appendix H). The ad should be large enough to be seen easily by the reader. In addition to the display ad, we also encourage facilities to place advertisements in free newspapers, community bulletins, newsletters, and other low-cost or free publications. In some cases, potential interest in the facility may extend beyond the host community. Under these circumstances, we encourage the applicant either to publish the display ad so that it reaches neighboring communities or to place additional ads in the newspapers of those communities.

- *A visible and accessible sign.* The applicant must provide notice on a clearly-marked sign at or near the facility (or the proposed facility site). If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass -- on foot or by vehicle -- by the site. EPA anticipates that the signs will be similar in size to zoning notice signs required by local zoning boards (of course, this size will vary according to the prerogative of the

zoning board). If a sign on the facility grounds is not practical or useful -- for instance, if the facility is in a remote area -- then the applicant should choose a suitable alternative, such as placing the sign at a nearby point of significant vehicular or pedestrian traffic (e.g., the closest major intersection). In the case that local zoning restrictions prohibit the use of such a sign in the immediate vicinity of the facility, the facility should pursue other available options, such as placing notices on a community bulletin board or a sign at the town hall or community center. EPA intends the requirement that the sign be posted "at or near" the facility to be interpreted flexibly, in view of local circumstances and our intent to inform the public about the meeting. In addition to the requirements of § 124.31, we encourage the applicant to place additional signs or flyers in nearby commercial, residential, or downtown areas. Supermarkets, hardware or department stores, malls, libraries, or local gathering places may have bulletin boards for posting notices and flyers. EPA encourages facilities to keep track of posted signs and remove them after the meeting.

- *A broadcast media announcement.* The applicant must broadcast the notice at least once on at least one local radio or television station. EPA expects that the applicant will broadcast the notice at a time and on a station that will effectively disseminate the notice. The applicant may employ another medium, aside from television or radio, with prior approval of the permitting agency. Many communities run their own cable channels for local news and activities; this medium may be used to target a local audience, often at no charge. Television spots may be advantageous for delivering pertinent information about a hazardous waste management facility directly to the people at home.

Choose notice methods that will spread the word over all segments of the affected community.

Sample notices are provided in Appendix H and more may be available by contacting the permitting agency.

EPA encourages facilities to pick a mixture of public notice tools that meets the regulations and will allow the affected community to receive equitable, timely, and effective notice of the pre-application meeting. Such a mixture may include a number of different and specialized notices that target specific groups within each community. One example of such a targeted notice would be the use of a translated advertisement on Chinese-speaking local access television station to reach a Chinese-American enclave in an area where the community members are affected by the permitting activity. Specific segments of the affected community can be targeted by strategic placement of the newspaper display ad, the timing and station of a radio spot, the geographic location of signs, use of free newspapers, and multi-lingual notices. EPA does not require that the applicant try to reach the largest audience with each method of public notice (e.g., the radio spot need not be placed on the most popular station). Instead, the applicant should use a combination of methods (including

translations) to spread the word over all segments of the affected community, taking into account the channels of information that are most useful in reaching diverse groups.

EPA encourages applicants to go beyond the minimum requirements in the regulations when providing notice of the pre-application meeting. The following suggestions will help in providing an effective broadcast notice. In some rural areas, community members may listen to or watch predominantly one radio or television station; in this case, the applicant should use this station as the vehicle for the notice. Some areas are part of a radio market (i.e., defined by services such as Arbitron's Radio Market Definitions) or television market and have competing radio and television stations. Where there is more than one station, the facility owner or operator should consider carefully the likely audience of the station in order to ensure that a substantial number of people will see or hear the ad. Areas with many competing stations are more likely to have audiences that may be delineated, for instance, by age, ethnicity, or income. In these situations, broadcasting the notice on several stations, or in more than one language, may be beneficial. In all cases, EPA suggests that the announcement occur at listening or viewing hours with a substantial audience -- hours that will vary for each community as well as for specific groups. The facility may consult with broadcast stations and community members to determine the best times to broadcast the notice.

The regulations also require the applicant to send a copy of the notice to the permitting agency. Applicants must follow this provision, but we encourage facilities to contact the appropriate agencies before this stage. *Applicants should consider informing the agency of their intent to seek a permit before planning the pre-application meeting.* Like other stakeholders in the permitting process, the permitting agency can benefit from receiving information as early as possible in the process. In addition, the permitting agency may be able to provide guidance about how to run the pre-application meeting or what types of public notice work best in a particular community.

EPA also encourages the applicant to send a copy of the notice to all members of the facility mailing list, if one exists. This suggestion applies especially to facility owners who are applying for a permit renewal and must comply with § 124.31 because they are seeking to make a change on the level of a class 3 permit modification. At these facilities, the mailing list will already exist and people on the list will be interested in learning about the most recent activity at the facility. A mailing list will most likely not exist for new applicants.

Getting the word out at this early stage is essential to assuring adequate community participation during the entire permitting process. For this

Free papers, existing newsletters, press releases, and word-of-mouth are inexpensive ways to notify the public.

reason, we encourage the applicant to take additional steps, within reasonable means, to announce the meeting. We do not intend for applicants to spend large amounts of additional time and resources; on the contrary, there are many simple and inexpensive mechanisms for distributing information. Free announcements on television or radio, advertisements in free papers, town newsletters, flyers, small signs, and press releases are all ways to disseminate information at little or no cost. We also encourage facilities to pass information through local community groups and Local Emergency Planning Committees (established under section 301 of the Superfund Amendments and Re-Authorization Act (SARA)), professional and trade associations, planning commissions, civic leaders, school organizations, religious organizations, and special interest groups. Other stakeholders involved in the process are also good conduits for spreading news about the pre-application meeting.

The regulations require that the notice contain several pieces of information: (1) the date, time, and location of the meeting; (2) a brief description of the purpose of the meeting; (3) a brief description of the facility and proposed operations, including the address or a map (i.e., a sketched or copied street map) of the facility location; (4) a statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and (5) the name, address, and telephone number of a contact person for the applicant.

The format of the notice is flexible as long as it communicates this information. The description of the purpose of the meeting should explain the facility's intent to submit a permit application and set out other objectives for the meeting. When describing the facility, the owner/operator should briefly cover what sort of facility it is or will be (e.g., a hazardous waste incinerator), what types of wastes it may handle, and what sort of operations will take place at the facility (e.g., types of manufacturing, commercial treatment of waste, etc.). For the facility map, the owner/operator should provide a photocopy of a street map or a sketched map, the purpose of which is to let the public know just where the facility is or will be. Finally, persons needing "special access" would include anyone who may have difficulty with stairs or some entrances, persons who are visually or hearing impaired, or any person who foresees some difficulty in attending the meeting without some help. EPA does not expect facilities to provide transportation to persons who cannot find other means of reaching the meeting.

The telephone contact provided by the applicant in the pre-application notice is an important addition to the public participation resources during this phase. EPA encourages members of the community to contact the facility, the permitting agency (see Appendices A and B for State and Federal contacts) or other interested groups in the community, as necessary,

to become acquainted with the permitting process and the facility plans.

EPA is not requiring the facility to submit proof of the public notice; however, we are requiring the facility to keep proof of the notice. The Agency is concerned that proof of the notices may be needed in the case of a lawsuit. The applicant should establish a simple file containing proofs for the notice. Acceptable forms of proof would include a receipt for the radio or TV broadcast, a photograph of the sign, and a photocopy of the newspaper advertisement or tear sheets.

The Facility Mailing List

The permitting agency is responsible for developing a representative mailing list for public notices under § 124.10. EPA is emphasizing the early development of a thorough mailing list as a critical step in the public participation process. If the mailing list allows the agency to keep important groups and individuals in the community up-to-date on activities at a facility, then the permitting agency and the facility will be better able to gauge community sentiment throughout the permitting process. See the section on "Mailing Lists" in Chapter 5 for additional information.

EPA anticipates that the meeting attendee list required under § 124.31(c) will help the agency generate the mailing list by identifying people or organizations who demonstrate an interest in the facility and the permit process.

The permitting agency should develop the mailing list early.

In the past, mailing lists have not been fully developed, oftentimes, until the agency issued the draft permit or intent to deny the permit. EPA believes that the mailing list is an integral public participation tool which permitting agencies should create as early as possible in the process. Our intent in having the permit applicant submit the list of meeting attendees under § 124.31(c) was to allow the agency to formulate the mailing list at an earlier stage in the permitting process. Aside from the names identified by the permit applicant, we encourage permitting agencies to enhance the mailing list by contacting a wide variety of groups and individuals, such as: civic organizations, religious groups, public interest organizations, recreational groups, professional/trade associations, Local Emergency Planning Committees (LEPCs), emergency response and local health care personnel, environmental justice networks, educational and academic organizations, city hall and elected officials, planning and zoning boards, local development councils, involved State and Federal agencies, newspapers and reporters, immediate neighbors and property holders, other nearby companies or business groups, facility employees, and plant tour attendees. In addition, we encourage the agency to maintain and update the lists regularly. All commenters on permitting documents, attendees at any public meetings or persons using information repositories should be placed on the mailing list, or have the option of putting their names on the list.

Members of the community and other interested groups or individuals can contact the permitting agency to have their names put on the facility mailing list. Community and public interest organizations may want to provide the permitting agency with names for the mailing list. Refer to Appendices A and B if you would like to find the addresses and phone numbers of EPA's Regional offices and the state environmental agencies.

Additional Activities

Public participation activities should be geared to the potential level of community interest.

The level of public participation activities should correspond to the potential level of community interest in the permitting process. To determine the need for additional activities, participants should consider conducting a **community assessment** (see Chapters 2 and 5). If the level of interest is high, participants will want to do a more thorough needs assessment and prepare a formal **public participation plan** (see Chapters 2 and 5).

EPA encourages applicants to provide **fact sheets**, information packets, or other materials (see Chapter 5) at the pre-application meeting. The permitting agency may also choose to make permitting fact sheets available at the meeting. One such fact sheet is included as Appendix J of this manual. EPA recommends that permit applicants distribute this fact sheet at the pre-application meeting, especially in cases where a representative of the permitting agency does not attend.

To provide widespread notice of the pre-application meeting, the applicant may want to use notice methods that go beyond the requirements. Some of these methods, such as **public service announcements**, **existing newsletters and publications**, and **newspaper inserts** are described in Chapter 5.

In some cases, the agency, facility, or a community group may find it appropriate to hold an additional meeting during the pre-application stage. **Availability sessions** or **open houses** can provide the public with an opportunity to discuss issues face-to-face with officials or other interested people.

The "RCRA Expanded Public Participation" rule gives the permitting agency the authority to require the facility owner or operator to establish an **information repository** at any point in the permitting process or during the life of a facility. The agency should assess the need for the repository by considering a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. The information repository

An information repository makes information accessible to the public in a convenient location.

can improve the permitting process by making important information accessible to the public in a convenient location. (See Chapter 5 for more detail on information repositories). Of course, EPA encourages facilities or interested community groups to establish their own repositories for public access to information. Chapter 5 provides more guidance on how to establish a repository.

Some permitting information is quite technical and detailed. Members of the public and other stakeholders may find this information difficult to interpret. EPA encourages permitting agencies, facilities, and community groups to provide fact sheets and additional materials to make technical and complicated information more accessible to people who are not RCRA experts. **Workshops** or **availability sessions** may be useful for explaining technical information. Some citizens or community groups may want to consult other sources for help in interpreting scientific and technical data. If you are looking for such help, you may want to contact the permitting agency, facility staff, or other sources such as local colleges, universities, public interest groups, environmental and civic organizations. Additional contacts may be available in the local community. Interested citizens may be able to find out about these contacts by talking to local newspapers and other media who cover environmental issues. People who are interviewed for or quoted in news articles can be an additional source for information.

Getting as much input as possible from the community during these initial phases of the RCRA permitting process and before a draft permit is issued will be very useful during the draft permit stage. The draft permit will be more responsive to the needs and concerns of the community, and the community will be more likely to accept the permit conditions if it sees that its concerns have been heard.

Though the early meeting may reduce public concern that the agency and the facility are making important decisions before the public becomes involved, some concern may still remain. The agency and the facility are likely to have meetings that cannot, for practical purposes, be open to public participation. One State agency found that by making notes from these meetings available through an **information repository**, public trust in the agency increased.

Step Two: Application Submittal and Review

Required Activities

After the permit applicant has met with the public and considered recommendations and input from the community, he or she may choose to pursue a RCRA permit and then submit a RCRA part B permit application

to the permitting agency. Upon receiving the permit application, the permitting agency must, under § 124.32, issue a **public notice** to the facility mailing list and appropriate units of state and local government. The notice will inform recipients that the facility has submitted a permit application for agency review. In addition, the notice will inform the recipients of the location where the application is available for public review.

New EPA rules make permit applications available to the public during agency review.

Both of the provisions mentioned in the previous paragraph are the result of the RCRA Expanded Public Participation rule. EPA composed these regulations as a way to inform the public about the status of a facility's permit application early in the process .

Before issuing the notice at application submittal, the permitting agency should solicit community suggestions and input on the best place to put the application for public review (agency personnel may have gathered this information during an earlier stage in the process). We encourage the agency to issue the notice as soon as is practically possible after receiving the application. The notice must contain the following information: (1) the name and telephone number of the applicant's **contact person**; (2) the name and telephone number of the permitting agency's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process; (3) an address to which people can write in order to be put on the facility mailing list; (4) the location where copies of the permit application and any supporting documents can be viewed and copied; (5) a brief description of the facility and proposed operations, including the address or a map (i.e., a sketched or copied street map) of the facility location on the front page of the notice; and (6) the date that the application was submitted.

Permitting agencies must place the application and any supporting materials somewhere in the vicinity of the facility or at the permitting agency's offices. The permitting agency should be sensitive to the burden on members of the affected community when determining where to place the application. Many communities do not have the resources or the time to travel several hours just to access permitting information. To make information available in these situations, the permitting agency should place the application in a place with public access in the general vicinity of the facility (e.g., a public library or community center). If such placement of the document is impractical, the agency should make sure that the public has other access to permitting information. For instance, the agency could require the facility to establish an information repository under § 124.31. If the community's information needs are on a lower level, the agency may want to make a short summary of the permit application available to the affected community. In some cases, making information available in electronic form (e.g., via diskette or Internet) may be useful.

The application should be available for review in the vicinity of the facility.

We recommend that, where feasible, the agency place the application in a location where copying facilities are available and the public has adequate access to the documents. EPA also recommends that the application be in a locale where the documents will be secure and readily available. The application should go in the information repository, if one exists. If not, a public library or other building in the vicinity of the facility may provide a suitable choice. The permitting agency's headquarters or satellite office may be adequate if not too far from the facility.

Additional Activities

The permit application review process is often lengthy. It may take anywhere from one to five years to issue a permit, depending on the facility type and level of facility owner or operator cooperation. Permit applicants and regulators should recognize that members of the public have pointed out that they often feel "in the dark" during this phase. We encourage agencies and facilities to maintain a good flow of information during application review. If resources are available, permitting agencies and facilities should plan activities during this time period to keep citizens informed about the status of the process. Holding **workshops**, conducting **informal meetings**, and providing periodic **fact sheets** and **press releases** about the facility, opportunities for pollution prevention, and the RCRA permit process can spread information and keep the community involved. Identifying a **contact person** to accept comments and answer questions will also enhance communication. A (toll-free) **telephone hotline** with recorded status reports can reduce the potential for rumors.

EPA encourages permitting agencies to respond (e.g., in writing, by phone, by holding a meeting) to comments and requests from the public during the application review process. Agencies should make good faith efforts to address public concerns and issues.

In situations where a community wants more information about potential operations at a facility and the health and environmental risks of those operations, citizens or the agency can work with the facility to set up **facility tours** and **observation decks** during the public comment period. These activities will give the community a first-hand look at a facility and the operations and activities happening on-site. (Note that safety and liability issues need to be considered before a decision is made to include these activities.) These activities may be particularly useful for a new facility or when a facility proposes a new or different technology. Facility tours also may be particularly effective for explaining pollution prevention accomplishments and opportunities. Similarly, facility owners or operators may wish to coordinate with community leaders to tour the community. This may be useful for understanding potential community concerns.

Step Three: The Draft Permit, Public Comment Period, and Public Hearing

Required Activities

After the permitting agency reviews the permit application, it must notify the applicant in writing. If the application is incomplete, the permitting agency may request that the applicant submit the missing information. This request is known as a Notice of Deficiency (NOD). The permitting agency may issue several NODs before the application is finally complete.

Once an application is complete, the permitting agency will make a decision to issue a draft permit or a notice of intent to deny the permit application (which is a type of draft permit). In either case, the agency must notify the public about the draft permit. In the notice, the permitting agency must announce the opening of a minimum 45-day public comment period on the draft permit. The agency must print the notice in a local paper, broadcast the notice over a local radio station, and send a copy of the notice to the mailing list, relevant agencies, and applicable state and local governments. We encourage agencies to attempt to reach all segments of the affected community, within reasonable means, when issuing the notice of the draft permit (see "Step One: The Pre-Application Stage" above and Chapter 5 for more information on how to notify the public). Although the agency is not required to retain documentation of the notice, we recommend keeping a simple file with proof of the notices. Forms of proof might include a receipt for the radio ad and a photocopy of the newspaper add.

EPA regulations require the permitting agency to prepare a **fact sheet** or a **statement of basis** to accompany every draft permit. This fact sheet (or statement of basis) is required by regulation and is different than commonly used informational fact sheets. This fact sheet must explain the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The fact sheet must also include, when applicable, the following (see § 124.8(b)):

- a brief description of the type of facility or activity which is the subject of the draft permit;
- the type and quantity of wastes that are proposed to be handled at the facility;
- a brief summary of the basis for the draft permit conditions;
- reasons why any requested variances or alternatives to required standards do or do not appear justified;
- a description of the procedures for reaching a final decision on the draft permit, including (1) the beginning and ending dates of the comment period and an address to which comments can be sent, (2) procedures for requesting a hearing and the nature of

the hearing, and (3) any other public participation procedures before the final permit decision; and

- the name and telephone number of a person to contact for additional information.

EPA recommends that the permitting agency include the fact sheet with the notice of the draft permit and make the fact sheet available to all interested parties.

Any person may request a **public hearing** during the public comment period. The agency must hold a public hearing if someone submits a written notice of opposition to a draft permit and a request for a hearing, or if the public demonstrates, by the number of requests for a public hearing, a significant degree of public interest in the draft permit. The Director also may hold public hearings at his or her discretion. The agency must notify the public about the hearing at least 30 days prior to the hearing. The agency may choose to combine the hearing notice with the draft permit notice. See Chapter 5 for information on holding a public hearing. Citizens may want to request a public hearing as a forum for airing community concerns. The hearing will be a standard meeting, attended by the agency and other interested parties.

There is more required public participation during the draft permit stage than at any other time during the permitting process. We strongly recommend that permitting agencies prepare public participation plans (see Chapter 5), even for the least controversial facilities, just to keep track of the activities during this stage.

By law, the agency must consider and respond to all significant comments received during the comment period.

The comment period on the draft permit allows anyone to submit their concerns and suggestions to the agency in writing. The permitting agency must, by law, consider all comments (see § 124.11) in making the final permit decision. In addition, the agency must briefly describe and respond to all significant comments raised during the comment period or during the public hearing. EPA encourages participants to submit comments during this period.

Additional Activities

You can use public participation activities to explain technical issues or the permitting process.

Permitting agencies can keep the process open by sharing all NOD information with the public, whether through the administrative record, an **information repository**, or another activity, such as a **workshop**. If the details of the NOD are too arcane or technical, the agency can provide a short **fact sheet**. The fact sheet should not gloss over any major omissions,

but, by the same token, it should point out when an omission is of a less serious nature.

Interested community groups or the permit applicant may decide to provide additional public participation activities during this stage. Some suggestions for useful activities would include explaining the NOD process and discussing technical issues in the application by holding **availability sessions**. Another option is for citizens or other stakeholders to request one-on-one or small **informal meetings** with the permitting agency, the permit applicant, or community groups. Stakeholder groups can improve their communication and interaction by meeting together in an informal forum. An informal meeting may also be more appealing to some participants, who may see activities like public hearings as overly confrontational.

The permitting agency may want to provide a **news release** when issuing the draft permit or intent to deny.

The agency, facility, or a public interest group may want to organize an **availability session**, **facility tours**, or some other activity prior to the comment period so that the public can be better informed about the facility. Some permitting agencies have held **public meetings** prior to a public hearing to provide a better forum to discuss issues. **Telephone hotlines** or voicemail recordings can supplement public notices to inform the community about the dates and locations of public participation events.

Step Four: Response to Comments and Final Permit Decision

Remember that State procedures may be different.

Required Activities

After the public comment period closes, the regulatory agency reviews and evaluates all written and oral comments and issues a final permit decision. The agency must send a **notice of decision** (not to be confused with a "notice of deficiency," see above) to the facility owner or operator and any persons who submitted public comments or requested notice of the final permit decision. The agency must also prepare a written response to comments that includes a summary of all significant comments submitted during the public comment period and an explanation of how, in making the final permit decision, the agency addressed or rejected the comments. This summary shows the community that the agency considered the community's concerns when making the final permit decisions. The agency must make the response to comments document available as part of the administrative record.

Additional Activities

If there was high interest during the comment period, the agency or the facility may want to issue a **news release** and **fact sheet** when the decision is finalized to inform a wide audience. The permitting agency may choose to update and release the fact sheet required in § 124.8.

Public Participation During the Life of a Facility

Interim Status Public Participation

When writing RCRA, Congress granted special status to facilities that existed when the statute went into effect and for facilities that would be brought under RCRA by new regulations. EPA refers to these facilities as having "interim status." According to RCRA, interim status facilities do not need a permit to operate; instead, while they are seeking permits, they follow a category of regulations created specifically for them by EPA. When EPA or a State issues a RCRA operating permit to one of these facilities, the facility loses its interim status.

Because interim status facilities can operate without a permit, many people are concerned that some of these facilities are not as safe as permitted facilities. Interim status facilities are not required to follow -- since they are not permitted -- any standardized public participation procedures or permit modification standards (that is, until the facility owner applies for a permit). Given all these conditions, interim status facilities often pose public participation challenges even though many such facilities have been operating for years.

Regulatory agencies may need to use innovative techniques to communicate with and provide information to communities around interim status facilities. EPA acknowledges that every situation will require a different type and level of community involvement. If interest grows in a certain facility, the agency should consider holding a **workshop** or an **availability session**. Information repositories are another available tool (see Chapter 5). The agency should take steps to explain the special situation of interim status facilities to citizens. Of course, if an interim status facility begins to attract public interest, permitting agencies should consider moving the facility towards getting a permit and undergoing the public participation steps in the permitting process.

Owners and operators of interim status facilities should involve the public even before they formally start to pursue a RCRA permit. One thing the facility owners could do to improve access to information is to make a draft part B application available to the public before submitting it to the

permitting agency. Facility owners who submitted part B applications in the past might make their applications available as well. (Note: any interim status facility that submits its part B application on or after June 11, 1996, will be subject to the standards of the RCRA Expanded Public Participation Rule and, thus, its application will be available for public review upon submission). The facility may also want to set up an **on-site information booth** or provide other background materials to the public. Establishing a **contact person** and making his or her name available to the public can improve communication between the facility and the community. Experience has shown that a good facility-community relationship during interim status will make for a more cooperative permitting process.

Members of the public will often have questions or concerns while a facility is in interim status. Citizens can contact the facility, the regulatory agency, or the RCRA/Superfund Hotline to ask questions or to inquire about other sources of information. Citizens may also want to contact public interest organizations, local government, or other involved citizens for more information. Interim status facilities will eventually need to enter the RCRA permitting process, which citizens can use as an opportunity to air concerns and to encourage the facility to make important changes.

Permit Modifications

Modifications can be initiated by either the agency or the facility.

Over time, a permitted facility may need to modify its permit. Just as public participation is a component of the initial permit process, it is also a part of the permit modification process. This section discusses different kinds of permit modifications and their corresponding public participation requirements. It is important to note that public participation responsibilities and activities vary depending on, first, who initiated the modification (i.e., the regulatory agency or the facility owner or operator) and, second, the degree to which the modification would change substantive provisions of the permit. No matter who initiates the modification, when a modification is proposed, only those permit conditions subject to modification are reopened for public comment.

State permitting agencies may have modifications processes that differ from the federal requirements. Contact your State agency (see Appendix B) for more details.

There are many reasons to modify a permit. In some cases, the regulatory agency may initiate a permit modification under 40 CFR 270.41. This section of the regulations identifies three causes for which the regulatory agency may require a permit modification: (1) alterations or additions to the permitted facility or activity; (2) new information received by the regulatory agency; or (3) new standards, regulations, or judicial decisions affecting the human health or environmental basis of a facility permit. In

addition, the regulatory agency may modify a compliance schedule for corrective action in the permit. Modifications initiated by the regulatory agency are subject to the full 40 CFR Part 124 permitting requirements, as described earlier in this chapter. Specifically, the permitting agency must

- Issue public notice of the draft modification;
- Prepare a fact sheet or statement of basis;
- Announce a 45-day public comment period;
- Hold a public hearing, if requested, with 30-day advance notice;
- Issue notice of the final modification decision; and
- Consider and respond to all significant comments.

More often, however, the facility owner or operator requests a permit modification to improve facility operations or make changes in response to new standards. Facility-initiated modifications are categorized under 40 CFR 270.42 as Class 1, 2, or 3 according to how substantively they change the original permit. Class 1 modifications require the least public involvement; Class 3, the most. Like agency-initiated modifications, a decision to grant or deny a Class 3 permit modification request is subject to the public participation procedures of 40 CFR Part 124.

Since facility owners or operators initiate modifications more often than the regulatory agency, the remainder of this chapter lays out the requirements for facility-initiated modifications. The permitting agency is also encouraged to follow these public participation activities, even if not required under an agency-initiated modification. Appendix L consists of an EPA fact sheet entitled "Modifying RCRA Permits," which provides more detail on permit modifications and associated public participation activities. Exhibit 3-1 at the end of this Chapter presents an easy-to-read synopsis of modification requirements and timelines.

When the Facility Owner or Operator Initiates a Modification

When a facility owner or operator wants to change a RCRA permit, he or she informs the regulatory agency and interested members of the public, either before making the change if it is substantive (Class 2 or 3), or soon after (with a few exceptions), if the change is minor (Class 1). In any case, this is relatively *early* notification for members of the public, who often perceive that RCRA actions are "done deals" by the time public comment is solicited.

When a facility initiates a modification, it is responsible for some public participation activities.

The *facility owner or operator* is responsible for conducting most of the public participation for modifications he or she initiates. In addition, the facility, rather than the regulatory agency, bears the burden of explaining

and defending its actions to the public. To ensure that the facility's public participation efforts are successful, staff from the facility and the agency should discuss how to conduct the required activities; the agency should provide guidance and assistance where necessary. Moreover, EPA encourages facilities to consult with communities to determine what activities will best promote public participation.

Class 1 Modifications

Class 1 modifications address routine and administrative changes, including updating, replacing, or relocating emergency equipment; updating certain types of schedules identified in the permit; improving monitoring, inspection, recordkeeping, or reporting procedures; and updating sampling and analytical methods to conform with revised regulatory agency guidance or regulations. They do not substantively alter the conditions in the permit or reduce the facility's ability to protect human health and the environment. With a few exceptions, most Class 1 modifications do not require approval from the regulatory agency before they are implemented. (The exceptions are listed in Appendix I to 40 CFR 270.42.)

The only public involvement requirement for Class 1 modifications is that *within 90 days of implementing a change, a facility must send a **public notice** to all parties on the mailing list compiled by the permitting agency*. The facility is responsible for obtaining a complete facility mailing list from the agency. (For more information on **mailing lists** see Chapter 5.) Any member of the public may ask the agency to review a Class 1 modification.

Class 2 Modifications

Class 2 modifications address facility-initiated changes in the types and quantities of wastes managed, technological advances, and new regulatory requirements, where such changes can be implemented without substantively altering the facility's design or the management practices prescribed by the permit. Class 2 modifications do not reduce, and, in most cases should enhance, the facility's ability to protect human health and the environment. During a Class 2 modification, there may be good opportunities to explore “low tech” pollution prevention opportunities that reduce waste generation but do not require major process changes (e.g., segregating waste streams, modifying maintenance procedures, or installing closed loop recycling).

Class 2 modifications require a number of activities, including a public notice, comment period, and a public meeting.

Class 2 modifications require the facility to submit a modification request and supporting documentation to the regulatory agency. In addition, *the facility must notify the people on its mailing list about the modification*

request and publish this notice in a major local newspaper of general circulation. The facility must publish the notice and mail the letter within seven days before or after it submits the request to the regulatory agency. The newspaper notice marks the beginning of a **60-day public comment period** and announces the time and place of a public meeting. In addition, the notice must identify a **contact person** for both the facility and the regulatory agency and must contain the statement, "The permittee's compliance history during the life of the permit being modified is available from the regulatory agency contact person." The notice should state that public comments must be submitted to the permitting agency's contact person.

The public comment period provides an opportunity for the public to review the modification request at the same time as the permitting agency. The facility must place the request for modification and supporting documentation in a location accessible to the public in the vicinity of the facility (see guidance on **information repositories** in Chapter 5 for suitable locations). The *facility must conduct the **public meeting*** no earlier than 15 days after the start of the 60-day comment period and no later than 15 days before it ends. The meeting, which tends to be less formal than a public hearing held by the regulatory agency in the draft permit stage, provides for an exchange of views between the public and the owner or operator and a chance for them to resolve conflicts concerning the permit modification. The meeting must be held, to the extent practicable, in the vicinity of the permitted facility (*the guidance on the pre-application meeting, earlier in this chapter, is applicable to this public meeting*).

The requirements for this meeting, like the pre-application meeting, are flexible. The facility is not required to provide an official transcript of the meeting, though we encourage owners/operators to consult the community and find out if this information would be useful. The permitting agency is not required to attend the meeting or respond to comments made there; however, EPA recommends that agency staff attend the meeting to clarify questions about the permitting process and to find out about any public concerns and how the owner or operator plans to address them.

The permitting agency is required to consider all written comments submitted during the public comment period and must respond in writing to all significant comments in its decision. EPA expects that the meeting will provide information to the public and improve the written comments submitted to the permitting agency. EPA anticipates that community input at the meeting may also result in voluntary revisions in the facility's modification request.

As the following paragraphs explain, the Class 2 modification procedures were written to ensure quick action by the agency. However, when seen by

the public, these procedures can be very confusing. A simple solution that the permitting agency or the facility should consider is to provide a fact sheet or a time table to the public at the meeting.

The procedures for Class 2 modifications include a default provision to ensure that the permitting agency responds promptly to the facility's request. The agency must respond to Class 2 modification requests within 90 days or, if the agency notifies the facility of an extension, 120 days. At any time during this 120-day period, the agency can: (1) approve the request, with or without changes, and modify the permit accordingly; (2) approve the request, with or without changes, as a temporary authorization having a term of up to 180 days; or (3) deny the request. If the permitting agency does not reach a final decision on the request within this period, the facility is granted an automatic authorization that permits it to conduct the requested activities for 180 days. Activities performed under this authorization must comply with all applicable federal and state hazardous waste management regulations. If the agency still has not acted within 250 days of the receipt of the modification request, *the facility must notify persons on the facility mailing list within seven days, and make a reasonable effort to notify other persons who submitted written comments*, that the automatic authorization will become permanent unless the regulatory agency approves or denies the request by day 300. The public must always have a 50-day notice before an automatic authorization becomes permanent. The agency must notify persons on the facility mailing list within 10 days of any decision to grant or deny a Class 2 modification request. The agency must also notify persons on the facility mailing list within 10 days after an automatic authorization for a Class 2 modification goes into effect.

At any time during the Class 2 procedures the agency may also reclassify the request as a Class 3 modification if there is significant public concern about the proposed modification or if the agency determines that the facility's proposal is too complex for the Class 2 procedures. This reclassification would remove the possibility of a default decision.

As previously indicated, the permitting agency may approve a temporary authorization under 40 CFR 270.42(b) for 180 days for a Class 2 modification. In addition, the agency may grant a facility temporary authorization under 40 CFR 270.42(e), which would allow the facility, without prior public notice and comment, to conduct certain activities necessary to respond promptly to changing conditions. *The facility must notify all persons on the facility mailing list about the temporary authorization request within seven days of the request.* Temporary authorizations are useful for allowing a facility owner or operator to perform a one-time or short-term activity for which the full permit modification process is inappropriate, or for allowing a facility owner or operator to initiate a necessary activity while his or her permit modification

is undergoing the Class 2 review process. A temporary authorization is valid for up to 180 days, and the permitting agency may extend the authorization for an additional 180 days if the facility initiates the appropriate Class 2 modification process for the covered activity. In addition, any extension of the activity approved in the temporary authorization must take place under Class 2 procedures.

Class 3 modifications are more likely than other modifications to raise concern.

Class 3 Modifications

Class 3 modifications address changes that substantially alter a facility or its operations. For example, a request to manage new wastes that require different management practices is a Class 3 modification.

Class 3 modifications usually involve changes that are broader or more detailed than Class 1 or 2 modifications; they are also more likely to raise concern. Though the Class 3 modifications process allows significant opportunity for public participation, additional activities may be helpful in some situations. Permit holders, regulators, and community interest groups may want to consider taking steps to encourage earlier participation. Facilities, in particular, should recognize that some Class 3 modifications will significantly alter their operations. In such cases, and in all cases where public interest may be high, *permittees should consider providing information and public participation activities prior to submitting the modification request*.

When concern is high, it is critical for the facility to consult with the agency to make sure that the facility knows how to conduct the required public participation activities. In some cases, the permitting agency might encourage the facility to go beyond the requirements and hold **workshops** and publish **fact sheets** to explain the proposed change. Public participation activities held by the agency or public interest groups can supplement the regulatory requirements.

As with Class 2 modifications, Class 3 modifications require the facility to submit a modification request and supporting documentation to the permitting agency, and *notify persons on the facility mailing list about the modification request and publish notice in a major local newspaper of general circulation*. The facility must publish the notice and mail the letter within seven days before or after the submitting the modification request to the regulatory agency. The notice must contain the same information as the Class 2 notification (see above), including an announcement of a ***public meeting*** *to be held by the facility* at least 15 days after the notice and at least 15 days before the end of the comment period. The newspaper notice marks the beginning of a **60-day public comment period.**

In holding a public meeting during the comment period, the facility owner or operator should follow the guidance for the pre-application meeting above. The requirements for this meeting are flexible. The facility is not required to provide an official transcript, though we encourage owners/operators to consult the community and find out if this information would be useful. As with Class 2 modifications, the agency is not required to attend the meeting or to respond to comments made at the meeting. However, it is important that the permitting agency attend the facility's public meeting in order to gauge concern about the proposed change and prepare appropriately for a public hearing, if one is requested. By attending the public meeting, the agency may learn whether it needs to conduct additional public participation activities (e.g., hold a **workshop** or **informal meetings**) after preparing the draft modification. The agency can also clarify questions about the permitting process. The agency should consider responding to issues raised at the meeting as part of the response to comments for the 60-day comment period. Of course, people who attend the meeting have the opportunity to submit formal comments to the permitting agency during the comment period.

At the conclusion of the 60-day comment period, the agency must consider and *respond to all significant written comments received during the comment period*. The agency must then either grant or deny the Class 3 permit modification request according to the permit modification procedures of 40 CFR Part 124.

Class 3 modifications are subject to the same public participation procedures as permit applications.

Class 3 modifications are subject to the same review and public participation procedures as permit applications, as specified in 40 CFR 270.42(c). The agency is required to perform the following tasks:

- Preparation of draft permit modification conditions or notice of intent to deny the modification;
- Publication of a **notice** of the agency's draft permit decision, which establishes a 45-day **public comment period** on the draft permit modification;
- Development of a **fact sheet** or **statement of basis**;
- Holding a **public hearing**, if requested, with **30-day advance notice**;
- Issuance of the **notice of decision** to grant or deny the permit modification; and
- Consideration and response to all significant written and oral comments received during the 45-day public comment period.

With Class 3 permit modifications, the public has 60 days to comment on the facility's requested modification and another 45 days to comment on the agency's draft permit modification or proposed notice of intent to deny the modification. And, in addition to the public meeting held by the facility owner or operator, the public may also request a **public hearing** with the

agency.

The permitting agency must notify persons on the facility mailing list within 10 days of any decision to grant or deny a Class 3 modification request. As with Class 2 modifications, the regulatory agency may grant a facility a temporary authorization to perform certain activities requested in the Class 3 modification for up to 180 days without prior public notice and comment. For example, the agency may grant temporary authorizations to ensure that corrective action and closure activities can be undertaken quickly and that sudden changes in operations not covered under a facility's permit can be addressed promptly. Activities performed under a temporary authorization must comply with all applicable federal and state hazardous waste management regulations. *The facility must issue a public notice to all persons on the facility mailing list within seven days of submitting the temporary authorization request.* The agency may grant a temporary authorization without notifying the public. The permitting agency may reissue a temporary authorization for an additional 180 days provided that the facility has initiated the appropriate Class 3 modification process for the activity covered in the temporary authorization and the agency determines that the extension is warranted to allow the facility to continue the activity while Class 3 procedures are completed. See Appendix L for an EPA fact sheet on modifying RCRA permits.

Public Participation in Closure and Post-Closure

Facilities may discontinue operations at one or more units for a number of reasons. For example, units may have reached capacity, the facility owner or operator may no longer wish to accept wastes, or the facility may have lost interim status and be required to close by the permitting agency. During closure, facility owners or operators complete treatment, storage, and disposal operations; apply final covers or caps to landfills; and dispose of or decontaminate equipment, structures, and soil. Post-closure, which applies only to land disposal facilities that do not "clean close" (i.e., remove all contaminants from the unit), is normally a 30-year period after closure during which owners or operators of disposal facilities conduct monitoring and maintenance activities to preserve the integrity of the disposal system.

Closure and Post-Closure at Permitted Facilities

EPA regulations (40 CFR 264.112 and 264.118) require facilities seeking operating permits to submit closure and post-closure plans (if appropriate) with their Part B applications in accordance with 40 CFR 270.14(b)(13). Furthermore, land disposal facilities that leave wastes in place when they close must obtain a post-closure permit, which specifies the requirements for proper post-closure care. Consequently, *the public has the opportunity to comment on a facility's closure and post-closure plans and any amendments made to the plans as part of the permitting process and permit modification procedures*, as described earlier in this chapter.

Facilities seeking permits for post-closure are exempt from the pre-application meeting requirement (§ 124.31) in the RCRA Expanded Public Participation rule. The facility, permitting agency, or community group may decide to hold some type of meeting prior to issuance of the post-closure permit. Refer to Chapter 5 for information on **public meetings**, **availability sessions**, and **workshops**.

The permitting agency or other involved organizations should be aware of closure issues that may concern the public, and they should plan public participation activities accordingly. For example, if the public has reservations about how "clean" the facility will actually be after the facility closes, public interest groups, the agency, or the facility may want to provide **fact sheets** or conduct educational **workshops** and **informational meetings** about the closure plan and the conditions at the facility.

If the facility owner or operator is leaving a facility, and possibly even the community, the public may be very concerned about whether the facility owner or operator will really be vigilant in monitoring the post-closure operations at the facility or will have enough financial resources to do so. Moreover, almost all post-closure permits will contain schedules of compliance for corrective action if a facility closes before all necessary corrective action activities are completed. As a result, public participation events in the post-closure phase need to address community concerns about corrective action. (See Chapter 4 for additional information on corrective action activities.) Note, however, that unless corrective action is required in the post-closure permit, public interest in closure plans is usually limited.

Public participation for the post-closure phase must address public concerns about corrective action.

Closure and Post-Closure at Interim Status Facilities

Facilities may also close under interim status, often under enforcement orders. Facilities that are closing under interim status must submit closure and post-closure plans (if appropriate) under 40 CFR 265.112 and 265.118. Public participation activities for interim status facilities during the closure and post-closure processes are specified in 40 CFR 265.112(d)(4) and 265.118(f). The regulations require that *the permitting agency provide the public and the facility, through a **newspaper notice**, with the opportunity to submit written comments on the closure and post-closure plans and request modifications to the plans no later than 30 days from the date of the notice*. EPA encourages permitting agencies to use other methods of notice, as appropriate, to announce the meeting. In response to a request, or at its own discretion, the agency may hold a **public hearing** on the plan(s), if such a hearing might clarify one or more of the issues concerning the plan(s). The agency must provide **public notice** at least 30 days before the hearing. The agency will approve, modify, or disapprove the plan(s) within 90 days of their receipt.

The public can petition the permitting agency to extend or reduce the post-

closure care period applicable to an interim status facility or land disposal unit. Whenever the agency is considering a petition on a post-closure plan, it will *provide the public and the facility, through a **public notice in the newspaper**, with the opportunity to submit written comments within 30 days of the date of the notice***. Again, EPA encourages permitting agencies to go beyond the newspaper notice requirement, as appropriate, to disseminate the notice. In response to a request or at its own discretion, the agency may hold a **public hearing** on the post-closure plan, if such a hearing might clarify one or more of the issues concerning the plan. The agency must provide **public notice of the hearing** at least 30 days before it occurs. If the agency tentatively decides to modify the post-closure plan, 40 CFR 265.118(g)(2) requires that *the agency provide the public and the facility, through a **public notice in the newspaper**, with the opportunity to submit written comments within 30 days of the date of the notice*, as well as the opportunity for a public hearing. After considering the comments, the regulatory agency will issue a final decision.

An interim status facility may amend its closure plan at any time prior to the notification of partial or final closure, and its post-closure plan any time during the active life of the facility or during the post-closure care period. An owner or operator with an approved closure or post-closure plan must submit a written request to the permitting agency to authorize a change. In addition, the agency may request modifications to the closure and post-closure plans. If the amendment to the closure plan would be a Class 2 or Class 3 modification, according to the criteria specified in 40 CFR 270.42, then the modification to the plan will be approved according to the procedures in 40 CFR 265.112(d)(4) detailed above. Similarly, if the amendment to the post-closure plan would be a Class 2 or Class 3 modification, according to the criteria specified in 40 CFR 270.42, the modification will be approved according to the procedures in 40 CFR 265.118(f), also described above.

Chapter Summary

Some permitting situations will call for public participation that goes beyond the regulatory requirements

The "RCRA Expanded Public Participation" rule (60 FR 63417, December 11, 1995), provides for earlier public participation in the permitting process, expands public notice for significant events, and enhances the exchange of permitting information

EPA strongly encourages permitting agencies and facilities to ensure equal access to permitting information and provide an equal opportunity for all citizens to be involved in the RCRA permitting process

The permit decision process and the required public participation activities can be divided into four key steps :

1. The Pre-Application Stage

   - Facility gives public notice and holds an informal public meeting

- Agency develops a mailing list
- Additional activities that may apply include: community assessments, public participation plans, information repositories, and fact sheets

2. Application Submittal, Notice, and Review

- Agency issues a notice to the facility mailing list and state and local governments
- Agency makes application available for public review
- Additional activities that may apply include: observation decks, facility tours, community tours, workshops, and news conferences.

3. Preparation of Draft Permit, Public Comment Period, and the Public Hearing

- Agency issues public notice of draft permit (or intent to deny)
- Agency prepares a fact sheet or statement of basis
- Agency announces a 45-day public comment period
- Hold a public hearing, if requested or at the agency's discretion, with 30-day advance notice
- Additional activities that may apply include: information sessions, workshops, news releases, and fact sheets.

4. Response to Public Comments and the Final Permit Decision

- Agency responds to all significant comments raised during the public comment period, or during any hearing
- Agency issues notice of final permit decision

The regulatory agency can initiate a permit modification under 40 CFR 270.41 following the full permitting procedures of 40 CFR Part 124. A facility may also initiate a Class 1, 2, or 3 permit modification under 40 CFR 270.42. For facility-initiated modifications, public participation activities are required of both the facility and the regulatory agency, as described below:

1. Class 1

Facility Requirements:

- Notify mailing list within 90 days

2. Class 2

Facility Requirements:

- Notify mailing list and public newspaper notice
- Announce 60-day public comment period
- Place modification request and supporting documentation in an accessible location in the vicinity of the facility
- Hold public meeting
- If the regulatory agency does not act within 250 days of the modification request, notify mailing list that automatic authorization will become permanent in 50 days

Regulatory Agency Requirements:

- Allow 60 days for public comment on the modification request
- Consider all written comments and respond in writing to all significant comments
- Issue notice to the mailing list within 10 days of any decision to grant or deny a modification request
- Issue notice to the mailing list within 10 days after an automatic authorization goes into effect

3. Class 3

Facility Requirements:

- Notify mailing list and publish newspaper notice
- Announce 60-day public comment period
- Place modification request and supporting documentation in an accessible location in the vicinity of the facility
- Hold public meeting

Regulatory Agency Requirements:

- Allow 60 days for public comment on the modification request
- Issue public notice
- Prepare a fact sheet or statement of basis
- Announce a 45-day public comment period on draft permit decision
- Hold a public hearing, if requested, with 30-day advance notice
- Issue or deny the modification request
- Respond to written and oral comments from the 45-day comment period
- Consider and respond to all significant written comments received during the 60-day comment period

For Class 2 or 3 modifications, the permitting agency may grant a facility temporary authorization to perform certain activities for up to 180 days. The facility must notify the public within seven days of making the request. The agency may grant a temporary authorization without prior public notice and comment.

For facilities seeking permits, the public has the opportunity to comment on closure and post-closure plans and any amendments to the plans as part of the permitting process and permit modification procedures. The public can also comment and request hearings on closure and post-closure plans submitted by interim status facilities. The permitting agency can initiate, and the facility can request, modifications to interim status plans; these requests are also subject to public comment.

Post-closure permits and plans often mandate corrective action.

Exhibit 3-1
Public Participation Requirements for Class 1, 2, and 3 Permit Modifications

Class 1

Type of Changes -- Routine and administrative changes

Required Activities

Within 90 days of implementing a change, facility must notify all parties on mailing list.

Class 2

Type of Changes -- Improvements in technology and management techniques

Required Activities

Day 1: Regulatory agency receives modification request.
Day 7: Facility publishes newspaper notice, notifies mailing list, and places copy of permit modification request and supporting documents in accessible location.
Days 15-45: Facility holds public meeting.
Day 60: Written public comments due to regulatory agency.
Day 90: Regulatory agency response to modification request due, including response to written comments. Deadline may be extended 30 days.
Day 120: If regulatory agency has not responded, requested activity may begin for 180 days under an automatic authorization.
Day 250: If regulatory agency still has not responded, facility notifies public that authorization will become permanent unless regulatory agency responds within 50 days.
Day 300: If regulatory agency has not responded, activity is permanently authorized.

Regulatory agency must notify mailing list within 10 days of any decision to grant or deny modification request, or after an automatic authorization goes into effect.

Class 3

Type of Changes -- Major changes to a facility and its operations

Required Activities

Day 1: Regulatory agency receives modification request.
Day 7: Facility publishes newspaper notice, notifies mailing list, and places copy of the permit modification request and supporting documents in an accessible location.
Days 15-45: Facility holds public meeting.
Day 60: Written public comments due to regulatory agency.

After the conclusion of the 60-day comment period, the regulatory agency must grant or deny the permit modification request according to the permit modification procedures of 40 CFR Part 124. These include:

- Issuing public notice of the draft permit modification or intent to deny the modification;
- Preparing a fact sheet or statement of basis;
- Announcing a 45-day public comment period;
- Holding a public hearing, if requested, with a 30-day advance notice;
- Considering and responding to all significant written and oral comments received during the 45-day comment period; and
- Issuing notice of the final permit modification.

In addition, the regulatory agency must consider and respond to all significant written comments received during the 60-day comment period.

Chapter 4
Public Participation in RCRA Corrective Action Under Permits and §3008(h) Orders

Introduction

RCRA requires owners and operators of hazardous waste management facilities to clean up contamination resulting from current and past practices. These cleanups, known as corrective actions, reduce risks to human health and the environment.

As with the rest of the RCRA program, state environmental agencies can receive authorization from EPA to implement the corrective action program. The corrective action requirements in authorized states must be at least as stringent as the federal requirements and may be more stringent. Where states implement the program, EPA plays an oversight role; the Agency implements the program in non-authorized states.

This chapter lays out a framework for corrective action public participation that follows the typical approach to facility cleanup (e.g., site investigation, analysis of alternatives, remedy selection). However, alternative approaches may be used provided they achieve the goals of full, fair, and equitable public participation. More than 5,000 facilities are subject to RCRA corrective action. The degree of cleanup necessary to protect human health and the environment varies significantly across these facilities. Few cleanups will follow exactly the same course; therefore, program implementors and facility owners/operators must be allowed significant latitude to structure the corrective action process, develop cleanup objectives, and select remedies appropriate to facility-specific circumstances. Similar latitude must be allowed in determining the best approach to public participation, in order to provide opportunities appropriate for the level of interest and responsive to community concerns.

Corrective action may take place under a permit or an enforcement order.

At the federal level, corrective actions may take place under a RCRA permit or as an enforcement order under §3008 of RCRA. In authorized states, corrective action may take place under a state-issued RCRA permit, a state cleanup order, a state voluntary cleanup program, or another state cleanup authority. Since authorized states may use a variety or combination of state authorities to compel or oversee corrective actions, EPA encourages interested individuals to check with their state agency to gather information on the available public participation opportunities.

The RCRA corrective action program is the counterpart of EPA's other hazardous waste clean-up program, "Superfund," which is formally known as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Unlike most Superfund clean-ups, RCRA corrective actions generally take place at facilities that continue to operate, and the current facility owner or operator is involved in the cleanup. Because cleanups under RCRA and Superfund often involve similar issues, EPA encourages equivalent public participation procedures in the two programs. Thus, parts of this chapter will refer you to the *Community Relations in Superfund* handbook (EPA/540/R-92/009, January 1992), which is available by calling the RCRA/Superfund Hotline at 1-800-424-9346.

Current Status of the Corrective Action Program

The ANPR emphasizes areas of flexibility in corrective action and describes how the program is improving.

Although Subpart S regulations are not final, much of the 1990 proposal is routinely used as guidance by permit writers.

On May 1, 1996, EPA published an Advance Notice of Proposed Rulemaking (ANPR) in the Federal Register (61 FR 19432). The Notice: (1) presents EPA's strategy for writing final corrective action regulations; (2) describes the current corrective action program and requests information to help EPA identify and implement improvements to the program; and (3) emphasizes areas of flexibility in the current program and describes program improvements already underway.

Public participation during corrective action derives from a combination of regulations and EPA guidance. The regulations set out requirements that facilities and agencies must meet when a permit is issued or modified, under 40 CFR parts 124 and 270, to incorporate corrective action provisions. EPA guidance, on the other hand, suggests additional provisions that the permitting agency may include in the permit. One example of such guidance for corrective action activities is the Proposed Subpart S rule (55 FR 30798, July 27, 1990). The Subpart S regulations are not final, but much of the 1990 proposal is routinely used as guidance by permit writers.[1]

Since there are no regulations requiring public participation under §3008(h) orders, any such activities are based on guidance. EPA policy states that the opportunities for public participation should be generally the same as those

---

[1] Two provisions of the 1990 proposal were promulgated in 1993: the final corrective action management unit (CAMU) and temporary unit regulations on February 16, 1993 (58FR 8658). Under this final rule, CAMUs and temporary units may be designated by the regulatory agency in the permit prior to or during remedy selection according to the procedures in 40 CFR 270.41; these units may also be implemented through the use of Section 3008(h) orders or order modifications. Conversely, the facility may request a permit modification to implement a CAMU following the Class 3 permit modification process defined in 40 CFR 270.42. If approval of a temporary unit or time extension for a temporary unit is not requested under a Class 3 permit modification or obtained under a regulatory agency-initiated modification, the facility owner or operator may request approval for a temporary unit according to the procedures for a Class 2 permit modification. Chapter 3 (RCRA Permitting) discusses the public participation activities associated with each level of permit modification.

opportunities that accompany corrective action under a permit (see the section called "Special Considerations for Public Participation Activities Under §3008(h) Orders" below).

In the 1996 ANPR, the Agency reaffirmed using portions of the 1990 proposal as guidance.

The May 1, 1996 ANPR reaffirms the Agency's use of portions of the 1990 proposal as guidance, including many of the portions addressing public participation in corrective action. While much of the 1990 proposal will still be used as guidance, the ANPR emphasizes the need for flexibility in developing site-specific corrective action schedules and requirements, including public participation requirements tailored to meet the needs of the local community.

As described in the ANPR, EPA is actively looking for opportunities to identify and implement improvements to make the corrective action program faster, more efficient, more protective, and more focused on results. In the ANPR, the Agency emphasizes that revisions to the corrective action program should also enhance opportunities for timely and meaningful public participation.

This chapter outlines the public participation activities associated with the corrective action process under both permits and §3008(h) orders. It describes public participation activities currently required under federal regulations and policies, as well as additional activities that EPA recommends. If additional guidance is appropriate upon promulgation and re-proposal of corrective action regulations, EPA will update this chapter and make it available to the public.

The three paragraphs below provide a few guidelines for public participation, in the form of overarching principles, which should be considered throughout the corrective action process.

Early Participation

Public participation should come early in the corrective action process.

As we emphasized in Chapter 2, public participation should begin early in the permitting process. It should also begin early in the corrective action process. Many of the important decisions in a corrective action are made during the site investigation and characterization. Overseeing agencies and facilities should make all reasonable efforts to provide for early public participation during these phases.

Consistency with Superfund

A significant portion of the RCRA corrective action process is analogous to the Superfund process. Due to this similarity, EPA encourages permitting agencies and facilities to make public participation activities under the RCRA system consistent with those activities required under Superfund. For example, RCRA interim actions should provide opportunities for participation that are similar to, or go beyond, Superfund public

participation for removal actions, and similar opportunities for participation should be available under both corrective measures implementation and a Superfund remedial action.

Shared Responsibility for Public Participation Activities

The corrective action process may involve cleanup steps that are initiated by an overseeing agency or a facility owner/operator. Public participation activities will often be more useful for the public if the party who performed the latest cleanup step then conducts the public participation activity. For instance, if the facility owner/operator does a facility investigation, then it would usually be more appropriate for the facility owner/operator to run the public meeting or whatever activity follows the investigation. In addition, EPA recognizes that important forms of public participation take place outside of the formal corrective action process. The Agency encourages public interest, environmental, civic, and other organizations to provide such activities. The Agency also encourages citizens to discuss cleanup and permitting issues with knowledgeable stakeholders in the community.

Special Considerations for Public Participation Activities Under §3008(h) Orders

As we mentioned above, corrective action activities are conducted under an order issued under RCRA Section 3008(h). RCRA 3008(h) orders may be used to get corrective action started in advance of facility permitting or when a facility is closing under interim status. RCRA 3008(h) orders may be issued either on consent or unilaterally. A consent order is issued when the facility and the regulatory agency have come to an agreement about the corrective action; a unilateral order is issued when the regulatory agency and the facility have been unable to agree about the need for, or the scope of, corrective action.

As a matter of EPA policy, the substantive corrective action requirements and public participation requirements imposed under an order are generally the same as those that would occur if corrective action were taking place under a permit (61 FR 19432, May 1, 1996); however, because orders have significant administrative differences from permits there are some special considerations. For example: under a §3008(h) order, there may be limitations on the permitting agency's ability to release or discuss certain information; no public participation activities are statutorily *required* under §3008(h), though EPA policy is that public participation under corrective action orders be generally the same as under permits; and, while facility owner/operators may agree to conduct public participation activities under a consent order, under a unilateral order public participation responsibilities will likely fall to the permitting agency.

Under EPA policy, public participation requirements during corrective action are generally the same under orders and permits.

In addition to ensuring that appropriate public participation activities occur during implementation of a corrective action order, in some cases, it may

be useful to begin public participation prior to the issuance of the order by assessing the community's concerns and identifying the most appropriate means of addressing those concerns. (Assessing a community's concerns and planning for public participation is discussed in greater detail in Chapter 2.) When corrective action will take place under a consent order, care should be taken to explain to the community that corrective action orders on consent are not traditional enforcement actions in that they are simply means to expedite initiation of corrective action activities; they are not typically issued in response to a violation at the facility.

Limitations on Releasing Information: When the agency is negotiating an order with the facility, confidentiality of certain information must be maintained. The aim of these negotiations is to encourage frank discussion of all issues and to resolve differences, thereby allowing the agency to issue an order on consent rather than unilaterally. Agency staff should take notice: public disclosure of some information may be in violation of state and federal statutes, and could jeopardize the success of the negotiations, so be sure to coordinate any public notices with enforcement staff before releasing information.

Not being able to fully disclose information to the public can pose problems, particularly in a community where interest is high and citizens are requesting information. If interest in the facility is high, the project manager, project staff, and the Public Involvement Coordinator should discuss how to address citizens' concerns without breaching confidentiality. At the very least, the public deserves to know why these limitations are necessary and when and if they will be lifted.

Further constraints may be placed upon public participation if discussions with the facility break down, and the case is referred to the Department of Justice (DOJ) to initiate litigation. In this situation, public participation planning should be coordinated with the lead DOJ attorney as well.

Strongly Suggested Versus Required Activities: As discussed earlier in this Chapter, EPA's policy is that the substantive corrective action requirements and public participation requirements imposed under an order should be generally the same as those that would occur if corrective action were taking place under a permit. U.S. EPA's Office of Solid Waste and Emergency Response has issued two directives addressing public participation in §3008(h) orders: Directive 9901.3, *Guidance for Public Involvement in RCRA Section 3008(h) Actions* (May 5, 1987) and Directive 9902.6, *RCRA Corrective Action Decision Documents: The Statement of Basis and Response to Comments* (April 29, 1991). These directives suggest public participation activities in orders, even though such activities are not required by statute. The directives suggest the following activities **after** a proposed remedy has been selected:

- Writing a **statement of basis** discussing the proposed remedy;

- Providing **public notice** that a proposed remedy has been selected and the statement of basis is available;
- Providing a **public comment period** (30-45 days) on the proposed remedy;
- Holding a **public hearing** if requested; and
- Writing a **final decision** and **response to comments**.

The remainder of this Chapter reflects EPA's support for having equivalent public participation steps under both permits and orders. While there are no requirements for public participation under orders, EPA strongly suggests the activities reviewed in this Chapter. In our review of the corrective action elements (initial site assessment, site characterization, etc.) in the following pages, we discuss public participation activities that are required or additional. Because EPA strongly suggests public participation activities under orders, we present them under the "Required Activities" headings for each corrective action element.

Consent Versus Unilateral Orders: If the agency is issuing a consent order, the agency should consider negotiating with the facility to have it write a **public participation plan** (if community interest in the facility is high), or at least conduct some activities as terms of the order. If the agency is issuing a unilateral order, however, circumstances may be such that it is necessary and/or appropriate for the agency to assume all or most public participation responsibilities. Care must be used regarding the disclosure of information prior to the issuance of a unilateral order. Premature disclosure may place additional strain on the facility-agency relationship.

Public Participation In Corrective Action

Because corrective action activities involve investigation of releases and potential releases of hazardous waste, the community is likely to take an active interest. Corrective action investigations and remedial activities may be very visible to the public. Experts visit the facility to conduct investigations, trucks and equipment travel back and forth to the facility, and government agencies oversee activities. Delays in the cleanup or long "down times" between permitting activities are not uncommon. All of these factors can heighten the anxiety and concern of the community. Accordingly, the community may require more information on issues related to current or potential contamination, including levels of contamination, the extent of health and environmental risks, and the potential for future risks. The public may also seek additional opportunities to give input to the overseeing agency or the facility.

The regulatory requirements provide a baseline for adequate public participation while leaving a great deal of flexibility in the program. Some situations will call for public participation opportunities that go beyond the regulatory baseline. Where regulations do not specify public participation during corrective action, overseeing agencies and facility owners/operators

should develop site-specific public participation strategies that are consistent with existing requirements and provide for full, fair, and equitable public participation.

The scope and complexity of corrective actions will vary significantly across facilities. For this reason, EPA has created a flexible program that allows regulatory agencies to tailor corrective action requirements to facility-specific conditions and circumstances. While EPA's public participation regulations establish a baseline of requirements, some situations will call for public participation opportunities that go beyond the regulatory baseline. This is particularly true in the corrective action program because many of the specific corrective action regulations, including regulations for public participation, are not yet final and because corrective action activities often occur outside the permitting process (e.g., under a federal or state order). In this chapter, we will discuss times during the process when additional public participation can be critical. We encourage stakeholders to follow the guidance in this chapter and Chapter 2 when planning for public participation in the corrective action process.

Corrective actions, like most site cleanup activities, usually involve several key elements. These elements are:

- Initial Site Assessment (RCRA Facility Assessment (RFA));
- Site Characterization (RCRA Facility Investigation (RFI);
- Interim Actions;
- Evaluation of Remedial Alternatives (Corrective Measures Study (CMS);
- Remedy Selection;
- Remedy Implementation (Corrective Measures Implementation (CMI)); and
- Completion of the Remedy.

A successful corrective action program must be procedurally flexible; no one approach will be appropriate for all facilities.

The corrective action process is not linear. The elements above should not be viewed as prescribed steps on a path, but as evaluations that are necessary to support good cleanup decisions. Because these elements may not occur in the same order (or at all) at every facility, we encourage planners to use them as general guidelines, while leaving flexibility for changes. A successful corrective action program must be procedurally flexible; no one approach to implementing these cleanup elements will be appropriate for all facilities. The seven elements, and the public participation activities associated with them, are described in the sections below.

Refer to Chapter 3 for additional information on permitting, including permit modifications, and Chapter 5 for specific details on public participation activities described in this chapter.

The corrective action process usually begins with an initial site assessment,

Initial Site Assessment (RFA)

called a RCRA Facility Assessment or RFA. The RFA is conducted either by the overseeing agency or by the facility with subsequent agency approval. The purpose of an RFA is to gather data about a site, including releases and potential releases of hazardous waste and hazardous constituents, to determine whether a cleanup may be necessary. RFAs usually include (1) a file review of available information on the facility; (2) a visual site inspection to confirm available information on solid waste management units (SWMUs) at the facility and to note any visual evidence of releases; and (3) in some cases, a sampling visit to confirm or disprove suspected releases.

The results of an RFA are recorded in an RFA report. The RFA report will describe the facility and the waste management units present at the facility and note any releases or potential releases. It will also describe releases and potential releases from other, non-waste-management-associated sources (e.g., a spill from a product storage tank). Interested individuals may request copies of RFA reports from the appropriate EPA regional office or state agency.

In addition to the information recorded in RFA reports, if corrective action is taking place in the context of a RCRA permit, the permit application will also describe the physical condition of the facility including its subsurface geology, the waste management units present at the facility, and any releases and potential releases.

The RFA report usually serves as the basis for future corrective actions at a facility. If, after completion of the RFA, it appears likely that a release exists, then the overseeing agency will typically develop facility-specific corrective action requirements in a schedule of compliance, which will be included in the facility's permit or in a RCRA Section 3008(h) corrective action order.

In the case of corrective action implemented through a permit, the public may comment on the schedule of compliance for corrective action during permit issuance and subsequent permit modification (see Chapter 3 for more information on the permitting process and permit modifications).

When corrective action is implemented though a 3008(h) order, the public should be given an opportunity to comment on the schedule of compliance when the order is issued; however, it may take many months of discussions between the facility owner/operator and the overseeing agency before an order is issued. In the meantime, the facility owner/operator may develop a **mailing list**, modeled after the mailing list developed under the permitting process, and a **public participation plan**.

On the day the order is issued, the administrative record, containing all information considered by the agency in developing the order, is made available for inspection by the public. The agency may also want to place a copy of the administrative record at a local library close to the facility.

The overseeing agency or facility owner/operator should consider writing a **fact sheet** that gives details of the order and the corrective action process. If there is a high level of interest in the facility, an **open house** or **workshop** should be considered.

Site Characterization (RFI)

A RCRA Facility Investigation or RFI is necessary when a release or potential release is identified and additional information is necessary to determine the nature and scope of corrective action, if any, that is needed. The purpose of an RFI is to characterize the nature and extent of contamination at the facility and to support selection and implementation of a remedy or remedies or, if necessary, interim measures.

Required Activities

If corrective action is being conducted in the context of a RCRA permit, the public has the opportunity to review and comment on the scope of the RFI and RFI schedules and conditions during permit issuance. The RFI is usually conducted by following an agency-approved RFI plan. If the RFI plan is incorporated into a permit by a permit modification, then the public will have an opportunity to comment on the scope and schedule of the RFI during the modification process. See Chapter 3 for more information on public participation during permit modifications.

If corrective action is being conducted under a 3008(h) order, the public should be given the opportunity to review and comment on the scope of the RFI and RFI conditions when the order is issued and/or when the RFI workplan is approved.

RFIs can often involve numerous rounds of field investigation and can take months or even years to complete. During the RFI process, it may be necessary to change the RFI requirements or modify the RFI schedule to react to new information. When corrective action is being conducted in the context of a RCRA permit, the public has an opportunity to comment on changes to RFI conditions and schedules during the permit modification process. Significant changes to the scope of RFI requirements are typically Class 3 permit modifications, changes to RFI schedules or investigatory details (e.g., a change in the number of samples to be collected in a given sampling area) are typically considered either Class 1 or Class 2 modifications, depending on their significance. When corrective action is being conducted under an order, the public's opportunities to review changes to RFI conditions and schedules should be consistent with the opportunities that are available under a permit. The **facility mailing list,** developed during the initial stages of the permitting process, or a mailing list developed during preparation of the corrective action order, should be used and updated throughout the corrective action process in order to keep members of the community informed. (See Chapters 3 and 5 for more information on facility mailing lists.)

In some cases (e.g., where there is a high level of public interest in corrective action activities), the overseeing agency will determine that an **information repository** is needed to ensure adequate public involvement. When corrective action is being conducted under a RCRA permit the agency can require the facility to establish a repository under § 270.30(m). A repository at the RFI stage will provide access to information from an early stage in the process, though the agency has the discretion to use this provision at any stage in the permitting process or at any stage during the corrective action. If the agency decides to require a repository, it will direct the facility to notify the public of the existence of the repository, including the name and phone number of a **contact person**. See Chapter 5 for more detail on information repositories.

Additional Activities

The start of the RFI usually marks the beginning of highly visible, on-going corrective action activities at a facility. Because RFI activities are highly visible and because many of the important decisions regarding the scope of potential corrective actions may be made during the RFI, it will generally be appropriate to reevaluate community concerns and the level of public participation and to revise the **public participation plan** accordingly (see Chapter 5) when RFIs begin. Such efforts early in the process, before community concerns and issues become overwhelming, will be beneficial in the long run.

Developing and distributing **fact sheets** throughout the RFI process is an excellent way to keep in touch with the community. It is a good idea to issue a fact sheet before the RFI begins to explain the investigation's purpose and scope. Another fact sheet should be issued after the RFI is completed to report the investigation results.

EPA encourages all facilities to make the results of the RFI readily available to interested stakeholders. One means of providing access to the information is to send a **summary of the RFI report** to the **facility mailing list**, as proposed in the 1990 Subpart S proposal. The facility may choose other means of distributing the information, such as through a **fact sheet or project newsletter**. The full report should be made available for review in an **information repository**, if one exists, or through some other method that is convenient for the interested public.

The facility owner/operator should provide notice to all adjacent landowners and other persons who may have been affected by releases of contamination, via air or ground water, from the facility. EPA recommends that the owner/operator follow the provisions in the 1990 proposal (proposed § 264.560(a) and (b)) for **notifications for discoveries of contamination** (see 55 FR 30882).

Informal meetings or **workshops** held by the facility, the permitting agency, or public interest groups can provide valuable forums for discussing community concerns.

Interim Actions

Interim actions are activities used to control or abate ongoing risks to human health or the environment in advance of final remedy selection. For example, interim actions may be required in situations where contamination poses an immediate threat to human health or the environment. They also may be required to prevent further environmental degradation or contaminant migration prior to implementing the final remedy. Interim actions may occur at any point in the corrective action process; however, they are often implemented during the RFI or CMS.

Required Activities

When corrective action is proceeding under a RCRA permit, the permit may identify specific interim measures and/or stabilization measures (if they are known at the time of permit issuance) or may have general conditions that govern when interim measures might be required during the course of the corrective action. In either case, the public can comment on the interim measures strategy in the draft permit as part of the permitting process.

When corrective action is proceeding under a 3008(h) order, the public should have the opportunity to comment on specific interim measures or general interim measure conditions when the order is issued, or otherwise in a manner that is consistent with the opportunities available when corrective action takes place under a permit.

Additional Activities

In recent years EPA has increasingly emphasized the importance of interim measures and site stabilization in the corrective action program. In the ANPR, EPA notes that an overriding goal in our management of the corrective action program is to help reduce risks by emphasizing early use of interim actions (while staying consistent with the environmental objectives at the facility). If a facility owner/operator or the permitting agency anticipates that an early interim action will be the only cleanup step taken over a significant period of time, then the facility or the agency should inform the public of such a plan and receive feedback, unless the immediacy of the situation will not allow for feedback. The facility and the agency should both announce a **contact person** to provide information and respond to inquiries about the action. Agencies and facilities may find Superfund guidance on removal actions useful in the RCRA context (see *Community Relations in Superfund: A Handbook*, Chapter 5).

It is a good idea to keep the public informed of such activities by issuing **fact sheets** or holding **informal meetings**. Because interim measures can be conducted at any stage in the corrective action process, you should incorporate activities related to interim measures into the rest of your public involvement program.

Evaluation of Remedial Alternatives (CMS)

When the need for corrective measures is verified, the facility may be required to perform a Corrective Measures Study (CMS) to identify and evaluate potential remedial alternatives. In cases where EPA or a state is using performance standards or a similar approach and in cases where the preferred remedial alternative is obvious (e.g., where EPA has issued a presumptive remedy that is appropriate to site-specific conditions), submission of a formal CMS may not be necessary.

Required Activities

When corrective action is proceeding under a permit, the permit schedule of compliance may already include conditions that specify when a CMS is warranted; the public can comment on these draft permit conditions at the time of permit issuance. However, because the RFI and CMS phases may last several years, depending on the complexity of the facility, the community may be frustrated by the length of time involved and the lack of information on results or findings. Significant changes to the scope of CMS requirements, as specified in the permit, may be considered Class 3 permit modifications requiring significant public involvement. Changes to the CMS schedule, or CMS details are typically considered class 1 or 2 permit modifications, as appropriate.

Public participation during corrective action under a 3008(h) order should be consistent with public participation under a permit. The public should have the opportunity to review and comment on the scope of the CMS and CMS conditions when the order is issued and/or when the CMS workplan is approved.

Additional Activities

In the 1996 ANPR, EPA emphasizes that it expects facility owners/operators to recommend a preferred remedy as part of the CMS. While there is no formal requirement for public participation at this time, EPA strongly encourages the facility to present its preferred remedy to the community before formally submitting it to the agency. The facility should seek community input through an **informal meeting**, **availability session**, or another method that encourages dialogue. This early input is likely to improve many preferred remedies and make them more agreeable to communities. Moreover, it will make the facility and the overseeing agency aware of community concerns and ways to address them.

Holding **workshops** and **informal public meetings** about the CMS process, the remedies being considered, and the activities being conducted at the facility will keep the community involved and informed. **Fact sheets** distributed at significant milestones during the CMS can keep the community abreast of the progress that has been made.

The agency and the facility should provide the name and number of a **contact person**. A contact person will accept comments and answer questions from the community, disseminate information, demonstrate the agency's and facility's willingness to talk with the community, and give the facility or the agency an opportunity to respond to public concerns. The agency or the facility may even consider establishing a **hotline** if a large number of people call with questions. The mailing list and local newspapers are good ways to advertise availability of the hotline.

Remedy Selection

Following receipt of a recommendation of a preferred remedy from the facility owner/operator, the overseeing agency will review the preferred remedy and other remedial alternatives and decide to tentatively approve the preferred remedy, tentatively select a different remedy or require additional analysis of remedial alternatives. The tentatively selected remedy will then undergo public review and comment, usually in the form of a proposed modification to the facility's permit or corrective action order. Following public review, the agency will respond to public comments and then modify the facility permit or corrective action order to incorporate the remedy.

Required Activities

When corrective action is proceeding under a permit, public review and comment on the tentatively selected remedy is generally conducted using the procedures of 40 CFR 270.41 for agency-initiated permit modifications. For such a modification, 40 CFR 270.41 requires the same level of public participation as is required for a draft permit. The agency must release the proposed modification for public review and issue a **public notice** announcing that the proposed modification is available for review. The agency must publish this notice in a major local newspaper, broadcast it over local radio stations, and send it to all persons on the mailing list.

In addition, agency staff must prepare a **fact sheet** or **statement of basis** to explain the proposed modification and the significant factual and legal reasons for proposing the remedy. The statement of basis describes the proposed remedy, but does not select the final remedy for a facility. This approach allows for consideration of additional information during the **public comment period**. Following the comment period, public comment and/or additional data may result in changes to the remedy or in another choice of remedy. After the agency has considered all comments from the public, the final decision -- selecting the remedy or determining the need to

develop another option -- is documented in the response to comments. (For more information on statements of basis, refer to OSWER Directive 9902.6, *RCRA Corrective Action Decision Documents: The Statement of Basis and Response to Comments* (April 29, 1991)).

A **45-day public comment period** on the draft permit modification follows publication of the public notice. The comment period provides the public with an opportunity to comment, in writing, on conditions contained in the draft permit modification. If information submitted during the initial comment period appears to raise substantial new questions concerning the draft permit modification, the agency must re-open or extend the comment period.

The members of the public may request a **public hearing** on the draft permit modification. If a hearing is requested, the agency must give a **30-day advance notice** to the community that states the time and place of the hearing. The agency Director has the discretion to schedule a public meeting or hearing even if the community does not request one. In some cases, scheduling a public hearing before the public requests one may save valuable time in the modification process and demonstrate a willingness to meet with the community to hear its questions and concerns.

After the public comment period closes, the agency must review and evaluate all written and oral comments and issue a final decision on the permit modification. Then the agency must send a **notice of decision** to the facility owner or operator and any persons who submitted public comments or requested notice of the final decision and prepare a written **response to comments**. This document must include a summary of all significant comments received during the public comment period and an explanation of how they were addressed in the final permit modification or why they were rejected. The response to comments must be made available through the Administrative Record and the **information repository**, if one was established, and must be sent to the facility and all persons who submitted comments or requested a copy of your response.

When corrective action is proceeding under a 3008(h) order, the Agency's longstanding policy is that the public's opportunity to review and comment on tentatively-selected remedies should be commensurate with the opportunity that would be available if the corrective action were conducted under a permit. At a minimum, this opportunity should include: publishing a notice and a brief analysis of the tentatively-selected remedy (this is typically referred to as a statement of basis) and making supporting information available; providing a reasonable opportunity for submission of written comments; holding a public hearing or public meeting, if requested by the public or determined necessary by the overseeing agency; preparing and publishing responses to comments; and, publishing the final remedy decision and making supporting information available. Additional guidance is available in OSWER Directives 9901.3, *Guidance for Public*

Involvement in RCRA Section 3008(h) Actions (May 5, 1987) and 9902.6 *RCRA Corrective Action Decision Documents: The Statement of Basis and response to Comments* (April 29, 1991).

Additional Activities

The agency, public interest groups, or the facility should consider holding **workshops** or **informal meetings** during the public comment period to inform the public about the proposed remedy. These discussion sessions can be especially useful when information about corrective measures in a draft permit modification is quite technical or the level of community concern is high.

Remedy Implementation (CMI)

Once the overseeing agency modifies the permit or corrective action order to include the selected remedy, the facility must begin to implement the remedy. Remedy implementation typically involves detailed remedy design, remedy construction, and remedy operation and maintenance; it is called Corrective Measures Implementation or CMI. Corrective measures implementation is generally conducted in accordance with a CMI plan, approved by the overseeing agency.

Required Activities

When corrective action is proceeding under a permit, the public will have an opportunity to comment on CMI conditions and schedules during the permit modification for remedy selection or when the permit is modified to incorporate the CMI plan. Significant changes to the scope of CMI may be considered Class 3 permit modifications. Changes to the CMI schedule are typically considered either Class 1 or Class 2 permit modifications, as appropriate.

When corrective action is proceeding under a 3008(h) order, the public's opportunity to comment on CMI conditions and schedules should be consistent with the opportunities that would be available if corrective action were taking place under a permit.

Additional Activities

Remedy implementation will often involve highly visible activities, such as construction of new on-site treatment and containment systems, and staging and transportation of large volumes of materials. These activities may result in increased levels of public interest, which may already be high due to the public's participation in remedy selection.

EPA recommends that the facility notify all individuals on the facility **mailing list** when the construction plans and specifications are available for public review. If the facility has established an **information repository**,

then the plans should go in the repository; otherwise, the facility should place the plans in a convenient location with public access.

As mentioned earlier, the corrective action process can take years to complete. Additional public participation activities may be appropriate during corrective measures implementation to inform the community of the progress of the remedial action, especially if the public shows concern over the pace and scope of the cleanup operations. In particular, it may be useful to release periodic **fact sheets** to the community that report on progress of the cleanup operations. It may also be helpful to hold an **availability session/open house** near or on the site of the facility to demonstrate or explain the activities involved in the remedy.

Completion of Remedy

Once corrective measures are complete the overseeing agency will either terminate the corrective action order or modify the permit to remove the corrective action schedule of compliance. Decisions regarding completion of corrective measures can be made for an entire facility, for a portion of a facility, or for a specified unit or release. EPA policy is for the public to be given an opportunity to review and comment on all proposals to complete corrective action.

Required Activities

When corrective action is proceeding under a permit, proposals to complete corrective measures should follow the procedures for Class 3 permit modifications. See the section on Class 3 modifications in Chapter 3 for details.

When corrective action is proceeding under a 3008(h) order and a proposal to complete corrective measures is issued, the public should have notice and comment opportunities that are consistent with the opportunities available under the Class 3 permit modification procedures.

Additional Activities

In some cases, hazardous wastes or hazardous constituents will remain in or on the land after completion of corrective measures. When this occurs, the overseeing agency may require the facility to record a notation in the deed to the facility property regarding the types, concentrations, and locations of such waste or constituents.

Chapter Summary

At the federal level, corrective actions may take place under a RCRA permit or as an enforcement order under §3008 of RCRA.

In authorized states, corrective action may take place under a state-issued RCRA permit, a state cleanup order, a state voluntary cleanup program, or another state cleanup authority. Authorized states may use a variety or combination of state authorities to compel or oversee corrective actions.

EPA's recent Advance Notice of Proposed Rulemaking (ANPR) (61 FR 19432, May 1, 1996) for the corrective action program does three things: (1) it presents EPA's strategy for writing final corrective action regulations; (2) it includes a description of the current corrective action program and requests information to help EPA identify and implement improvements to the program; and (3) it emphasizes areas of flexibility in the current program and describes program improvements already underway.

The ANPR also affirmed EPA's use of the 1990 proposal as guidance and emphasized the Agency's commitment to enhanced public participation.

As a matter of EPA policy, the type and timing of public participation activities for §3008(h) orders are generally the same as those for corrective action in permitting.

There are three important distinctions between conducting public participation in corrective action under a §3008(h) order and through permitting:

1. Under a §3008(h) order, there may be limitations on the release or discussion of certain information;

2. No public participation activities are required under §3008(h) but they are strongly encouraged in guidance. In addition, the agency may require the facility to conduct additional activities as a term in the order; and

3. Facilities may agree to conduct public participation activities under a consent order, however, under a unilateral order, the responsibility will likely fall to the agency.

While being flexible, the corrective actions should provide for early public participation, seek consistency with Superfund community involvement standards, and allow facility owner/operators to perform public participation activities where appropriate.

The corrective action process is composed of seven basic elements which are not prescribed steps, but evaluations that are necessary to make good cleanup decisions. Because these elements may not occur in the same order (or at all) in every situation, we encourage planners to use them as general guidelines, while leaving flexibility for changes. A successful corrective action program must be procedurally flexible

The basic elements (with corresponding public participation activities that are currently required or suggested):

1. Initial Site Assessment (RCRA Facility Assessment)

   - Schedule of compliance will go into permit, where public can comment
   - For enforcement orders, the agency will release administrative record and make it available for public review. The agency may provide a fact sheet and hold an open house or workshop.

2. Site Characterization (RCRA Facility Investigation)

   - Update mailing list, if necessary
   - Establish information repository, if required
   - Revise public participation plan
   - Modify permit, if necessary, to reflect changes to schedule of compliance
   - Under an order, provide notice and comment on the planned RFI
   - Develop fact sheets on the investigations
   - Mail summary of RFI Report to facility mailing list and make available to the public
   - Hold informal meetings or workshops
   - Issue notifications for discovery of contamination

3. Interim Actions -- May occur at any time during the process

   - Provide for public input and feedback , as appropriate given time constraints, and announce a contact person
   - Use fact sheets and informal meetings, if appropriate

4. Evaluation of Remedial Alternatives (Corrective Measures Study)

   - Hold informal meetings or workshops when facility presents preferred remedy
   - Identify a contact person
   - Develop fact sheets on the study
   - Establish a hotline

5. Remedy Selection

   - Agency-initiated permit modifications follow 40 CFR 124 procedures, including public notice, public comment period, and a hearing (if requested)
   - For corrective action under an order, the agency should: publish a notice and a statement of basis; take public comment; holding a public hearing or public meeting, if requested by the public or determined necessary by the overseeing agency; prepare and publish responses to comments; and, publish the final remedy decision while making supporting information available.
   - Hold workshop on proposed remedy
   - Once final remedy is selected, send out notice of decision
   - Issue response to comments
   - Hold informal meetings or workshops on the final remedy

6. Corrective Measures Implementation

   - Notify public when plans and specifications are available for review
   - Develop fact sheets on remedy implementation
   - Coordinate availability session/open house

7. Completion of Remedy

   - Agency may remove schedule of compliance from the permit or terminate the order by following the Class 3 modifications procedures for a permit or a similar process for an order.

Chapter 5
Public Participation Activities: How to Do Them

Introduction

This chapter presents a "how-to" for a broad range of activities that permititng agencies, public interest groups, and facility owners/operators can use to promote public participation. The variety of activities in this chapter should fit any situation: from the formal regulatory process that EPA follows, to community-based discussions of RCRA issues, to events held by the facility owner or operator.

Some of the activities in this chapter (for instance, public hearings) will be more appropriately led by a permitting agency; however, all stakeholders can learn more about the different kinds of activities by reviewing this chapter. Moreover, EPA would like to emphasize that this list is not exhaustive. You should consult with other stakeholders to determine if these or any other public participation activities will best suit your particular situation. Several of the appendices provide contact lists for various stakeholder groups.

As we emphasized in the preceding chapters, public participation is a dialogue. It involves both getting information out to other stakeholders and getting feedback in the form of ideas, issues, and concerns. We have divided this chapter's activities to reflect the dual role of public participation. The first group of activities involves techniques that disseminate information. The second group involves techniques that are useful for gathering and exchanging information. Note that some of these activities, such as informal meetings, are useful both for disseminating and collecting information. On the other hand, some activities, such as public notices, provide one-way communication. *EPA encourages stakeholders to combine public participation techniques so that they provide two-way communication.* For instance, if an agency issues a public notice, it should create a feedback loop by including the name and number of a contact person in the notice. Similarly, a facility or a public interest group could provide for feedback in an information repository by asking users to complete surveys or by assigning a staff person to answer questions at the repository.

The following pages contain summaries of numerous public participation activities, information on how and when to conduct them, an estimate of how much effort they require, and their advantages and limitations. Each summary includes a checklist to help in conducting the activity. Examples of public notices and fact sheets are also included.

Use this directory to locate specific activities:

L Disseminating Information

L Gathering and Exchanging Information

Public Participation Plans

Regulatory Requirements

None.

Description of Activity

A public participation plan provides a community-specific plan for interacting with a community regarding the permitting or corrective action activities taking place at a RCRA facility. The plan, typically prepared by the permitting agency, assesses the level of community interest as well as the types of concerns identified through a variety of sources (e.g., **community interviews**) and, based on this information, recommends specific activities for involving the community in the RCRA process. See the section on "Planning for Participation" in Chapter 2 and the detailed sample plan in Appendix I for more information. Chapter 3 of *Community Relations in Superfund* also provides useful guidance.

The level of detail in the plan will vary according to the probable level of public interest, the type of permitting activity, the location of the facility, and other applicable factors. The steps described in this section are not all necessary in every plan. Depending on the situation, the public participation plan may vary from a two-page schedule of activities to a comprehensive study of the population, an itinerary of permitting activities, and an analysis of community concerns.

Level of Effort

A Public Participation Plan may take several days to two weeks to complete. Revision of a plan could take a few days to a week. The range of effort depends on the priority of the site and the complexity of the activities performed at that site.

How to Conduct the Activity

A Public Participation Plan should be based on information collected during community interviews (if conducted) and information obtained from other sources, such file searches, reviews of past media coverage, and community assessments done by third parties (see the section entitled "Planning for Participation" in Chapter 2). This information is analyzed and organized into a community-specific plan. Typical sections of a public participation plan are:

- Introduction -- several paragraphs clearly explaining the purpose of the document.
- Facility History -- several paragraphs to several pages providing an overview of the facility, its technical and regulatory history, and a history of past community concerns and involvement in activities at

the facility. Short cut: attach the facility fact sheet if one already exists.

- Community Concerns -- several paragraphs to several pages summarizing the concerns identified during the community interviews.

- Objectives of the Plan -- several paragraphs to several pages, depending on the objectives, providing a narrative of the major objectives of the plan. Objectives typically relate to the specific concerns outlined in the previous section.

- Public Participation Activities -- several paragraphs to several pages, depending on the plan, describing the specific activities that will be conducted to meet the objectives outlined in the previous section (e.g., meetings, fact sheets, briefings for local officials, etc.) and a schedule for conducting these activities.

- Appendices -- Appendices can be included to provide the mailing list, media contacts, and public meeting and information repository locations.

The activities in a public participation plan should be tailored to address community concerns and needs. The plan should include the kinds of activities that are discussed in this manual.

The plan should be presented in a public document that serves to demonstrate to the community that the agency (and public interest groups and the facility owner, if involved) listened to specific community concerns and developed a specific program around those concerns. EPA encourages permitting agencies to seek input from other stakeholders during development of the plan. The facility owner and public interest groups can provide information about their planned activities and the community representatives can suggest the types of activities, information channels, and logistics that will work best in the area.

Revisions of all or parts of the public participation plan for a facility may be done in order to incorporate new information, reflect changes in community concern, and adjust public participation activities to meet these changes. A revision ensures that the plan remains sensitive to citizens' concerns through the final phases of a permit determination or a corrective action. It can also evaluate which public participation activities were effective and which were not.

When to Use

Public participation plans may be prepared:

- At the beginning of the RCRA process (e.g., for facilities seeking a permit or facilities beginning corrective action) to schedule activities

and assign responsibilities;

- After community interviews (if conducted).

Public participation plans should be revised:

- When a significant change in community concerns or activities at the facility occurs (e.g., after a remedy is selected or the facility proposes a significant permit modification); and
- At least every two years for longer-term projects.

Accompanying Activities

Although they are not necessary in every case, **community interviews** can be very helpful when writing a plan. The plan typically includes the **mailing list** and provides the locations of the **information repositories** and **public hearings**.

Advantages and Limitations

Public participation plans establish a record of community concerns and needs and a set of activities to meet those needs. Because the plans are community-specific, they ensure that the community gets the information they need in a fashion that is most useful and they assist the project staff in making the most efficient use of their time when interacting with the public.

The plan represents the agency's commitment to dedicate significant resources to the activities specified; thus, agency staff should make certain that resources are available to implement all activities identified in the plan. The plan should not schedule activities that the agency will not be able to conduct.

Community concerns can change significantly and may require that the public participation plan be revised periodically. The plans should be seen as "evolving" documents. The agency may need to revise the plan often, conducting new community interviews each time. At the least, the agency should be prepared to revise activities or expand activities as the project proceeds.

Revising the plan will help to ensure that the agency continues to respond to citizens' concerns during long-term projects. Minor changes also can help a public participation planner; for example, the contacts list can incorporate changes in addresses, new telephone numbers, and the names of new officials.

Checklist for Public Participation Plans

As applicable:

- __ Review facility background file and other information sources
- __ Review comments gathered during the community interviews
- __ Coordinate with other key stakeholders to discuss the plan
- __ Write draft plan
  - __ Introduction -- explains the purpose of the document
  - __ Project History -- provides an overview of the project, its technical and regulatory history, and a history of past community concerns and involvement in the project (if available)
  - __ Community Concerns -- summary of the concerns identified during the community interviews
  - __ Objectives of the Plan -- explains the major objectives relating to specific concerns outlined in the previous section of the document
  - __ Public Participation Activities -- describes the specific activities to be conducted to meet the objectives of the plan and schedule
  - __ Appendices -- provide information on key contacts, media, public meeting and information repository locations.
- __ Coordinate internal review of plan
- __ Solicit community input on the plan
- __ Prepare final plan based on comments
- __ Distribute plan to information repositories if they exist, or make the plan available to the public in a convenient place

Public Notices

Regulatory Requirements

The permitting agency must give official public notice when issuing the draft permit (§ 124.10(c)), holding a public hearing under § 124.12, or when an appeal is granted under § 124.19. This notice must be sent by the agency to all relevant units of federal and local government, the applicant, and all parties on the facility mailing list. In addition, the notice must be broadcast over local radio stations and published in a daily or weekly major local newspaper of general circulation.

A prospective permit applicant must issue a similar, but broader, public notice to announce the pre-application meeting (§ 124.31). This notice must be published as a display advertisement in a paper of general circulation and must be sent to the permitting agency and appropriate units of local government. The applicant must also post the notice as a sign at or near the facility, and as a broadcast media announcement. The notice must include the name, address, and telephone number of a contact person for the applicant.

The facility owner/operator must provide public notice for permit modfications (including modifications to incorporate corrective action provisions) under § 270.42. For a class 1 modification, the facility must notify the facility mailing list. For a class 2 modification, the facility must notify the mailing list and publish a newspaper notice when requesting the modification. The permitting agency must notify the mailing list within 10 days of granting or denying a modification request. For a class 3 modification, the facility must publish a newspaper notice and notify the mailing list when requesting a modfication. The permitting agency must follow the procedures for modifications in part 124 when granting or denying the class 3 permit modification. The permitting agency will also notify people on the mailing list and State and local government within 10 days of any decision to grant or deny a Class 2 or 3 modification request. The Director also must notify such people within 10 days of an automatic Class 2 modification goes into effect under § 270.42(b)(6)(iii) or (v).

If the permitting agency initiates the permit modification, under § 270.41, then the agency must follow the notice requirements for a draft permit in § 124.10(c) (see above in this section). Agency-initiated modifications may include modifications during the corrective action process.

If the permitting agency requires a facility to establish an information repository under § 124.33 or § 270.30(m), the agency Director will specify notice requirements. At the least, the facility will provide written notice to the people on the mailing list.

Permitting agencies must also provide provide public notice during the trial burn stage at permitted and interim status combustion facilities (§ 270.62(b)

and (d); 270.66(d)(3) and (g)) and when an interim status facility undergoes closure or post-closure (see §§ 265.112(d)(4) and 265.118(f)).

Description of Activity

Public notices provide an official announcement of proposed agency decisions or facility activities. Notices often provide the public with the opportunity to comment on a proposed action.

Most RCRA notices contain essentially the same types of information. Where they differ is in how they are distributed by the agency or the facility. Some go to members of the mailing list, some as legal advertisements in the newspaper, and some others as signs or radio advertisements. In all cases, EPA encourages facilities and permitting agencies to make a good faith effort to reach all segments of the affected community with these notices. As we mention earlier in this manual, any organization that wants to provide public notice has a number of inexpensive and simple options available to it, including: free circulars; existing newsletters or organzation bulletins; flyers; bulletin boards; or storefront signs.

There are many effective ways to spread information. However, the job of anyone giving notice is to find out what information pathways will be most effective in a particular community. Public interest groups, the facility, and the permitting agency should seek community input on this topic. The citizens of that community are the most qualified people to explain what methods will work best in their community. **Community interviews** are one way to learn more about how the citizens communicate.

The following are the most common ways to give public notice:

- Newspaper Advertisements. Traditionally, public notices have often appeared as legal advertisements in the classified section of a newspaper. While this method provides a standard location for the ads, display advertisements (located along with other commercial advertisements) are more likely to reach a larger audience. Display advertisements offer an advantage over legal classified ads since they are larger, easier to read, and are more likely to be seen by the casual reader. A sample is available in Appendix H of this manual.
- Newspaper Inserts. Inserts stand out from other newspaper advertisements since they come as a “loose” section of the newspaper (a format often used for glossy advertisements or other solicitations). They provide a way to reach beyond the most-involved citizens to inform a broader segment of the community.
- Free Publications and Existing Newsletters. Placing a notice in a newsletter distributed by a local government, a civic or community organization, or in a free publication (e.g., a paper that highlights local or community activities) is a generally inexpensive way to target a specific audience or segment of the community. Some publications may not be appropriate for communicating information from your

organization. By publishing information through a group that has a specific political interest or bias, your organization may be perceived as endorsing these views. Permitting agencies may want to avoid associations with groups that appear to represent the agency's interests. In any case, the relationship between your organization and the newsletter or publication should be clear to the public.

You may want to consider some of the following options. Local governments sometimes send newsletters or bulletins to their entire population; such newsletters can reach an entire affected community. Planning commissions, zoning boards, or utilities often distribute regular newsletters; they may be willing to include information about permitting activities. Newsletters distributed by civic, trade, agricultural, religious, or community organizations can also disseminate information to interested readers at low cost. Some segments of the affected community may rely on a free local flyer, magazine, independent or commercial newspaper to share information.

- Public Service Announcements. Radio and television stations often broadcast, without charge, a certain number of announcements on behalf of charities, government agencies, and community groups. In particular, they are likely to run announcements of public meetings, events, or other opportunities for the public to participate. One drawback with a public service announcement is that you have no guarantee that it will go on the air. If it does go on the air, it may come at odd hours when relatively few people are listening.
- Broadcast Announcements and Advertisements. A number of RCRA notices must be broadcast over radio or another medium. Beyond these requirements (which are further explained below and in the section on "Notice of the Pre-Application Meeting" in Chapter 3), you may consider providing notice via a paid TV advertisement or over a local cable TV station. Paid advertisements can be expensive and may be seen by the public as taking a side. You can avoid this drawback by limiting information to the facts (e.g., time, date, location of the meeting). Some local access cable TV stations run a text-based community bulletin board, which may provide a useful way to distribute information.
- Signs and Bulletin Boards. The notice requirements for the pre-application meeting (§ 124.31) require posting of a visible and accessible sign. Signs can be a useful means of public notice, especially for residents and neighbors of the facility or planned facility. A sign on the site should be large enough so that passers-by, whether by foot or by vehicle, can read it. If few people are likely to pass by the site, consider posting the sign at the nearest major intersection. Another option is to place posters or bulletins on community bulletin boards (in community centers, town halls, grocery stores, on heavily-travelled streets) where people are likely to see them. The signs should contain the same information as a written or broadcast notice.

- Telephone Networks or Phone Trees. This method provides an inexpensive, yet personal, manner of spreading information. The lead agency, facility, or organization calls the first list of people, who, in turn, are responsible for calling an additional number of interested people. Phone trees are a good way to provide back up plans or reminders while reducing the number of calls made by individual staff members. As an alternative to calling the first tier, the lead agency, facility, or organization may want to distribute a short written notice.

Level of Effort

Preparing a public notice and arranging for its publication takes a day or two, depending on the need for review. Producing a television or radio ad, or building a sign will take longer, depending on the situation.

How to Conduct the Activity

To prepare a public notice:

1. **Identify the major media contacts.** While there may be many daily newspapers serving a particular area, use only one or two for the public notice. In general, use the newspaper with the widest circulation and greatest visibility in order to reach the most people and elicit the greatest response. In some cases, you may want to choose specific newspapers to reach target audiences; find out what papers the affected community reads and place your notices there. Use a similar strategy for notices in the broadcast media. If you are giving notice via more than one media, you have more flexibility for reaching specific audiences. See the section on "Notice of the Pre-Application Meeting" in Chapter 3 for more information.

2. **Take into account publication schedules.** Many local or community newspapers are published on a weekly or bi-weekly basis. This may make it difficult to coordinate the publication of the notice with the event. In such a case, consider using a city-wide newspaper that is published more frequently. If the city-wide paper is not likely to reach all segments of the affected community, you should make efforts to supplement the newspaper notice with other means of notice (e.g., signs or broadcast media).

3. **Include the following information in the public notice:**

   - Name and address of the facility owner/operator;
   - A brief description of the business conducted at the facility and the activity that is the subject of the notice;
   - Name, address and telephone number of an individual who can be contacted for further information on the activity;
   - A brief description of the comment procedures and the date, time, and place of any hearing;

- If the permit is issued by EPA, the location of the administrative record and the times when it is open for public inspection; and
- Any additional information considered appropriate.

Also, try to format the notice so that it is eye-catching. A logo can help.

4. **Announce dates, times, and locations clearly in the public notice.** When announcing an event such as a hearing, make sure that the date and time do not conflict with other public meetings, religious or non-religious holidays, or other important community events.

5. **Provide ample notice.** For RCRA permits, the public notice must allow at least 45 days for public comment. Public notice of a public hearing must be given at least 30 days prior to the hearing. Be sure to state the opening and closing dates for comment periods.

6. **If possible, review a typeset version of the notice before it is published to ensure accuracy.**

7. **Keep proof of the notice for your files.** Newspapers often can provide "tear sheets" as a record of the notice. Similar proofs are available from radio or television stations. You should consider keeping photgraphs of posted signs.

When to Use

The "Regulatory Requirements" section above reviews the mandatory public notices. In addition, agency personnel can use informal public notices to announce other major milestones or events in the permit review or corrective action process. Permitting agencies may also want to use public notices when they are establishing mailing lists. The facility must issue notices when it requests a permit modification, holds a pre-application meeting, or establishes an information repository.

Public notices can be useful for any organization involved in the RCRA permitting process. Whenever a public interest organization is planning an activity, or would like to supplement notices given by the facility or the agency, you may want to consider using one of the public notice methods in this manual. Notices can also help build your mailing lists.

Accompanying Activities

Public notices are used to announce **public comment periods** and **public hearings**. They can also be used to announce other meetings and milestones, opportunities to join the **mailing list**, as well as the availability of an **information repository**, **fact sheets**, or other permitting information.

Advantages and Limitations

Public notices are an efficient, simple means of alerting the public to important events. However, public notices should never substitute for other activities that involve direct communication with the public.

Public notices can be more effective, and provide more of a feedback loop, when they are combined with a means of gathering information from the public. Every notice should contain a **contact person** so that the public can direct comments or questions to the agency, the facility, or other stakeholder groups.

See "Description of Activity" above in this section for advantages and limitations of specific notice methods.

Checklist for Public Notices

__ Compile information to be included in the public notice:

- __ Name of agency overseeing the permit or corrective action
- __ Name, address, and phone number of contact person
- __ Facility owner/operator and description of facility activities
- __ Purpose of public notice
- __ If applicable provide the date, time, and location of public hearing (or meeting)
- __ Description of the procedures governing the public's participation in the process

__ Draft the public notice, announcement, or advertisement

__ Coordinate review of the draft public notice

__ Prepare final public notice

__ Receive final approval of public notice

__ Coordinate placement of the public notice in the local newspaper(s), coordinate distribution of the public notice to the facility mailing list, submission to radio/television stations or other publications (as applicable)

For publication in local newspaper(s):

Name of Newspaper	Publication Days	Advertising Deadline

__ Prepare procurement request or advertising voucher for public notice publication

__ Obtain price quotes (i.e., cost per column inch)

__ Determine size of public notice _____

__ Determine deadlines for publication of the public notice

__ Submit for publication

__ Request proof of publication; file proof in facility file

Checklist for Public Notices (continued)

For distribution to the mailing list:

__ Verify that facility mailing list is up-to-date

__ Produce mailing labels

__ Distribute to the mailing list

For broadcast on local radio/television stations:

___ Verify media list

___ Prepare procurement request or advertising voucher for public notice spots

___ Obtain price quotes

___ Distribute to stations

___ Request proof of airing and file in facility file

Translations

Regulatory Requirements

None. EPA strongly recommends using multilingual fact sheets, notices, and other information (as appropriate) to provide equal access to information in the permitting process.

Description of Activity

Translations provide written or oral information in a foreign language to a community with a significant number of residents who do not speak English as a first language. There are two types of translations:

- A written translation of materials originally written in English;
- A simultaneous verbal translation (i.e., word by word) of a public meeting or news conference, usually with small headsets and a radio transmitter.

Translations ensure that **all** community members are informed about activities at a facility and have the opportunity to participate in the decision-making process.

Level of Effort

The amount of time needed to translate a document depends on the length of the document and the complexity of the information in the document. You should allow at least several days for translation.

How to Conduct the Activity

To develop a successful translation:

1. **Evaluate the need** for a translation. Evaluate the demographic characteristics of the community as well as the type of public participation activities being planned. Consider whether citizens' ability to take part in an activity is limited by their inability to speak or understand English.

2. **Identify and evaluate translation services**. A successful translation depends on the skill of the translator. More problems may be created than solved if inaccurate or imprecise information is given. Many translators will not be familiar with the technical terms associated with hazardous materials and few, if any, will be familiar with the RCRA permitting and corrective action processes. This problem may be further compounded in the case of oral translations (especially simultaneous translations) as there is no time for review or quality control. Thus, it is necessary to contract someone with experience in translating technical information and check the translator's work to ensure that the content and tone are in keeping with the intent. You also need to ensure that the translator uses the same dialect as those in your intended audience.

3. **Avoid the use of jargon or highly technical terms**. As a matter of standard practice, a staff member should go over in advance all technical and RCRA terms that may cause problems with the translator.

4. **For verbal presentations, public meetings, and news conferences, plan what to say ahead of time**. If the translator has a prepared written speech to work with in advance, there is more time to work out any vocabulary "bugs" and thereby reduce the chances of faltering over unfamiliar material or making inaccurate word choices. If possible, practice with the translator before the actual meeting or presentation date.

5. **Anticipate questions from the audience and reporters**, and have at least the technical aspects (e.g., chemical names, statistics) of the answers translated in advance.

When to Use

A translation can be used:

- When a signficant portion of the community does not speak English as a first language. A written translation should be provided for fact sheets or letters, unless a presentation or public meeting would be more appropriate (e.g., the literacy rate among the foreign-speaking community is low).
- Verbal translations are recommended where there is considerable concern over the facility, extreme hostility, or suspicion of the agency's efforts to communicate with community members.

Accompanying Activities

The need for translations is often determined during the community assessment and **community interviews**. Translations are generally used for **fact sheets**, **public notices**, **presentations**, **public meetings**, **public hearings**, and **news conferences**.

Advantages and Limitations

Written translations and use of translators ensure that a greater number of community members can participate effectively in the process and, therefore, provide input to decisions concerning the RCRA-regulated process. This effort assures the community of your organization’s sincerity in providing opportunity for public participation.

Translations are very costly, especially simultaneous translations of public meetings. Sentence-by-sentence oral translations frequently double the length of public meetings, and may make information more difficult to present effectively and smoothly. In addition, very few translators are familiar with the RCRA permitting and corrective action processes. For facilities having highly volatile or sensitive problems, it may be difficult to communicate your organization’s position and involve community

members in a constructive dialogue.

Checklist for Translations

- _ Determine need for translations
- _ Identify translation service or identify staff to provide translating services
- _ Fact sheet translations
  - _ Provide English text (including text for graphics, headlines, fact sheet flag)
- _ Meeting translations
  - _ Determine if translation will be simultaneous or if translations will occur following statements.
  - _ If simultaneous, provide audio equipment for translator/participants
  - _ Prepare list of technical and RCRA terms that will need to be translated
  - _ Prepare, in advance with the translator, presentations, responses to questions

Mailing Lists

Regulatory Requirements

The permitting agency must establish and maintain the facility mailing list in accordance with § 124.10(c)(1)(ix). The agency must develop the list by: (a) including people who request in writing to be on the list; (b) soliciting persons for "area lists" from participants in past permit proceedings in that area; and (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.

Description of Activity

Mailing lists are both important databases and essential communication tools. Mailing lists ensure that concerned community members receive relevant information. They allow messages to reach broad or targeted audiences. The better the mailing list, the better the public outreach and delivery of information. Mailing lists typically include concerned residents, elected officials, appropriate federal, state, and local government contacts, local media, organized environmental groups, civic, religious and community organizations, facility employees, and local businesses.

It is recommended that you develop an internal distribution list at the same time you prepare your external mailing list. The distribution list for permitting agencies should include all technical project staff, public involvement staff, legal staff, and staff from other affected programs (Air, Water, etc.), as appropriate. This list will help ensure that all relevant project staff receive the same information about all phases of the project. Facilities and community organizations should follow similar procedures to keep their staffs and members informed.

Level of Effort

A mailing list can be developed in conjunction with other public participation activities. Depending on the size of the list, inputting information into a data base can take several days. Updating will require approximately half a day per quarter.

How to Conduct the Activity

To develop and update a mailing list, consider the following:

1. **Solicit names, addresses, and phone numbers of individuals** to be included on the list. This should include individuals who put their names and addresses on the sign-in sheet at the pre-application meeting, if applicable. Telephone numbers are useful to have so that you can contact these individuals for community interviews and to aid you when you update your list.

   Individuals to include in your mailing list:

- The people interviewed during community interviews, as well as other names these people recommend;
- All nearby residents and owners of land adjacent to the facility;
- Representatives of organizations with a potential interest in an agency program or action (e.g., outdoor recreation organizations, commerce and business groups, professional/trade associations, environmental and community organizations, environmental justice networks, health organizations, religious groups, civic and educational organizations, state organizations, universities, local development and planning boards, emergency planning committees and response personnel, facility employees);
- Any individual who attends a public meeting, workshop, or informal meeting related to the facility, or who contacts the agency regarding the facility;
- Media representatives;
- City and county officials;
- State and Federal agencies with jurisdiction over wildlife resources;
- Key agency officials; and
- The facility owner/operator.

2. **Review background files** to ensure all interested individuals are included on the mailing list.

3. **Input information into a computer system** so that it can be categorized and sorted and printed on mailing labels.

4. **Send a letter or fact sheet to the preliminary mailing list developed using 1) and 2) above.** Inform key Federal, State, and local officials, citizens, and other potentially interested parties of your activities and the status of upcoming permit applications or corrective actions. Ask whether they wish to receive information about this facility. Ask them for accurate addresses and phone numbers of other people who might be interested in the project.

5. **Update your mailing list** at least annually to ensure its correctness. Mailing lists can be updated by telephoning each individual on the list, and by using local telephone and city directories as references. The permitting agency can update the official mailing list from time to time by requesting written indication of continued interest from those listed. The agency can then delete any people who do not

respond (see § 124.10(c)(1)(ix)(C)).

See the section on "The Facility Mailing List" in Chapter 3 for more information.

When to Use

A mailing list is a required public participation activity for permitting. Additional people may want to join the list if corrective action will take place at a facility. Public interest groups or other involved organizations often have mailing lists.

- Develop a mailing list as soon as possible during the permit application phase, or as soon as the need for a RCRA Facility Investigation is identified.
- Update the mailing list regularly.

Develop a distribution at the same time you develop a mailing list.

Accompanying Activities

Mailing lists are useful in identifying individuals to contact for community interviews. They are also needed to distribute **fact sheets** and other materials on the facility. **Public notices** and sign-up sheets at **public meetings** or **information repositories** can help you build mailing lists.

Advantages and Limitations

Mailing lists provide the names of individuals and groups interested in activities at RCRA facilities. However, lists can be expensive and time-consuming to develop, and they require constant maintenance.

Checklist for Mailing Lists

Mailing List Development:

- __ Verify the list format (i.e., name, title, company, address, phone number)
- __ Consider issuing a public notice to solicit names for the mailing list
- __ Identify people to be included on the list:
  - __ People who signed the attendance sheet at the pre-application meeting (if applicable)
  - __ City elected officials (mayor and council)
  - __ City staff and appointees (city manager, planning director, committees)
  - __ County elected officials (supervisors)
  - __ County staff and appointees (administrator, planning director, health director, committees)
  - __ State elected officials (senators, representatives, governor)
  - __ State officials (health and environment officials)
  - __ Federal elected officials (U.S. Senators, U.S. Representatives)
  - __ Federal agency officials (EPA)
  - __ Residents living adjacent to facility
  - __ Other interested residents
  - __ Media
  - __ Business groups of associations
  - __ Businesses possibly affected by the facility (i.e., located down-wind of facility)
  - __ The facility owner/operator
  - __ Consultants working on the project or related projects
  - __ Local environmental groups
  - __ Other civic, religious, community, and educational groups (e.g., League of Women Voters, government associations, churches, homeowners and renters associations)
  - __ State and Federal Fish and Wildlife Agencies

Checklist for Mailing Lists (continued)

__ Have list typed

__ Prepare mailing list

__ Store on computer data base

Mailing List Updates:

__ Verify names/addresses by searching telephone directory

__ Verify names/addresses by searching city directory

__ Verify names/addresses by calling each individual

__ Consider issuing a notice asking for written indication of continued interest (§ 124.10(c)(1)(ix)(C))

Notices of Decision

Regulatory Requirements

RCRA requires the permitting agency to issue a notice of decision to accompany the final permit decision (under § 124.15 procedures). The agency must send the notice to the permit applicant and to any person who submitted written comments or requested notice of the final permit decision (§ 124.15). Note that Class 3 modifications and the corrective action final remedy selection also follow § 124.15 procedures and require a Notice of Decision.

Description of Activity

A notice of decision presents the agency's decision regarding permit issuance or denial or modification of the permit to incorporate changes such as the corrective action remedy.

Level of Effort

A notice of decision may take several days to write and review, depending on the complexity. Allow time for several rounds of revisions. If you need to develop graphics, such as site maps, allow time to produce the graphics.

How to Conduct the Activity

The notice should briefly specify the agency's final decision and the basis for that decision. The notice must also refer to the procedures for appealing a decision. Notices of decision must be sent to the facility owner/operator (permit applicant) and each person who submitted written comments or requested notice of the final permit decision. You may want to send the notice to other interested parties as well. Final permits generally become effective 30 days after the notice of decision.

When to Use

- When a permit decision has been finalized following the 45-day public comment period;
- When the permitting agency makes its final decision regarding a permit modification.

Accompanying Activities

A **response to comments** document must be issued at the same time the final permit decision is issued.

Advantages and Limitations

The notice of decision provides a clear, concise public record of the decision. However, the notice of decision should not be a substitute for other activities that involve direct two-way communication with the public.

Checklist for Notices of Decision

- _ Determine contents of the notice of decision
  - _ Decision made and basis for that decision
  - ___ Information on appeal procedures
- _ Coordinate writing the notice with technical and legal staff
  - _ Technically accurate
  - _ Satisfies statutory requirements
  - _ Provides the public with all necessary information in a clear and concise manner
- _ Coordinate internal review of notice of decision
- _ Prepare final notice of decision based on internal review comments
- ___ Notify the facility owner/operator and anyone who submitted written comments or requested notice of the final decision
- _ Notify other interested parties of the decision
- _ Place copy of the notice of decision in the administrative record and the information repository (if one exists)

Introductory Notices

Regulatory Requirements

While EPA regulations do not specifically require an introductory notice, § 124.32 provides for an agency notice at the time of application submittal. Permitting agencies may want to consider the guidance in this section (in addition to the § 124.32 requirements) when preparing the notice at application submittal. Chapter 3 provides guidance specifically for the notice at application submittal.

Description of Activity

An introductory notice explains the agency's permit application review process or the corrective action process and the opportunities for public participation in that process.

Level of Effort

The amount of time needed to prepare an introductory notice is based on whether the notice is prepared as a public notice or a fact sheet. If prepared as a public notice, allow a day or two for writing, review, and placement in newspapers and other media. If prepared as a fact sheet, allow several days to a week to write and review, depending on the layout and graphics used, and several days for printing.

How to Conduct the Activity

To prepare an introductory notice:

1. **Determine the best method to explain the permit application review or corrective action process.** An introductory notice can be presented as a public notice, a fact sheet, or a flier distributed to the facility mailing list.

2. **Prepare and distribute the notice.** Coordinate the writing and distribution of the notice with technical project staff. Take care to write the notice avoiding technical terms and jargon.

3. **Include an information contact.** Provide the name, address, and phone number of a contact person who the public can call if they have questions or need additional information about the facility. You might add a return slip to the notice for people to complete and return to your organization if they would like additional information or to be placed on a mailing list.

When to Use

An Introductory Notice can be used:

- When you find the community knows little or nothing about the RCRA process; and
- When you need to notify the public of how they can become involved in the RCRA process.

Accompanying Activities

Informal meetings, **availability sessions/open houses**, or **workshops** may be conducted following release of the notice.

Advantages and Disadvantages

An introductory notice informs the public about the agency's permit application review process and how they can be involved in the process. However, the notice is a one-way communication tool. A **contact person** should be identified in the notice so that interested members of the community can call this person if they have questions.

Checklist for Introductory Notices

- ___ Determine how you will distribute the notice.
  - ___ Public notice in newspaper
  - ___ Fact sheet or flier sent to the mailing list
- ___ Prepare draft introductory notice
- ___ Include name and phone number of a contact person
- ___ Coordinate internal review of introductory notice
- ___ Write final introductory notice based on comments received during the internal review
- ___ Verify facility mailing list is up-to-date
- ___ Request mailing labels
- ___ Distribute introductory notice

Fact Sheets/ Statements of Basis

Regulatory Requirements

EPA's regulations require the agency to develop a fact sheet or a statement of basis to accompany the draft permit. The agency will develop a fact sheet for any major hazardous waste management facility or facility that raises significant public interest (§ 124.8). The agency must prepare a statement of basis for every draft permit for which a fact sheet is not prepared (§ 124.7). Note that these requirements also apply to Class 3 modifications and agency-initiated modifications (such as the agency may use at remedy selection), which must follow the part 124 procedures. Specific requirements for these activities are described below under "How to Conduct the Activity."

Description of Activity

RCRA-required fact sheets and statements of basis summarize the current status of a permit application or corrective action. This required fact sheet (or statement of basis) is probably different than the commonly-used informational fact sheets that most people recognize. The required fact sheet must explain the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. They can vary in length and complexity from simple two-page documents to 12-page documents complete with graphic illustrations and glossaries.

The agency and other stakeholder groups may find it useful to develop other fact sheets to be used in public participation activities. These informal/informational fact sheets can explain difficult aspects of the permitting process or provide technical information in language that an ordinary person can understand. These fact sheets may come in many different varieties and levels of detail.

Fact sheets are useful for informing all interested parties about the basis for the permitting agency's decision regarding a facility permit or proposed corrective action activities. They ensure that information is distributed in a consistent fashion and that citizens understand the issues associated with RCRA programs.

Statements of basis are generally shorter than fact sheets and summarize the basis for the Agency's decision. Statements of basis are often used in the corrective action program to summarize the information contained in the RFI/CMS reports and the administrative record. They are designed to facilitate public participation in the remedy selection process by:

- Identifying the proposed remedy for a corrective action at a facility and explaining the reasons for the proposal.

- Describing other remedies that were considered in detail in the RFI and CMS reports.
- Soliciting public review and comment on all possible remedies considered in the RFI and CMS reports, and on any other plausible remedies.
- Providing information on how the public can be involved in the remedy selection process.

In emphasizing that the proposed remedy is only an initial recommendation, the statement of basis should clearly state that changes to the proposed remedy, or a change from the proposed remedy to another alternative, may be made if public comments or additional data indicate that such a change would result in a more appropriate solution. The final decision regarding the selected remedy(ies) should be documented in the final permit modification (if applicable) with the accompanying response to comments after the permitting agency has taken into consideration all comments from the public.

Level of Effort

Fact sheets and statements of basis may take from two days to two weeks to write, depending on their length and complexity. Allow time for several rounds of revisions. Allow three days for printing. (Short Cut: Use already developed RCRA templates with graphics that are on file at your agency).

How to Conduct the Activity

The first step in preparing a fact sheet is to determine the information to be presented. EPA decisionmaking regulations require that RCRA permit fact sheets contain the following types of information:

- A brief description of the type of facility or activity which is the subject of the draft permit;
- The type and quantity of wastes covered by the permit;
- A brief summary of the basis for the draft permit conditions and the reasons why any variances or alternatives to the proposed standards do or do not appear justified;
- A description of the procedures for reaching a final decision, including the beginning and ending dates of the public comment period and the address where comments can be sent, and procedures for requesting a public hearing; and
- Name and telephone number of a person to contact for additional information.

A statement of basis is prepared the same way as a fact sheet. The statement of basis summarizes essential information from the RFI and

CMS reports and the administrative record. The RFI and CMS reports should be referenced in the statement of basis. The statement of basis should:

- Briefly summarize the environmental conditions at the facility as determined during the RFI.
- Identify the proposed remedy.
- Describe the remedial alternatives evaluated in sufficient detail to provide a reasonable explanation of each remedy.
- Provide a brief analysis that supports the proposed remedy, discussed in terms of the evaluation criteria.

Select a simple format for presenting the information. Avoid using bureaucratic jargon, acronyms, or technical language in the text, and be concise.

Use formatting techniques to make the fact sheet or statement of basis more interesting and easy-to-read. People are less likely to read a fact sheet or statement of basis consisting of a solid sheet of typed text than one with clear, informative illustrations. Moreover, a well-designed document suggests that the permitting agency takes its public participation program seriously.

Coordinate the production of these documents with technical project staff. Technical staff should review them to ensure that the information conveyed is accurate and complete. Outreach staff should review them to ensure that the communication goals are being met.

Arrange for printing and distribute copies of the fact sheet or statements of basis to the mailing list, place extra copies at the information repository, and distribute additional copies at public meetings and hearings.

When to Use

While fact sheets/statements of basis are required for draft permits, they can also be helpful at other times in the permitting and corrective action processes:

- During technical review of the permit application;
- At the beginning of a RCRA facility investigation;
- When findings of the RCRA facility investigation are available;
- When the corrective action is completed; and
- When the Notice of Decision is released.

In addition, fact sheets can be written to explain a facility inspection or

emergency action, a new technology, or a community-based activity.

Fact sheets and statements of basis can be particularly useful in providing background information prior to a public meeting or public hearing.

Accompanying Activities

Fact sheets and statements of basis are generally used in conjunction with the **mailing list**, **public notices**, **public comment periods**, and **public meetings** and **hearings**. However, as stated above, they can be helpful at almost any stage in the permitting or corrective action processes.

Advantages and Limitations

Fact sheets and statements of basis are effective in summarizing facts and issues involved in permitting and corrective action processes. They communicate a consistent message to the public and the media. Produced throughout the permitting or corrective actions processes, they serve to inform the public about the regulatory process as well as the technical RCRA issues and can aid in creating a general community understanding of the project. They are relatively inexpensive and can be distributed easily and directly to the mailing list. In addition, fact sheets and statements of basis can be tailored to meet specific information needs identified during community assessments.

However, a poorly written fact sheet or statement of basis can be misleading or confusing. Documents of this type that are not written in an objective style can be perceived as being too "persuasive" and considered "propaganda" by mistrusting communities. Remember that fact sheets and statements of basis are a one-way communication tool, and therefore should always provide the name and telephone number of a contact person to encourage comments and questions.

Checklist for Fact Sheets/Statements of Basis

- _ Determine purpose and focus of fact sheet or statement of basis
- _ Develop outline
  - _ Organize contents in a logical manner
  - _ Determine appropriate graphics
- _ Verify mailing list is up-to-date
- _ Request mailing labels
- _ Coordinate preparation of fact sheet or statement of basis with technical staff as appropriate
  - _ Draft text
  - _ Draft graphics
  - _ Draft layout
  - _ Place mailing coupon on reverse side of mailing label
- _ Coordinate internal review of fact sheet or statement of basis
- _ Incorporate revisions into final fact sheet or statement of basis
- _ Proofread final fact sheet or statement of basis
- _ Arrange printing of fact sheet or statement of basis
  - _ Select paper weight, ink color, and color paper
- _ Print fact sheet or statement of basis
- _ Distribute fact sheet or statement of basis to the mailing list and place additional copies in the repository

Project Newsletters and Reports

Regulatory Requirements

None.

Description of Activity

Project newsletters and reports are means of direct communication that keep interested people informed about corrective action and permitting activities. Both publications provide a level of project detail that is not usually available from the news media. A project newsletter uses a reader-friendly, news-based format to provide regular updates on activities in the permitting process and actions taking place at the facility. Project reports may include official technical reports or other environmental documents and studies related to a particular facility. Sending these reports directly to key stakeholders can spread information more effectively than simply placing the documents in an information repository.

Level of Effort

Newsletters can require significant amounts of staff time and resources to write, copy, and distribute. Direct transmission of reports will require less staff time, but may cost more to copy and distribute.

How to Conduct the Activity

To provide a project newsletter or project reports:

1. **Assign a staff person to produce the newsletter.** Instruct project staff to direct relevant information and reports to this person.

2. **Decide on a format and style for the newsletter.** Evaluate the resources you have available for the newsletter and decide what type of newsletter you will produce. Keep in mind that a visually-attractive newsletter with plenty of graphics and simple language is more likely to be read. Avoid bureaucratic or technical jargon. The newsletter should contain real news that is useful to people. Since people who are not familiar with the project may pick up the newsletter, write it so that first-time readers can understand it.

3. **Provide for review.** Permitting agencies, in particular, will want to ensure the credibility of their newsletters by making sure that they are objective. In such cases, you may consider asking a **citizen advisory group**, a consultant, or a non-partisan civic group (e.g., the League of Women Voters), to review the document. If the public has concerns over the credibility of your organization, it may be beneficial for the citizens advisory group or a neutral body to produce the newsletter. An objective newsletter should candidly report all developments at the facility.

4. **Summarize detailed reports.** If you are distributing a technical report, you should consider including a summary. Another option is to include findings in the project newsletter and allow people to send in a clip-out request form or contact your staff for copies of the full report.

5. **Check your mailing list.** Make sure that your mailing list is up to date and includes all interested stakeholders and media contacts (see the section on **Mailing Lists** above).

6. **Update your mailing list.** Project newsletters may continue for a number of years. You should consider updating your mailing list by including an "address-currency" card in the newsletter on a regular basis (e.g., once a year). By sending in this card, people will continue to receive the newsletter.

When to Use

Project newsletters and reports can provide detailed information about a facility that is not usually available in the media. These methods may be most useful when:

- there is a high level of public interest in a facility;
- when many citizens do not have access to an information repository, or a repository has not been established;
- you would like to maintain project visibility during extended technical studies; or
- presenting the results of detailed studies through a newsletter will better inform the public.

Accompanying Activities

A **mailing list** is essential for distribution of reports and newsletters. You should consider **availability sessions**, **open houses**, or **informal meetings** to explain the results of detailed reports and studies. Always include a **contact person** in the newsletter or report.

Advantages and Limitations

Newsletters and project reports are useful ways to disseminate important information to stakeholders. Making reports widely available can enhance their credibility.

Newsletters may require significant amounts of staff time and resources. Direct distribution of technical reports may create confusion if they are not accompanied by a summary.

Checklist for Project Newsletters and Reports

- _ Assign a staff person to be in charge of producing the newsletter or reports
- _ Direct the project staff (e.g., through a memo) to forward all relevant project information to the newsletter director
- _ Decide on format, style, and frequency of distribution
- _ Draft the newsletter
- _ Review the newsletter for content, style, simple language, and visual appeal
- _ (If applicable) Send the newsletter to an assigned neutral party for review
- _ If you produce detailed project studies or reports, write a summary in simple language and attach to the report or include the summary in the newsletter
- _ Distribute the newsletter to the mailing list
- _ Update the mailing list on a regular basis

Response to Comments

Regulatory Requirements

According to § 124.17, the permitting agency must prepare a response to comments at the time that it issues a final permit decision. The agency will also issue a response to comments when making final decisions on requested Class 2 and 3 permit modifications under § 270.42 and agency-initiated modifications under § 270.41.

Description of Activity

A response to comments identifies all provisions of the draft permit or modification that were changed and the reasons for those changes. It also briefly describes and responds to all significant comments on the draft permit that were received during the public comment period.

The response to comments should be written in a clear and understandable style so that it is easy for the community to understand the reasons for the final decision and how public comments were considered.

Level of Effort

A response to comments can be a time-intensive activity because of the large amount of organization, coordination, and review needed. On average, allow several hours per comment for completion, as some questions may take only a few minutes to answer while others may involve in-depth technical and legal responses. In general, preparing response to comments documents can take from several days for low-interest facilities to several weeks for high-interest facilities.

How to Conduct the Activity

There is no required format for preparing response to comments documents. However, several EPA Regions have adopted a two part approach:

- Part I is a summary of commenters' major issues and concerns and expressly acknowledges and responds to those issues raised by the local community. "Local community" means those individuals who have identified themselves as living in the immediate vicinity of a facility. These may include local homeowners, businesses, the municipality, and facility employees. Part I should be presented by subject and should be written in a clear, concise, easy to understand manner suitable for the public.

- Part II provides detailed responses to all significant and other comments. It includes the specific legal and technical questions and, if necessary, will elaborate with technical detail on answers covered in Part I. It also should be organized by subject.

Think of Part I as a type of fact sheet for the detailed responses provided in

Part II. Because both parts deal with similar or overlapping issues, the response to comments should state clearly that any points of conflict or ambiguity between the two parts shall be resolved in favor of the detailed technical and legal presentation in the second part.

In order to effectively address all public comments, closely coordinate the preparation of responses with appropriate legal and technical staff. Also, it is important to be certain that all comments are addressed. A system of numbering all comments as they are received and referring to these numbers in all internal drafts of the response document may help keep track of them. Computer databases are a good way to keep track of and arrange the comments.

In addition, the Response to Comments should include a summary that discusses the following:

- The number of meetings, mailings, public notices, and hearings at which the public was informed or consulted about the project;
- The extent to which citizen's views were taken into account in decision-making; and
- The specific changes, if any, in the project design or scope that occurred as a result of citizen input.

Response to comments documents must be sent to the facility owner/operator and each person who submitted written comments or requested notice of the final permit decision.

When to Use

A response to comments is required for all final permit decisions and decisions on class 2 and 3 modifications..

Accompanying Activities

A response to comments usually accompanies the **notice of decision**.

Advantages and Limitations

A response to comments provides a clear record of community concerns. It provides the public with evidence that their input was considered in the decision process. The summary also is an aid in evaluating past public participation efforts and planning for subsequent activities.

Comments may be difficult to respond to at times, like when the public raises new issues, questions, or technical evidence during the public comment period. The permitting agency may need to develop new materials to respond to these questions.

Checklist for Response to Comments

- ___ After reviewing comments, determine organization of document
  - ___ Determine groups, subgroups of comments
  - ___ Where applicable, paraphrase and summarize comments
- ___ Write a response for each comment, group or subgroup of comments
- ___ Prepare an introductory statement including:
  - ___ A summary of the number and effectiveness of meetings, mailing, public notices, and hearings at which the public was informed or consulted about the project
  - ___ The numbers and kinds of diverse interests which were involved in the project
- ___ Prepare a summary statement including:
  - ___ The extent to which citizen's views were taken into account in decision-making
  - ___ The specific changes, if any, in the project design or scope that occurred as a result of citizen input.
- ___ Coordinate internal review of the Response to Comments with all necessary departments (public affairs, technical, legal)
- ___ Prepare final Response to Comments
- ___ Distribute Response to Comments to:
  - ___ Information Repository
  - ___ Facility owner/operator
  - ___ Each individual who makes written or oral comments
  - ___ Individuals who asked to receive the Response to Comments
  - ___ Appropriate agency officials
  - ___ Administrative Record

Information Repositories

Regulatory Requirements

EPA regulations authorize the permitting agency to require a facility to establish an information repository during the permitting process (§ 124.33) or during the active life of a facility (§ 270.30).

Description of Activity

An information repository is a collection of documents related to a permitting activity or corrective action. A repository can make information readily available to people who are interested in learning about, or keeping abreast of, RCRA activities in or near their community.

Information repositories are not mandatory activities in every situation. As mentioned above, RCRA regulations give the permitting agency the authority to require a facility to set up and maintain an information repository. The agency does not have to require a repository in every case; it should use its discretion. Additionally, a facility or an environmental group may voluntarily set up a repository to make it easier for people in the community to access information.

The size and location of the repository will depend on the type of permitting activity. The regulations allow the permit applicant or permittee to select the location for the repository, as long as it is in a location that is convenient and accessible to the public. If the place chosen by the facility does not have suitable access, then the permitting agency can choose a more suitable location. EPA encourages the facility and the agency to *involve the public when suggesting a location for the repository -- the potential users of the facility are best qualified to tell you if it's suitable.* See #1 under "How to Conduct the Activity" below.

The information that actually goes in the repository can differ from case to case, depending on why the repository was established. If the agency requires a facility to establish the repository, then the agency will set out the documents and other information that the facility must include in the repository. The agency will decide what information will be most useful according to the specifics of the case at hand. For instance, multi-lingual fact sheets and other documents will be most appropriate in situations where there are many non-English-speakers in an affected community. Similarly, if the community needs assistance in understanding a very technical permitting situation, then the agency and the facility should provide fact sheets and other forms of information that are more accessible to the non-technical reader. See #2 under "How to Conduct the Activity" below.

The permitting agency should assess the need, on a case-by-case basis, for an information repository at a facility. When doing so, the agency has to

consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. Since any of these other factors may indicate that the community already has adequate access to information, and since repositories can be resource-intensive, permitting agencies should use this authority only in cases where the community has a true need for additional access to information.

For example, in determining levels of public interest the agency staff will want to consider: What kind of turnout has there been at public meetings? What kind of responses during community interviews? What level of media attention? How many inquiries have been coming in? What levels of community involvement have there been in previous facility and/or local environmental matters? If another repository already exists, can it be augmented with materials to meet the information needs of the permit or corrective action at hand? Is it located in a convenient and accessible place? [Note: If a facility has an existing repository that does not completely satisfy the need that the agency identifies, then the agency may specify additional steps that the facility must take to make the repository meet the public need.]

Is the nearest copy of the administrative record "close enough"? The answer to this question could depend on a few things. Ask yourself some other questions first. For example: Can people get there by public transportation or only by a personal vehicle (i.e, by car or taxi)? Do most people in the community rely on public transportation, or do most people have and use their own cars? Apart from whether it is accessible by public transportation or personal vehicle, how long is the trip? Is the administrative record available for review on weekends or after business hours?

Level of Effort

Depending on the amount of available documentation, the information repository may take a week to establish, including compiling and indexing documents and arranging for placement in a library or other location. Updating may take a day or two every quarter. A public notice announcing the availability of the information repository may take between a day to write, review, and place in newspapers or send to the mailing list.

How to Conduct the Activity

To establish an information repository:

1. **Determine a suitable location.** For repositories established under §§ 124.33 or 270.30, the initial choice of location is made by the facility. If the agency decides that the facility-proposed location is not suitable, then the agency will suggest another location.

   Whether required or established voluntarily, the repository should be be convenient and accessible for people in the community. Whoever establishes the repository should consider, in particular, locations

suggested by community residents. Typical locations include local public libraries, town halls, or public health offices.

A facility may choose to set up the repository at its own offices. Before doing so, the facility owner or operator should discuss his or her intent with community representatives and/or the agency. It is important to confirm that people are comfortable about coming onto facility property and trust that you will properly maintain the information in the repository.

Facility owners and operators should be sensitive to the concern that some citizens have about repositories that are on facility property. Some people do not feel comfortable when they need to attend a meeting or a function on the facility grounds. If the members of your community may feel uncomfortable at the facility, then you should make all efforts to establish the repository at a suitable off-site location. All repositories should be in a location where its users will feel comfortable when accessing information.

In evaluating potential sites for the repository, there are several factors to consider. The location should have adequate access for disabled users, should be accessible to users of public transportation (where applicable), and should be open after normal working hours at least one night a week or on one weekend day. Repositories should be well lit and secure.

A facility should also ensure that someone in its company and someone at the repository location are identified as the information repository contacts -- to make sure that the information is kept up-to-date, orderly and accessible.

Depending on the level of community concern, or the location of the facility relative to the surrounding communities, more than one repository may be desirable. For example, if a county seat is several miles from the RCRA-regulated facility, and county officials have expressed a strong interest in the facility, two repositories may be advisable: one in the community closest to the facility, and the other in the county seat.

2. **Select and deposit the materials to be included in the repository.** For repositories established under EPA's regulations, the permitting agency will decide, on a case-by-case basis, what documents, reports, data, and information are necessary to help the repository fulfill its intended purposes, and to ensure that people in the community are provided with adequate information. The agency will provide a list of the materials to the facility. The agency has the discretion to limit the contents of repositories established under §§ 124.33 and 270.30. While there is no outright ban on materials, EPA encourages regulators to ensure that repository materials are relevant and

appropriate.

Facilities, permitting agencies, and public interest groups may decide to establish repositories aside from those required by regulation. Whoever establishes a repository should consult the public regarding what materials would be most useful to members of the surrounding community. EPA encourages parties to place substantive and appropriate materials in the repository.

If you are establishing an information repository, you should consider including the following documents:

- Background information on the company or facility;
- Fact sheets on the permitting or corrective action process;
- Meeting summary from the pre-application meeting (if one was conducted);
- Public involvement plan (if developed);
- The draft permit;
- Reports prepared as part of the corrective action investigations, including the RCRA Facility Assessment (RFA), the RCRA Facility Investigation (RFI), and the Corrective Measures Study (CMS);
- Fact sheets prepared on the draft permit or corrective action plan;
- Notice of decision;
- Response to comments;
- Copies of relevant RCRA guidance and regulations;
- A copy of the Cooperative Agreement, if the state is the lead agency for the project;
- Documentation of site sampling results;
- Brochures, fact sheets, and other information about the specific facility (including past enforcement history);
- Copies of news releases and clippings referring to the site;
- Names and phone numbers of a contact person at the facility and at the permitting agency who would be available to answer questions people may have on the materials in the repository; and
- Any other relevant material (e.g., published studies on the potential risks associated with specific chemicals that have been found stored at the facility).

You should organize the documents in binders that are easy to use and convenient for the on-site repository host. For projects that involve a large number of documents, separate file boxes should be provided as a convenience to the repository host to ensure that the documents remain organized.

3. **Publicize the existence of the repository.** For repositories required under RCRA regulations, the permitting agency will direct the facility, at a minimum, to announce the repository to all members of

facility mailing list. If you establish a repository aside from EPA's regulations, you should be sure to notify local government officials, citizen groups, and the local media of the location of the project file and hours of availability. Newsletters of local community organizations and church groups are another means of notifying the public.

4. **Keep the repository up-to-date by sending new documents to it as they are generated.** If the permitting activity is controversial or raises a lot of community interest, you should consider providing several copies of key documents so that community members can check them out for circulation. For repositories required under RCRA regulations, the facility is responsible for updating the repository with new documents and maintaining the documents in the repository.

When to Use

An information repository is recommended:

- When the agency requires the facility to establish an information repository. In making its determination, the agency will consider relevant factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record; and

- When interest in the facility is high and the public needs convenient access to relevant facility documents.

Accompanying Activities

The contact person(s) should be responsible for making sure that all relevant materials have been filed in the repository.

If you establish a repository, you may want to consider setting aside time at the repository to periodically staff a "walk-up" **information table**. An information table would entail having a representative from your organization, the permitting agency, or both, available to answer questions that repository visitors may have. You may decide to establish the information table on a routine basis (for example, once a month) or at key milestones in the permitting or corrective action process (for example, after a draft permit decision or completion of the RFI).

Advantages and Limitations

An information repository provides local officials, citizens, and the media with easy access to accurate, detailed, and current data about the facility. It demonstrates that your organization is responsive to citizens' needs for comprehensive information on the facility.

An information repository is a one-way communication tool and does not allow for interaction between citizens and your organization (unless used in

conjunction with a “walk-up” information table). The information repository may also include technical documents, which may be difficult for citizens to understand.

Checklist for Information Repositories

[Note: this checklist contains all the steps for information repositories required under §§ 124.33 and 270.30. Anyone who is establishing a repository apart from these requirements should check above in this section to find out which steps apply].

__ Determine location of Information Repository; check with agency

__ Establish contact with the director of the location determined above

__ Mail a letter to the permitting agency confirming the location of the Information Repository

__ Agency will mail a list of required documents to the facility

__ Collect and compile the documents to include in the Information Repository

- __ Documents sequentially numbered
- __ Index prepared
- __ Documents placed in notebooks

__ Deliver documents to location determined above

- __ Have location director sign a letter/memo acknowledging receipt of the documents

__ Send a notice to the facility mailing list indicating the availability of the Information Repository; provide additional means of notice (e.g., newspaper, broadcast media) as appropriate

__ Update the Information Repository as key public documents are available and at key technical milestones

Exhibits

Regulatory Requirements

None.

Description of Activity

Exhibits are visual displays such as maps, charts, diagrams, photographs, or computer displays. These may be accompanied by a brief text explaining the displays and the purpose of the exhibit. Exhibits provide a creative and informative way to explain issues such as health risks or proposed corrective actions. They make technical information more accessible and understandable.

Level of Effort

Exhibits may take from one day to one week to write, design and produce depending on the complexity of the exhibit. Computer software production will take longer. Allow time for review of the exhibit's design and concept.

How to Conduct the Activity

To develop and display an exhibit:

1. **Identify the target audience.** Possible audiences include:

   - General public;
   - Concerned citizens;
   - Environmental/Public Interest groups;
   - Media representatives; and
   - Public officials.

2. **Clarify the subject.** Possible subjects include:

   - The RCRA program or the permit or corrective action process;
   - Historical background on the facility;
   - Public participation activities;
   - Corrective action or waste management technologies; and
   - Health and safety issues associated with the facility.

3. **Determine where the exhibit will be set up.** If the general public is the target audience, for example, assemble the exhibit in a highly visible location, such as a public library, convention hall, or a shopping center. If concerned citizens are the target audience, set up a temporary exhibit at a **public meeting**, **availability session/open house**, or **an informal meeting**. An exhibit could even be as simple as a bulletin board at the site or staff trailer.

4. **Design the exhibit and its scale according to the message to be transmitted.** Include photos or illustrations. Use text sparingly.

When to Use

Exhibits can be used:

- When level of interest in the facility is moderate to high;
- When information to be conveyed can be explained graphically;
- When staff time is limited and the audience is large;
- When a display can enhance other information being distributed; and
- When displays will be useful over long periods of time and at different facilities (e.g., generic posterboards on RCRA process).

Accompanying Activities

Exhibits are useful at **public meetings**, **public hearings**, and **availability sessions/open houses**. If an **observation deck** is installed at a site, a nearby exhibit could explain corrective action or compliance activities under way.

Advantages and Limitations

Exhibits tend to stimulate public interest and understanding. While a news clipping may be glanced at and easily forgotten, exhibits have a visual impact and leave a lasting impression. Exhibits also can convey information to a lot of people with a low level of effort.

Although exhibits inform the public, they are, for the most part, a one-way communication tool. One solution to this drawback is to attach blank postcards (**surveys**) to the exhibit, encouraging viewers to comment or submit inquiries by mail to the agency. Another approach is to leave the phone number of the **contact person** who can answer questions during working hours. However, these requests must be answered or citizens may perceive the agency as unresponsive to their concerns. Finally, computer touch screens can provide some feedback by answering common questions about an exhibit.

Checklist for Exhibits

- ___ Determine purpose, use of exhibit
  - ___ Identify the audience
  - ___ Clarify the message
  - ___ Determine where and how the exhibit will be displayed
    - ___ Free-standing
    - ___ Table-top display
    - ___ Will the exhibit need to be easily transported?
- ___ Coordinate design and construction with public involvement coordinator (and contractors, if available)
  - ___ Write copy
  - ___ Determine graphics
  - ___ Design the exhibit
  - ___ Coordinate review of the design, text, and graphics
  - ___ Complete the exhibit based on review comments

Briefings

Regulatory Requirements

None.

Description of Activity

Briefings are useful for sharing information with key stakeholders, whether they are involved regulators, elected officials, or members of involved public interest or environmental groups. You can use briefings to inform other stakeholders about the status of a permit application or corrective action; to provide them with materials such as technical studies; results of the technical field and community assessments; and engineering designs. These sessions are conducted in person, and the briefings usually precede release of information to the media or occur before a public meeting. Briefing key stakeholders is particularly important if an upcoming action might result in political controversy.

Level of Effort

Briefings will usually take a day to plan and conduct.

How to Conduct the Activity

To schedule and hold briefings:

1. **Inform your audience** far in advance of the date of the briefing. It is usually best to hold the initial briefing in a small public room, such as a hotel meeting room, conference room, or at the stakeholders' offices. Where relationships might be antagonistic, it may be best to hold the briefing in a neutral location.

2. **Present a short, official statement** explaining the information in the context of the RCRA process and announcing future steps in the process.

3. **Answer questions about the statement.** Anticipate questions and be prepared to answer them simply and directly.

   If the briefing has been requested, find out in advance the information that the stakeholders seek and prepare to answer these and related questions.

When to Use

Briefings are appropriate:

- When key stakeholders have expressed a moderate to high level of concern about the facility or the process;

- Before the release of new information to the media and the public;

- When unexpected events or delays occur; and
- At any point during the permit or corrective action processes. If local officials have expressed concern during the preliminary assessment of the facility, a briefing may be appropriate to explain the RCRA permitting or corrective action program and the technical actions that are scheduled for the facility.

Accompanying Activities

Briefings usually precede **news conferences**, **news releases**, **informal meetings**, or **public meetings**.

Advantages and Limitations

Briefings allow key stakeholders to question you directly about any action prior to public release of information regarding that action. By providing a "heads up," you can prepare other key stakeholders to answer questions from their constituents when the information becomes public. Briefings also allow for the exchange of information and concerns.

Because briefings are normally offered to a small select group, they are not considered to be general information dissemination to the public. Care must be taken to provide the public with ample opportunity to receive information. At briefing sessions, include the appropriate officials, taking care not to exclude people key to the public participation process. Avoid the perception that you are trying to bury facts or favor special interest groups.

Although briefings can be an effective tool for updating key stakeholders (e.g., state and local officials, community leaders, involved regulators) they always should be complemented by activities to inform the general public, such as **informal meetings** with small groups, **public meetings**, or **news conferences**.

Checklist for Briefings

__ Determine date, time, and location of briefing.

Date: _____

Time: _____

Location: _____

__ Notify key state and local officials, citizens, and other interested parties of the briefing

__ Prepare presentation

__ Prepare any handout materials

__ Conduct briefing

__ Follow-up on any questions you are unable to answer during the briefing

Presentations

Regulatory Requirements

None.

Description of Activity

Presentations are speeches, panel discussions, video tapes or slide shows held for local clubs, civic or church organizations, school classes, or concerned groups of citizens to provide a description of current RCRA activities. They help improve public understanding of the issues associated with a permitting or corrective action.

Level of Effort

One to two days may be needed to set up and schedule the presentation, prepare for it, give the presentation, and follow up on any issues raised. Add more time if you need to prepare visual equipment.

How to Conduct the Activity

Develop procedures that can be changed easily to suit different audiences. To conduct presentations:

1. **Contact groups that may be interested in learning about your work.** Announce the program through the media and in your publications. Adjust the tone and technical complexity of any presentation to suit the audience's needs.

2. **Select a standard format** such as the following:

   - Introduce yourself, your organization, the RCRA permitting or corrective action process, and the facility;
   - Describe the issues that affect your audience;
   - Discuss what is being currently done; and
   - Discuss how citizens can play a part in making decisions about the facility.

3. **Set a time limit of 20 minutes.** Consider having several staff members deliver short segments of the presentation. Allow time for a **question-and-answer session**.

4. **Schedule presentations at convenient times,** possibly evenings or weekends, or during regularly-scheduled meetings of other groups. Consult with members of your target audience to find out what time is best for them.

5. **Select supporting materials** (slides, graphics, exhibits, etc.) that will

hold the audience's attention but not distract from the speaker's message. Conduct a trial run in front of colleagues and rehearse the presentation as much as possible.

6. **If substantive issues or technical details cannot be handled in the time allowed for the presentation, name a contact for further information.**

When to Use

Presentations may be held:

- When there is moderate to high interest in a facility;
- When it is practical to integrate short RCRA presentations into meetings on other subjects; and
- When a major milestone in the RCRA process is reached.

Accompanying Activities

Fact sheets or handouts should be distributed so that participants have something to refer to after the presentation. Incorporating **exhibits** into your presentation will hold the audience's attention and aid in their understanding of the material. **Question and answer sessions** will help clear up any misunderstanding about the presentation and allow you to address complex issues in more detail

Advantages and Limitations

Because the presentation is delivered in person, the audience has a chance to ask questions, and the presenter can gauge citizens' concerns. Also, many people can be reached at one time, reducing individual inquiries. Making project staff available for community speeches and presentations will signal your organization’s interest in the community.

Presentations require substantial effort to be effective. A poorly planned presentation can distort residents' views of the situation.

Because the presentation is rehearsed, accommodating different or unanticipated concerns of the audience can be difficult. Handle these concerns during a **question-and-answer session** after the presentation.

Checklist for Presentations

- ___ Contact groups that may be interested in a presentation
- ___ Determine message(s) to be presented based on stated community interests/concerns
- ___ Prepare presentation(s) based on responses from groups contacted
  - ___ Prepare handout materials
  - ___ Prepare exhibits or other visual materials
- ___ Determine what staff are available for presentations
- ___ Schedule presentations
- ___ Conduct rehearsals
- ___ Conduct presentations
- ___ Conduct follow-up question-and-answer session after presentations
  - ___ Respond to questions you were unable to answer
  - ___ Contact group regarding other presentation topics in which they may be interested

Facility Tours

Regulatory Requirements

None, though the tour will have to comply with facility safety plans.

Description of Activity

Facility tours are scheduled trips to the facility for media representatives, local officials, and citizens during which technical and public outreach staff answer questions. Facility tours increase understanding of the issues and operations at a facility and the RCRA-regulated process underway.

Level of Effort

Facility tours generally take a day to plan and conduct.

How to Conduct the Activity

To conduct facility tours:

1. **Plan the tour ahead of time.**

   The facility owner/operator may decide to conduct a tour, or the agency may set up a tour of the facility. If agency staff plan to lead the tour, they should coordinate with the facility owner/operator. Citizens groups should arrange tours with the facility owner/operator. If there is a Citizens Advisory Panel, the members could lead or participate in tours.

   Before the tour, you should:

   - Determine tour routes;
   - Check on availability of facility personnel, if needed; and
   - Ensure that the tour complies with the safety plan for the site.

   If it is not possible to arrange tours at the facility (e.g., the facility is under construction or not yet built), perhaps it would be possible to arrange a tour at one like it. Interested community members may benefit from touring a facility that has similar operations or where similar technologies have been applied. Touring a RCRA-regulated facility can give residents a clearer perception of what to expect at their own site.

2. **Develop a list of individuals that might be interested** in participating in a tour, including:

   - Individual citizens or nearby residents who have expressed concern about the site;

- Representatives of public interest or environmental groups that have expressed interest in the site;
- Interested local officials and regulators;
- Representatives of local citizen or service groups; and
- Representatives of local newspapers, TV, and radio stations.

3. **Determine the maximum number that can be taken through the facility safely.** Keep the group small so that all who wish to ask questions may do so. Schedule additional tours as needed.

4. **Think of ways to involve tour participants.** A "hands-on" demonstration of how to read monitoring devices is one example.

5. **Anticipate questions.** Have someone available to answer technical questions in non-technical terms.

When to Use

Tours may be conducted:

- When there is moderate to high interest in the facility, especially among elected officials;
- When it is useful to show activities at the facility to increase public understanding or decrease public concern;
- When it is practical and safe to have people on facility grounds; and
- During the remedial phase of corrective action.

Accompanying Activities

Fact sheets, **exhibits**, and **presentations** complement facility tours. An **observation deck** near the facility would allow them to watch the progress of activities on their own. An **on-scene information office** would allow for an agency official to be around and for less formal tours of the facility. An alternative to a facility tour would be a **videotape presentation** showing activity and operations at the facility. This would be effective in cases where tours cannot be conducted.

Advantages and Limitations

Facility tours familiarize the media, local officials, and citizens with the operations and the individuals involved in the permitting or corrective action. Unreasonable fears about the risks of the facility may be dispelled, as might suspicion of corrective action crews working at the facility. The result is often better understanding between stakeholders.

Facility tours require considerable staff time to arrange, prepare, and coordinate. Staff may have difficulty gaining site access for non-agency

people. Insurance regulations for the facility and liability, safety and injury considerations may make tours impossible.

Checklist for Facility Tours

- _ Determine need for facility tours
- _ Coordinate tours with the facility
  - _ Tour routes
  - _ Facility personnel
  - _ Tour dates
  - _ Compliance with health and safety
- _ Determine maximum number of people that can be taken on the tour
- _ Notify interested citizens on availability of facility tours
  - _ Call interested citizens
  - _ Distribute mailing to facility mailing list
  - _ Have citizens respond and reserve space on the tour
- _ Determine plant staff or agency staff to conduct tour
- _ Prepare responses to anticipated questions
- _ Conduct tours
- _ Follow-up on any requested information from interested citizens

Observation Decks

Regulatory Requirements

None.

Description of Activity

An observation deck is an elevated deck on the facility property, near the area where corrective or RCRA-regulated activities are in progress. The deck allows interested citizens to observe facility activities or corrective actions directly in order to remove some of the unfamiliarity, and hence fear, that may encompass RCRA-regulated activities.

Level of Effort

Maintaining an observation deck may be a time-intensive activity depending on the deck's hours of operation. Up to 40 hours a week may be necessary to staff the deck. Short Cut: Consider hiring a contractor to staff the deck, or limit the hours when it is open to the public.

How to Conduct the Activity

To use an observation deck, the agency and the facility should work together to:

1. **Decide whether or not an observation deck is needed or desirable.** Gauge community interest in the facility and whether or not there is a location for a deck that would facilitate observation.

2. **Coordinate deck construction.** Determine the best location for the observation deck keeping in mind safety and public access issues.

3. **Coordinate staffing of the observation deck.** Determine the hours of operation for the observation deck. Identify staff to supervise the observation deck and prepare staff to answer questions from the public.

4. **Announce the availability of the observation deck.** Notify the community that the deck is available through public notices, fact sheets, and a mailing to the facility mailing list.

When to Use

An observation deck may be used:

- When community interest or concern is high;
- When the community's understanding of facility operations will be enhanced by direct observation;
- When there will be sufficient activity at the site to promote the community's interest;

- When staff are available to supervise public use of the deck and answer questions;
- When it is physically possible to set up an observation deck in a place where there is no danger to the public;
- When a corrective action is being implemented; and
- When a new technology is being tested or implemented.

Accompanying Activities

An observation deck could complement periodic **facility tours** or an **on-scene information office**. Citizens can initially be informed about operations or corrective actions during the tours, then can monitor the progress of these activities at their convenience from the observation deck. **Fact sheets** or an informative **exhibit** placed near the deck also could further aid in explaining facility activities.

Advantages and Limitations

An observation deck allows citizens and media representatives to observe site activities without hindering the activities.

Constructing and occupying an observation deck is expensive and needs to be supplemented with an informational/interpretive program, so that citizens understand what they see. Further, health and safety issues must thoroughly be considered so that any visitor to the observation deck is not endangered by activities at the facility.

Checklist for Observation Decks

- ___ Determine need for an observation deck
  - ___ Coordinate with facility
- ___ Identify staff available to supervise the observation deck and answer questions from interested citizens
- ___ Coordinate deck construction
- ___ Set hours of operation for the observation deck
- ___ Notify interested citizens of availability of observation deck
  - ___ Public notice
  - ___ Fact sheet
  - ___ Mailing to facility mailing list
- ___ Maintain observation deck

News Releases and Press Kits

Regulatory Requirements

None.

Description of Activity

News releases are statements that you or your organization send to the news media. You can use them to publicize progress or key milestones in the RCRA process. News releases can effectively and quickly disseminate information to large numbers of people. They also may be used to announce public meetings, report the results of public meetings or studies, and describe how citizen concerns were considered in the permit decision or corrective action.

Press kits consist of a packet of relevant information that your organization distributes to reporters. The press kit should summarize key information about the permitting process or corrective action activities. Typically a press kit is a folder with pockets for short summaries of the permitting process, technical studies, newsletters, press releases, and other background materials.

If your organization has public affairs personnel, you should coordinate with them to take on media contact responsibilities.

Level of Effort

News releases generally take eight hours to write, review, and distribute to the media.

How to Conduct the Activity

To prepare news releases and press kits:

1. **Consult with external affairs personnel who regularly work with the local media.** External affairs personnel will assure that you adhere to organization policy on media relations. They will assist in drafting the news release and can provide other helpful suggestions about the release and the materials for the press kit.

2. **Identify the relevant regional and local newspapers and broadcast media, and learn their deadlines.** Get to know the editor and environmental reporter who might cover the issue. Determine what sorts of information will be useful to them.

3. **Contact related organizations to ensure coordination.** For instance, permitting agencies should contact other regulatory agencies on the federal, state, and local levels to ensure that all facts and procedures are coordinated and correct before releasing any statement

or other materials. If your organization is local, you should coordinate with national or state-wide chapters. You may want to consider discussing the news release with other interested stakeholders (e.g., through a **briefing**). However, draft news releases should not be shared -- they are internal documents.

4. **Select the information to be communicated.** For the press release, place the most important and newsworthy elements up front and present additional information in descending order of importance. Use supporting paragraphs to elaborate on other pertinent information. Mention opportunities for public participation (i.e., public meetings, etc.) and contact persons and cite factors that might contribute to earlier implementation or delays in the corrective action or permit processing. Note the location of the information repository (if applicable) or other sources for relevant documents. If you are presenting study findings or other technical information, present it in layman's terms along with any important qualifying information (e.g., reliability of numbers or risk factors).

   The press kit should contain materials that elaborate on the information in the press release. Basic summaries of the RCRA program, the permitting process, and public participation activities are helpful materials. Background reports or studies may also be useful. Enclose the name and phone number of a contact person and invite the reporter to call him or her with any questions.

5. **The news release should be brief.** Limit it to essential facts and issues.

6. **Use simple language.** Avoid the use of professional jargon, overly technical words, and acronyms.

7. **Identify who is issuing the news release.** The top of the sheet should include:

   - Name and address of your organization;
   - Release time ("For Immediate Release" or "Please Observe Embargo Until") and date;
   - Name and phone number of the contact person for further information; and
   - Headline summarizing the activity of interest.

8. **In some cases, send copies of the release and the press kit to other stakeholders** at the same time you give them to the news media. Coordinate with the public affairs office to determine appropriateness.

When to Use

The press kit and the news release can be complementary activities, though you may choose to use either one separately. Some of the occasions when you may want to issue a news release or a press kit include:

- When significant findings are made at the site, during the process, or after a study;
- When program milestones are reached or when schedules are delayed;
- In response to growing public or media interest or after your organization takes a new policy stance;
- When you are trying to increase public interest in a facility;
- Before a public meeting to announce subject, time, place; and
- A news release should not be issued at times when it may be difficult to get in touch with responsible officials (e.g., Friday afternoons, or the day before a holiday).

Accompanying Activities

The press kit is useful as a complement to a news release. News releases and press kits can accompany any formal **public hearings** or **public meetings**. They commonly accompany **news conferences**. They should provide the name of the **contact person** whom interested reporters can contact if they want more information.

Advantages and Limitations

A news release to the local media can reach a large audience quickly and inexpensively. Press kits allow reporters to put the issue in context. If a reporter is trying to meet a deadline and cannot contact you, he or she can turn to the press kit as an authoritative source of information. If the name, address, and phone number of a contact person are included, reporters and possibly interested community members can raise questions about the information in the release.

Because news releases must be brief, they often exclude details in which the public may be interested. A news release should therefore be used in conjunction with other methods of communication that permit more attention to detail. A news release is not an appropriate vehicle for transmitting sensitive information. In some cases, a news release can call unwarranted attention to a situation; a mailing to selected individuals should be considered instead. Frequent use of news releases to announce smaller actions may reduce the impact of news releases concerning larger activities.

One potential drawback of a press kit is that reporters may ignore it or use the information incorrectly when writing a story.

News releases and press kits cannot be used in lieu of a public notice. Certain activities, such as the preparation of a draft permit, are subject to public notice requirements. See the section on “Public Notices” earlier in this Chapter for more details.

Checklist for News Releases and Press Kits

- __ Coordinate with public affairs staff
- __ Determine purpose of news release and/or press kit
- __ Coordinate writing and distribution of release or press kit with the public affairs staff
  - __ Verify that media mailing list is up-to-date
  - __ Request mailing labels
- __ Write draft news release
  - __ Type and double space news release
  - __ Indicate the source of the news release (i.e., in the upper-left-hand corner, put the name and phone number of the person writing the release, along with the agency or department name and address)
  - __ Provide release instructions (i.e., "For Immediate Release")
  - __ Date the news release
  - __ Write concisely; avoid technical terms and jargon
  - __ Number pages; if more than one page is needed, put " -- more --" at the center bottom of the page that is to be continued; succeeding pages should be numbered and "slugged" with an identifying headline or reference (i.e., "EPA -- 2"); when you come to the end of the news release, indicate the end with one of the following: -- 30 --, ####, or -- END --.
- __ Prepare materials for the press kit
  - __ Collect short descriptions of the RCRA program, permitting, and public participation processes
  - __ Include other pertinent information, such as reports, studies, and fact sheets
- __ Coordinate internal review
- __ Prepare final matierals based on review comments
- __ Distribute news release and press kit to local media

News Conferences

Regulatory Requirements

None.

Description of Activity

News conferences are information sessions or briefings held for representatives of the news media and may be open to the general public. News conferences provide all interested local media and members of the public with accurate information concerning important developments during a RCRA-regulated process. If your organization has public outreach personnel, you will probably want to coordinate news conferences with them.

Level of Effort

Allow one to two days to prepare for, rehearse, and conduct a news conference.

How to Conduct the Activity

To conduct news conferences:

1. **Coordinate all media activity through your outreach staff.** Public outreach personnel will assure that you adhere to organization policy on news conferences. They will help arrange location and equipment, etc.

2. **Evaluate the need for a news conference.** Use this technique carefully because statements made during a news conference may be misinterpreted by the media. For reporting the results of site inspections, sampling, or other preliminary information other public involvement techniques (e.g., **fact sheets**, **news releases**, or **public meetings**) may be more appropriate. A news conference announcing preliminary results of technical studies may add unnecessarily to public concerns about the facility.

3. **Notify members of the local and regional media of the time, location, and topic of the news conference.** Local officials also may be invited to attend, either as observers or participants, depending upon their interest. Including local officials at a news conference will underscore your organization's commitment to a community's interests and concerns.

4. **Anticipate reporters' questions and have your answers ready.**

5. **Present a short, official statement, both written and spoken, about developments and findings.** Explain your organization's decisions by reviewing the situation and identifying the next steps. Use visual aids, if appropriate. Live conferences leave no room for

mistakes, so preparation and rehearsal is very important.

Open the conference to questions, to be answered by your staff, local officials, and any other experts present. Have technical staff on hand to answer any technical questions. Decide ahead of time who will answer certain types of questions.

When to Use

News conferences can be used:

- When time-sensitive information needs to reach the public, and a news release may not be able to address key issues for the community;
- When staff are well-prepared to answer questions; and
- During any phase of the permit application or corrective action.

Accompanying Activities

News conferences can be held before or after formal **public hearings** or **public meetings**. They are usually accompanied by **news releases**. **Exhibits**, **telephone contacts**, **briefings**, and **mailing lists** would contribute to the planning and effectiveness of a news conference.

Advantages and Limitations

News conferences provide a large public forum for announcing plans, findings, policies, and other developments. They also are an efficient way to reach a large audience. A written news release can help ensure that the facts are presented accurately to the media. During the question and answer period, your spokesperson(s) can demonstrate knowledge of the facility and may be able to improve media relations by providing thorough, informative answers to all questions.

A news conference can focus considerable attention on the situation, potentially causing unnecessary local concern. Residents may not welcome the increased attention that such media coverage is apt to bring. News releases or lower-profile means of disseminating information should be considered as alternatives.

A risk inherent in news conferences is that the media can take comments out of context and create false impressions. This risk is heightened when staff are unprepared or when the conference is not properly structured or unanticipated questions are asked.

Checklist for News Conferences

- _ Coordinate news conference with public affairs staff
- _ Determine purpose of news conference
- _ Identify staff to make presentations/answer questions at news conference
- _ Prepare visual materials (i.e., exhibits) and handout materials (i.e., fact sheets)
- _ Prepare responses to "anticipated" questions from the media
- _ Coordinate a rehearsal of all presenters
- _ Determine date, time, location, and equipment needs of news conference
    - _ Is the location large enough to accommodate the media?
- _ Notify local media of news conference in advance of news conference
- _ Call the local media the day before the news conference as a reminder
- _ Conduct the news conference
    - _ Set up room with a speakers table, chairs for the audience
    - _ Have handout materials available when media arrive

Community Interviews

Regulatory Requirements

None.

Description of Activity

Community interviews are informal, face-to-face or telephone interviews held with local residents, elected officials, community groups, and other individuals to acquire information on citizen concerns and attitudes about a facility. The interviews may be conducted by facility staff, the permitting agency, or public interest groups as part of the community assessment. Chapter 2 provides more information on community assessments in the section titled "Assessing the Situation."

Community interviews can play an important role in the community assessment, which usually takes place at the beginning of the permitting process, or before major modifications and significant corrective actions. Community interviews will not be necessary in every community. For instance, in routine or non-controversial situations, there may be no need for community interviews. However, if a facility is controversial or has the potential to receive high levels of public interest, then EPA recommends a broad range of community interviews. Permitting situations that fall between the preceding cases may require some interviews, beginning with a survey of community representatives and group leaders (see "Assessing the Situation" in Chapter 2).

Community interviews allow agencies, facility owners, and public interest groups to tailor regulatory requirements and additional activities to fit the needs of particular communities. Information obtained through these interviews is typically used to assess the community's concerns and information needs and to prepare a **public participation plan**, which outlines a community-specific strategy for responding to the concerns identified in the interview process.

Level of Effort

Community interviews are a time-intensive activity because of the large amount of organization required and time needed for interviews. While level of effort will vary, interviewers should schedule at least one hour per interview for research and preparation, the interview itself, and follow-up activities. If time and/or resources are limited, interviewers may want to conduct interviews by phone and focus on community leaders.

How to Conduct the Activity

Permitting agencies, facility owners, and public interest groups who plan to conduct community interviews should follow the steps below, adjusting them as necessary to suit the situation at hand:

1. **Identify potential people to interview.** If a mailing list is not available, begin by reviewing available files and other documents (e.g., newspaper articles) to identify local residents, key state and local officials, and citizen organizations that have been involved with or expressed concern about the facility. Agency staff or other groups in the community (e.g., existing facility owners and operators, public interest organizations, civic groups, local government agencies) may also be able to suggest individuals or groups to interview. Develop a list of individuals and groups that provides the greatest variety of perspectives. Make sure to include individuals who tend to be less vocal to balance the views of those who are more outspoken. Your contact list may include:

   - state agency staff, such as officials from health, environmental, or natural resources departments;
   - local agency staff and elected officials, such as county health department officials, county commissioners, mayor or township administrator, and officials on environmental commissions, advisory committees, and planning boards;
   - representatives of citizens' groups organized to address issues at the facility or in the area;
   - non-affiliated area residents and individuals;
   - local business representatives (e.g., from the Chamber of Commerce or Council of Governments);
   - local civic groups, neighborhood associations, educational and religious organizations;
   - local chapters of public interest groups (e.g., environmental organizations); and
   - nearby landowners and businesses.

2. **Determine how many interviews to conduct.** Conduct interviews with the goal of obtaining a broad range of perspectives and gathering sufficient information to develop an effective public participation plan. However, the actual number of interviews is likely to depend on available time and resources as well as the community's level of interest and concern about the facility. It is generally desirable to conduct more extensive interviews in communities where the level of concern is high. Alternatively, where the level of interest is low or there has already been significant interaction with community, fewer interviews may be appropriate.

3. **Prepare for the interviews.** Before conducting the interviews, learn as much as possible about the community and community concerns

regarding the facility. Review any available news clippings, documents, letters, and other sources of information relevant to the facility. Determine whether the community has any particular language, geographic, or economic characteristics that should be addressed. Prepare a list of questions that can serve as a general guide when speaking with residents and local officials. Questions should be asked in a way that stimulates discussion on a variety of topics, including:

- General knowledge of the facility. Find out what sort of information the community has received about the facility and if what level of involvement the community has had with the facility.

- Specific concerns about the technical and regulatory aspects of activities at the facility. Determine what the community's concerns are and what types of information would be most appropriate to address these concerns.

- Recommended methods of communicating with the community and receiving community input. Determine which communications tools are likely to be most effective -- e.g., mailings, meetings, broadcast media -- and what public participation events could best serve the community. Learn about special information needs that the community may have (e.g., the level of literacy, the percentage of non-English speakers).

- The best public meeting facilities, most relied-upon media outlets, and the best times to schedule activities.

- Other groups or individuals to contact for more information.

4. **Arrange the interviews.** Telephone prospective interviewees and arrange a convenient time and place to meet. Ideally, the meeting place should promote candid discussions. While government and media representatives are likely to prefer meeting in their offices during business hours, local residents and community groups may be available only in non-business hours. Meetings at their homes may be most convenient.

During the interviews:

1. **Provide background information.** Briefly describe the permitting activity or corrective action at hand.

2. **Assure interviewees that their specific comments will remain confidential.** At the beginning of each interview, explain the purpose of the interviews -- to gather information to assess community concerns and develop an appropriate public participation strategy.

Explain that while the public participation plan will be part of the administrative record, the plan will not attribute specific statements or information to any individual. Ask interviewees if they would like their names, addresses, and phone numbers on the mailing list.

3. **If community members do not feel comfortable with interviewers from your organization, consider using a third-party.** Some citizens may not be entirely forthcoming with their concerns or issues if they are uncomfortable with the interview. If sufficient resources are available, inciter hiring a contractor to perform interviews. Some civic or community organizations may be willing to help in the interview process. If these options are not available, then consider distributing anonymous **surveys** or convening **focus groups**, where a number of citizens can give their input together.

4. **Identify other potential contacts**. During the discussions, ask for names and telephone numbers of other persons who are interested in activities at the facility.

5. **Gather information on past citizen participation activities** . Determine the interviewee's perceptions of past outreach activities by your organization.

6. **Identify citizens' concerns about the facility**. When identifying concerns, consider the following factors:

   - Threat to health -- Do community residents believe their health is or has been affected by activities at the facility?

   - Economic concerns -- How does the facility affect the local economy and the economic well-being of community residents?

   - Agency/Facility/Interest Group credibility -- Does the public have confidence in the capabilities of the agency? What are the public's opinions of the facility owner/operator and involved environmental/public interest organizations

   - Involvement -- What groups or organizations in the community have shown an interest in the facility? Is there a leader who has gained substantial local following? How have interested groups worked with the agency or facility in the past? Have community concerns been considered in the past?

   - Media -- Have events at the facility received substantial coverage by local, state, or national media? Do local residents believe that media coverage accurately reflects the nature and intensity of their concerns?

   - Number affected -- How many households or businesses perceive themselves as affected by the facility (adversely or

positively)?

7. **Assess how citizens would like to be involved in the RCRA permitting or corrective action process**. Briefly explain the RCRA public participation process and ask the interviewees how they would like to be involved and informed of progress made and future developments at the facility. Ask what is the best way to stay in contact with the interviewee. Ask the interviewee to recommend convenient locations for setting up the information repository or holding public meetings. Keep a list of those who wish to be kept informed.

When to Use

Community interviews should be conducted:

- As part of a community assessment by facility owners who are applying for a permit, seeking a major permit modification, or beginning significant corrective action.
- By the permitting agency to find out about community concerns at the outset of a major permitting or corrective action process.
- Before revising a public participation strategy, because months, or perhaps years, may have elapsed since the first round of interviews, and community concerns may have changed.

As the level of community concern increases, so does the need to conduct more extensive assessments. If there has been a lot of interaction with the community and interested parties, information on citizen concerns may be current and active. In such situations, it may be acceptable to conduct only a few informal discussions in person or by telephone with selected, informed individuals who clearly represent the community to verify, update, or round out the information already available.

Accompanying Activities

As stated above, community interviews are conducted to gather information to develop an appropriate **public participation plan** for the facility. A **mailing list** may or may not be in place at the time interviews are conducted. If there is one, it can be used to identify individuals to interview. If one has not yet been established, the interviews themselves can provide the basis for the list.

Advantages and Limitations

Community interviews can be a valuable source of opinions, expectations, and concerns regarding RCRA facilities and often provide insights and views that are not presented in the media. In addition, these interviews may lead to additional information sources. The one-on-one dialogue that takes place during community interviews provides the basis for building a good working relationship, based on mutual trust, between the community and other stakeholders. Therefore, although its primary purpose is to gather

information, the community interview also serves as an important public outreach technique.

The major disadvantages of community interviews are that they may be time-consuming and resource-intensive for your staff; they could cause unnecessary fear of the situation among the public; and, they are not very useful if you do not talk with the right people -- the people who have not identified themselves as well as the more vocal ones who have.

Checklist for Community Interviews

- ☐ Determine number of interviews to be conducted: _____
- ☐ Determine dates for interviews: _____
- ☐ Identify team to conduct interviews:

  _____

  _____

- ☐ Identify individuals to interview
  - ☐ Review facility background files for names of people who have expressed interest
  - ☐ Identify community leaders to contact
  - ☐ Identify city/state/county officials to contact
- ☐ Prepare interview questions
- ☐ Review background information available about the facility and community
- ☐ Set up interviews
  - ☐ Confirm interviews by mail or phone
- ☐ Conduct interviews
  - ☐ Ask for additional people to contact
  - ☐ Gather information using prepared interview questions
- ☐ Follow-Up
  - ☐ Follow-up interview with a thank you letter
  - ☐ Notify the interviewee when the public participation strategy is available in the repository

Focus Groups

Regulatory Requirements

None.

Description of Activity

Some organizations use focus groups as a way of gathering information on community opinion. The advertizing industry developed focus groups as an alternative to expensive market research (which relies heavily on polling). Focus groups are small discussion groups selected either to be random or to approximate the demographics of the community. The group is usually led by a trained moderator who draws out people's reactions to an issue.

Facility owners may want to consider focus groups as a complement to interviews during the community assessment or at important activities during the life of a facility. The permitting agency may want to consider focus groups to gauge public opinion before controversial permitting activities or corrective actions.

Level of Effort

Focus groups can be resource-intensive, depending on the number of groups you convene. This method will be more expensive if you need to provide for a moderator, meeting space, or transportation.

How to Conduct the Activity

To prepare for focus groups:

1. **Determine whether or not a focus group can help the process.** Community interviews serve much the same purpose as focus groups. Will gathering members of the community together provide more comfort? Will it be a more effective means of gauging public opinion?

2. **Select your focus groups.** Contact other stakeholders and community leaders to get input on who to include in your focus groups.

3. **Use community interview techniques to get input from the focus group.** You can follow the guidance in "Community Interviews" above in this Chapter to learn about the types of questions to ask your focus groups.

4. **Use the information in forming a public participation plan.**

When to Use

Facility owners may want to use focus groups as a complement to community interviews; permitting agencies may want to consider focus groups in situations where there is a high degree of public interest in a

permitting activity. Focus groups provide a quick means of feedback from a representative group and can be a good supplementary activity, especially if such group discussions will make some members of the public feel more comfortable.

Accompanying Activities

Use focus groups as a complement to **community interviews**. You may want to hold a **presentation** or provide the groups with information such as **fact sheets**.

Advantages and Limitations

Focus groups allow you to get an in-depth reaction to permitting issues. They can help to outline a public participation plan and give an indication of how the public will react to certain issues.

The reactions of a focus group cannot, in all cases, be counted on to represent the greater community. Some people may perceive focus groups as an effort to manipulate the public.

Checklist for Focus Groups

- ☐ Determine number of focus groups to be conducted: _____
- ☐ Determine dates for focus groups: _____
- ☐ Identify moderator to conduct focus groups:

  _____
- ☐ Identify individuals for focus groups
  - ☐ Review facility background files for names of people who have expressed interest
  - ☐ Identify community leaders to contact
  - ☐ Identify city/state/county officials to contact
- ☐ Prepare discussion questions
- ☐ Review background information available about the facility and community
- ☐ Set up focus groups
  - ☐ Confirm participation by mail or phone
- ☐ Conduct focus groups
  - ☐ Ask for additional people to contact
  - ☐ Gather information using prepared interview questions
- ☐ Follow-Up
  - ☐ Follow-up interview with a thank you letter
  - ☐ Notify the interviewee when the public participation plan is available

Door-to-Door Canvassing

Regulatory Requirements

None.

Description of Activity

Door-to-door canvassing is a way to collect and distribute information by calling on community members individually and directly. Public interest groups have long used such techniques, and they may also be useful for facility owners as a way to gauge public interest during the community assessment stage. The permitting agency may consider using this technique to interact with the community in situations where public interest is very high, such as emergency cleanups, or in other situations where direct contact with citizens is essential. See the section on "When to Use" below for more details.

During these interactions, canvassers can field questions about the permitting activity, discuss concerns, and provide fact sheets or other materials. Some citizens may want to find out more about the activity by signing up for mailing lists or by attending an upcoming event.

Level of Effort

Door-to-door canvassing is a very time-intensive activity because of the number of staff needed to conduct the canvassing and the amount of time you will need to plan for the canvassing. Canvassers should travel in pairs in areas where there may be a lot of contention or in high crime areas. Planning for the door-to-door canvassing will require at least a day. This includes identifying the area to be canvassed, determining the amount of staff needed, and notifying area residents. The amount of time spent canvassing will depend on the size of the area to be canvassed.

How to Conduct the Activity

A door-to-door canvass involves training staff to gather information, answer questions, and to communicate with a possibly irate or suspicious public.

Procedures to follow in preparing a door-to-door canvass include:

1. **Identify the area where canvassing is necessary or desirable.** Determine the area where special information must be given or collected. This area may range from just a few streets to several neighborhoods. Determine if there is a need for a translator or materials in languages other than English. Also determine when it is likely that people will be at home; the canvassing may have to be conducted in the evening.

2. **If time permits, notify residents** (e.g., by distributing a flyer) that canvassers will be calling door-to-door in the area. Tell residents what time the canvassers will be in the neighborhood and explain the purpose of the canvassing program. Advance notice will reduce the suspicions of residents and encourage their cooperation. Also, notify local officials so they are aware of the door-to-door canvassing.

3. **Provide canvassers with the information they will need** to respond to questions. Residents will want to know what is happening at the facility and may have questions about possible health effects associated with various activities. If appropriate, you should distinguish between the types of questions that a canvasser may answer (i.e., questions concerning the schedule of activity) and the types of questions that should be referred to technical staff (e.g., highly technical questions concerning hazardous waste or agency policies). Provide canvassers with fact sheets or other written materials for distribution.

4. **Canvass the designated area.** Note the name, address, and telephone number of residents requesting more information. Note also the names of those who were especially helpful in giving information. Be prepared to tell residents when they will next be contacted and how (i.e., by telephone, by letter, or in person). All canvassers should have an official badge to identify themselves to residents.

5. **Send a thank-you letter** after the canvass to all residents in the canvassed area. If possible, provide information concerning recent developments and any results or pertinent information gathered by the canvass. Respond to special requests for information either in the thank-you letter or by telephone.

When to Use

Door-to-door canvassing may be used:

- When there is a high level of concern about the site, but meetings cannot be scheduled;
- When there is a need to notify citizens about a certain event or an upcoming permitting issue;
- When you need to reach a specific group of people for a specific purpose, such as getting signatures to allow access to properties adjacent to the facility;
- When the community has a low literacy rate and written materials aren't useful;

- When the area consists of a population whose primary language is not English, but it is important to pass information to the area; and

- When there is an emergency situation that the community needs to know about.

Accompanying Activities

Telephone contacts and **community interviews** may help to identify appropriate areas for canvassing efforts. Canvassers should add to the **mailing list** names of individuals who either requested additional information or provided particularly useful information.

Advantages and Limitations

This activity involves face-to-face contact, thereby ensuring that citizens' questions can be directly and individually answered. Canvassing demonstrates a commitment to public participation, and is a very effective means of gathering accurate, detailed information, while determining the level of public concern.

This technique is very time-consuming and costly, even in a small area. Furthermore, trained people that can answer questions at the necessary level of detail are often not available for this activity. This activity is not recommended for the dissemination of information except in an emergency. This high level of direct contact can raise more concerns rather than allay them.

The safety and security of the canvassers also should be taken into account when planning this activity. Additional staff may be need so that people can work in teams to two or three; in extreme situations, security staff may be necessary .

Checklist for Door-to-Door Canvassing

- ___ Identify area where canvassing will be conducted
  - ___ Prepare maps for each team of canvassers
  - ___ Send a letter to residents announcing canvassing
    - ___ Prepare mailing list using the city directory (section listing residences by street address)
    - ___ Prepare letter; coordinate internal review
  - ___ Determine security needs of canvassing team
- ___ Prepare any information (i.e., fact sheets) that canvassing team may provide to interested residents
- ___ Identify staff to conduct canvassing and have official badges made to identify them
- ___ Brief staff on canvassing effort
  - ___ Provide staff with a copy of letter sent to residents
  - ___ Tell staff what kinds of questions they may answer and provide them with information (i.e., questions concerning the schedule of activity)
  - ___ Tell staff what kinds of questions they should refer to a specialist (i.e., technical questions)
  - ___ Provide staff with prepared maps
- ___ Canvass designated areas
  - ___ Note the name, address, and telephone number of residents requesting more information
- ___ Send thank you letter to all residents in the canvassed area

Public Comment Periods

Regulatory Requirements

Public comment periods are required whenever the permitting agency issues a draft permit or an intent to deny a permit (§ 124.10). Comment periods are also mandatory on requests for Class 2 and 3 permit modifications under § 270.42, for agency-initiated modifications under § 270.41, and during closure and post-closure for interim status facilities under §§ 265.112(d)(4) and 265.118(f).

Description of Activity

A public comment period is a designated time period in which citizens can formally review and comment on the agency's or facility's proposed course of action or decision. Comment periods for RCRA permits must be at least 45 days.

Level of Effort

There is no specific level of effort for a public comment period. Estimates of the time required to conduct activities associated with the public comment period (public notice, public hearing, etc.) are found elsewhere in this chapter. The time required to receive, organize, and determine how to respond to comments will vary depending on the number of comments received and the complexity of the proposed action (see the section on "Response to Comments" earlier in this chapter).

How to Conduct the Activity

Announce the public comment period in a local newspaper of general circulation and on local radio stations. Public notices must provide the beginning and ending dates of the public comment period and specify where interested parties should send their comments and/or requests for a public hearing. Refer to the section about "Public Notices" earlier in this chapter for further information.

When to Use

A minimum 45-day public comment period is required for RCRA permits, including modifications to permits initiated by the agency as well as Class 2 and 3 modifications requested by the facility.

Accompanying Activities

Public comment periods cannot begin until notice of the permitting activity is given. RCRA requires that the agency conduct a **public hearing** if requested by a member of the public during the public comment period. Announce the hearing through a public notice and through a fact sheet, if one is prepared in advance. Public comment periods cannot begin until notice is given.

Comments received during the public comment period must be discussed in a written **response to comments**.

Advantages and Limitations

Public comment periods allow citizens to comment on agency and facility proposals and to have their comments incorporated into the formal public record.

However, public comment periods provide only indirect communication between citizens and agency officials because, in some cases, the formal responses to the comments may not be prepared for some time. Also, in some cases, the agency may not individually respond to every comment. A public participation program should provide other activities that allow dialogue between agency officials and the community.

Checklist for Public Comment Periods

_ Determine dates of public comment period (minimum of 45 days)

Dates: _____

_ Determine contact person within the agency who will answer citizens' questions regarding the public comment period

_ Announce public comment period through a public notice

_ If requested by a member of the public during the comment period, schedule a public hearing

_ Document with a memo to the file any comments that were not received in written form

Unsolicited Information and Office Visits

Regulatory Requirements

None.

Description of Activity

EPA encourages permitting agencies, public interest groups, and facility owners/operators to seek input from interested citizens and other stakeholders. At times, this information may arrive in the form of phone calls, letters, and meetings. While this type of information is not always asked for, it can be helpful.

Citizens or stakeholders from other groups may want to visit the agency's office or the facility. In this situation, the visiting stakeholders will want to meet with the person who works most directly with their concerns.

Level of Effort

Depends entirely on the type of unsolicited information provided by the public. Office visits will also command varying amounts of time.

How to Conduct the Activity

Members of the public will come to the agency, the facility, or another organization with information and requests. Public outreach staff should be available for discussion and information when visitors come.

Unsolicited information can be very helpful. First, it can provide an idea of the level of public concern over a facility. Second, members of the public often provide information that is essential to making good technical, economic, and policy decisions. Local citizens often have the most knowledge and insight about the conditions of the land and the people surrounding a facility.

If interested people come to the office, they should be received by a staff member who can relate well with the public and knows the overall mission of your organization. If feasible, he or she should introduce the visitors to members of the staff who can discuss specific issues. Staff people should listen to the citizens' concerns and provide feedback where possible. They should be candid when they do not know the answer to a question. They should also be cordial, avoid jargon and overly technical language, and try to solve the visitor's problem. (See the section on "Informal Meetings With Other Stakeholders" in this Chapter for more information).

If citizens send a letter or call by phone, the receiving organization should respond as soon as possible. If the response will be delayed, a representative of the organization should write a letter or call to explain.

The receiving organization should consider all relevant comments as informal input into the permitting process and let citizens know how they can submit formal comments.

When to Use

Unsolicited information is a constant in community participation. You can improve (or maintain) the credibility of your organization by giving due weight to citizens' concerns and by replying promptly to citizen input.

Accompanying Activities

Fact sheets, **project reports**, and other mailings can answer questions or reply to citizen inquiries. Offer to put concerned citizens on the **mailing list**. Consider holding an **availability session**, **open house**, or **informal meetings** if you detect a high level of public interest.

Advantages and Limitations

A good outreach program can increase your organization's credibility. Unsolicited information can alert you to issues of high public concern and allow you to identify involved groups in the community. Visitors to your organization can get to know the staff, while the staff gains a better understanding of the visitors' concerns.

Unsolicited information is, at best, a supplement to more formal information-gathering. It may be misleading since it does not always reflect the overall level of public concern. Good handling of unsolicited information takes good communication and cooperation within your organization.

Checklist for Unsolicited Information and Office Visits

For office visits:

_ Appoint a member of your staff to act as a liaison for public visits

_ The liaison should answer questions and introduce stakeholders to members of your organization who are involved in the issue

_ Invite visitors to put their names on your mailing list

_ Follow up quickly on any questions that you could not answer during the visit

For phone calls and written requests:

_ Keep a log of calls and letters from other stakeholders

_ Respond quickly to questions; inform the questioner if your response will not be timely

Surveys and Telephone Polls

Regulatory Requirements

None.

Description of Activity

If public participation is to be a dialogue, citizens need ways to provide feedback to facilities, public interest organizations, and permitting agencies. Surveys and polls are designed to solicit specific types of feedback from a targeted audience, such as public opinion about a permitting activity, the effectiveness of public participation activities, or what could be done to improve distributed materials. Surveys may be either oral or written; used in person or by mail; and distributed either to specific segments of the community or to representative samples. We discuss telephone polls in this section, but you may want to consider door-to-door polling or other methods.

Facility owners may want to consider using surveys and polls during the community assessment to gauge public sentiment about constructing or expanding a facility, or as a complement to direct community interviews. The permitting agency can use surveys and polls in a similar fashion, especially during major projects and at facilities that raise controversy. The agency, public interest groups, and the facility owner may also want to use surveys and polls to find out if citizens are receiving enough information about the RCRA activity and are being reached by public notices or other outreach methods.

Level of Effort

On-paper surveys distributed at meetings or by mail are relatively easy and inexpensive, aside from postage. Surveys done in person or by telephone can be very time-consuming.

How to Conduct the Activity

To prepare for surveys or telephone polls:

1. **Specify the information that you need to gather.** Construct specific questions to include in the survey or poll. For written surveys, consider which questions should be multiple choice or "check one box" -- formats that people are more likely to answer. Ensure that oral questions are not too long or confusing and be wary of the factors that can bias your surveying method (e.g., the wording of the question).

   Survey questions do not have to be highly detailed in every case. You may use surveys to allow people to submit general impressions after a meeting or a hearing.

2. **Design the survey or poll.** For written surveys, you should leave plenty of room for people to write. Give clear instructions and explain how you will be using the information. Always include the name and number of a contact person. Provide multi-lingual surveys where appropriate. Follow these same guidelines for oral surveys and polls. For oral surveys, you may want to provide a business card to the interviewee when your discussion is over

3. **Distribute the surveys and questionnaires.** As we mentioned earlier, you may distribute written surveys in person or via mail. You may also leave them for people to pick up after a meeting; or you may decide to distribute them by hand to peoples' homes. If people will need to mail the survey, consider including pre-stamped, pre-addressed envelopes.

   If you are seeking out specific information, you may want to distribute the surveys to a representative sample of the community. In some cases, you may want to do a "blanket" distribution to all homes and businesses within a certain distance of the facility.

   If you choose to do an oral survey, follow the information in the section on "Community Interviews" earlier in this Chapter.

   For telephone polls, you will have to decide whom to call and whether you will address the poll to a random sample, a representative sample, or a targeted segment of the community. If you are attempting one of the latter two options, you may want to contact community leaders and local officials to determine the demographics of the area.

When to Use

Use surveys and telephone polls when:

- you are seeking specific information from a targeted community or audience; or
- you are trying to provide people with a means of giving anonymous feedback during the permitting process.

Accompanying Activities

Always include the name and number of a **contact person** on a survey or a questionnaire. Surveys and questionnaires can be useful for gathering general impressions about specific permitting activities or public participation events, such as **availability sessions** or **public hearings**. They may also complement **community interviews** by allowing people, who may have been uncomfortable or pressured during the interview, to submit anonymous thoughts and comments.

Advantages and Limitations

Written surveys and questionnaires are relatively inexpensive and simple ways to solicit information. They can provide feedback loops for many permitting activities and some people may be more comfortable with the

anonymity that written surveys can ensure. Oral surveys and polls allow you to interact directly with members of the public and to solicit their immediate feedback on permitting issues.

Surveys conducted in-person can be very time-consuming and expensive. Written surveys may not present viewpoints that are representative of the community because people who fill out the surveys tend to have stronger feelings in favor, or against, the proposed activity. Surveys conducted by mail have the additional weaknesses of undependable response rates and questionable response quality.

Checklist for Surveys and Telephone Polls

_ Determine what type of information is needed

_ Determine what format will work best for gathering the information

Written surveys:

_ Determine if you will need to provide the survey in a multilingual format or you will need to provide for other special communication needs in the community (e.g., persons who are illiterate)

_ Prepare interview questions

_ Design the survey sheet; leave adequate writing room and make sure the instructions are clear and easy to understand

_ Provide the name of a contact person on the survey

_ Decide how you will distribute the survey, based on the public participation plan, community interviews, and background information on the facility and the community

Telephone polls or an oral surveys:

_ Identify a team to conduct the survey or the telephone poll

_____

_____

_ Identify how you will target the polling group

_ Consult a polling firm or a consultant if you are conducting your survey with a representative sample

_ Determine if you need to conduct a multilingual poll or survey and whether there are other special communication needs in the community (e.g., persons who are hearing impaired)

_ Prepare the questions for the poll or survey

_ Write a script you can use to give background information to people before the questions

_ When you conduct the survey, provide the name of a contact person, either over the phone, or by handing out business cards in person

Contact Persons/Offices

Regulatory Requirements

EPA regulations require the permitting agency to designate a contact office in most public notices. This requirement applies to draft permits, notices of intent to deny a permit, and modifications initiated by the permitting agency (§§ 124.10(d) and 270.41), as well as to the notice of application submittal (§ 124.32(b)). In these cases, the permitting agency will also provide a contact for the permit applicant. When a permit applicant holds a pre-application meeting under § 124.31, the applicant must provide public notice that includes a contact person for the facility. Similarly, the facility must provide public notice, including a contact at the agency and the facility, when requesting a Class 2 or 3 permit modification (§ 270.42 (b) and (c)). Permitting agencies must also provide contacts and telephone numbers (for the facility and the agency) during the trial burn stage at permitted and interim status combustion facilities (§ 270.62(b) and (d); 270.66(d)(3) and (g)).

Description of Activity

The contact person is a designated staff member who is responsible for responding to questions and inquiries from the public and the media. Some organizations may want to consider distributing lists of contact persons who are responsible for answering questions in certain topic areas.

Level of Effort

The amount of time that the contact person spends responding to citizen concerns and questions will depend on the level of community interest in a facility's permit or corrective action activities. A contact person may spend a few hours a day responding to citizen inquiries if there is high to moderate interest in the facility's RCRA activities.

How to Conduct the Activity

For each permit or corrective action, designate a contact who will respond to citizens' requests for information, answer their questions, and address their concerns on any aspect of the permit or cleanup process. Although permitting agencies are only required to designate a contact office, specifying a person and keeping the same person as the contact throughout the process may engender more public trust and confidence.

When a contact person is assigned:

1. **Send out a news release** announcing the contact person to all local newspapers, radio stations, and television stations. Include the contact person's telephone number and mailing address in all news releases, fact sheets, and mailings. Include in publications a self-mailer, which can be a separate flyer or a designated cut-a-way section of the fact sheet that is addressed to the contact person and leaves room for interested people to request more information or

write their comments.

2. **Give the name, address, and phone number of the contact person to all involved staff in your organization and other stakeholders.** Let staff members know that the contact person may be approached for information and that your staff should coordinate the release of information with the contact person. Inform other stakeholders that the contact person will be available for questions and information-sharing.

3. **Keep a log book** of all citizen requests and comments received by the contact person, and how each one was handled. This will help to assure that incoming requests are not filed and forgotten. This log book also provides another record of issues and concerns.

When to Use

A contact person should be designated for every facility at the outset of the RCRA process.

Accompanying Activities

Designation of the contact person should be announced in **news releases** and **fact sheets**, and **public notices**. The contact person also should be responsible for making sure that the facility's **information repository**, if required, is kept up-to-date.

Advantages and Limitations

A contact person can assure citizens that your organization is actively listening to their concerns and can provide the community with consistent information from a reliable source.

The contact person may not have the authority to resolve all of the concerns raised by citizens and other stakeholders; his or her role may be limited to providing information and facilitating communication between your staff, citizens, and other stakeholders. If, for any reason, the identity of the contact person changes, it is important to inform the community, media contacts, and other stakeholders about this change quickly. You should designate a replacement as soon as possible.

Checklist for Contact Persons

_ Designate a contact person for the facility:

_____

_ Notify media of the name, mailing address, and phone number of the contact person

_ Inform your staff and other stakeholders who are involved with the facility

_ Have contact person maintain a log book of all stakeholder requests and comments received

Telephone Contacts

Regulatory Requirements

None.

Description of Activity

Telephone contacts can be used to gather information about the community and to update State and local officials and other interested parties on the status of permitting or corrective action activities. See the section on "Surveys and Telephone Polls" earlier in this Chapter for related activities.

Level of Effort

Telephone contacts can be a time-intensive activity, depending on the nature of the call. Allow several hours per call when gathering information.

How to Conduct the Activity

In making telephone contacts:

1. **Know exactly what information to request or give out.** Plan carefully what you want to say or what information you would like to obtain from these individuals. Refer to the section on "Community Interviews" earlier in this chapter for information on how to conduct these interviews.

2. **Conduct telephone calls and take notes for your files.**

When to Use

Telephone contacts may be used:

- In the early stages of the RCRA actions to identify key officials, citizens, and other stakeholders who have a high interest in the facility;
- To gather information when face-to-face community interviews are not possible;
- When new and time-sensitive material becomes available; and
- When there is a high level of community interest in the facility, and it is important to keep key players informed.

Accompanying Activities

Telephone contacts are usually made to arrange or conduct community interviews, develop **mailing lists** and arrange for other public participation activities such as **news briefings**, **informal meetings**, and **presentations**.

Advantages and

Telephone calls can be an inexpensive and expedient method of acquiring

Limitations

initial information about the facility. Once the initial information has been gathered, telephone contacts are a quick means of informing key people about facility activities and for monitoring any shifts in community concerns.

Residents initially may feel uncomfortable discussing their concerns and perceptions over the telephone with a stranger. Once residents have met your staff in person, however, they may be more open and willing to discuss their concerns during follow-up telephone calls.

Checklist for Telephone Contacts

Initial telephone contacts:

- ☐ Identify individuals to contact:
  - ☐ State officials
  - ☐ Local officials
  - ☐ Regulatory agency officials
  - ☐ Concerned citizens
  - ☐ Media
  - ☐ Environmental groups, civic organizations, public interest groups
- ☐ Prepare information to discuss on telephone
  - ☐ Prepare questions for individuals to answer
  - ☐ Prepare information that you can give them
- ☐ Keep a log book of information received/given

On-going contacts:

- ☐ Maintain up-to-date telephone contact list
- ☐ Prepare information to discuss on telephone before each set of calls

Telephone Hotlines

Regulatory Requirements

None.

Description of Activity

A hotline is a toll-free (or local) telephone number people can call to ask questions and obtain information promptly about RCRA activities. Some hotlines allow people to order documents.

Level of Effort

The amount of time spent on the telephone hotline responding to citizen concerns and questions will depend on the level of concern the community has regarding the facility's permit or corrective action activities. You may spend several hours a day responding to inquiries if there is high to moderate interest in the facility's RCRA activities.

How to Conduct the Activity

To install a telephone hotline, either as a semi-permanent fixture (available throughout the permit review or corrective action process) or as a temporary measure (installed at the time of major community feedback, such as the public comment period):

1. **Assign one or more staff members** to handle the hotline calls. Consider installing more than one line to minimize busy signals. If staff are not available throughout the day, install an answering machine directing people to leave their name, number, and brief statement of concern, and informing them that someone in your organization will return their call promptly. If a voice mail system is available, provide information on commonly requested information such as meeting dates and locations and the permit status. Check the answering machine for messages at least once a day. If the level of concern is high, check for messages more frequently.

2. **Announce the telephone hotline** in news releases to local newspapers, radio stations, and television stations, and in fact sheets, publications, and public notices.

3. **Keep a record of each question**, when it was received, from whom, and how and when it was answered. All questions and inquiries should be responded to promptly (within 24 hours) if an answer cannot be given immediately. Be diligent in following up requests for information and tracking down accurate, direct responses.

When to Use

A telephone hotline may be used:

- When community interest or concern is moderate to high;

- When emergencies or unexpected events occur, or when a situation is changing rapidly;
- When there is a high potential for complaints (e.g., about dust or noise);
- Where literacy rates are low and written information must be supplemented; and
- Where the community is isolated and has little opportunity for face-to-face contact with project staff (e.g., rural areas, areas far from Regional offices).

Accompanying Activities

The hotline can supplement all other public participation activities.

Advantages and Limitations

A hotline can provide interested people with a relatively quick means of expressing their concerns directly to your organization and getting their questions answered. This quick response can help reassure callers that their concerns are heard. A telephone hotline also can help monitor community concerns. A sudden increase in calls could indicate that additional public participation efforts may be warranted.

You must respond quickly to questions or concerns; otherwise callers may become frustrated. If the number of calls is large, responding quickly to each inquiry could prove burdensome to your staff. Furthermore, dialing a hotline number and receiving a recorded message could irritate or alienate some members of the public.

Checklist for Telephone Hotlines

- _ Determine need for telephone hotline
- _ Identify staff responsible for answering calls
  - _ Have staff maintain a log of all calls and responses
- _ Install telephone hotlines/answering machines
- _ Notify interested people about the hotline
  - _ Public notice
  - _ Fact sheet
  - _ Mailing to facility mailing list
- _ Coordinate staffing of hotline
- _ Follow-up on calls to hotline

On-Scene Information Offices

Regulatory Requirements

None.

Description of Activity

An on-scene information office is a trailer, small building, or office space on or near the facility site, depending on what is more convenient and accessible for the affected community. The office is staffed by a full-time or part-time person(s) who responds to inquiries and prepares information releases.

Level of Effort

An on-scene information office is a time-intensive activity. You may have staff in the office up to 40 hours a week. Short Cut: Hire a contractor to staff the office; however, always ensure that a representative is there for some specified period during the week.

How to Conduct the Activity

To provide an on-scene information office:

1. **Establish the office.** You may have to rent a trailer, arrange with the owner of the facility to designate space in the facility, or rent office space in a town to be used as an office and launching area. If you will be establishing the office off-site, then you should find an area in the vicinity of the facility or in the nearest town or village.

2. **Install a telephone** and an answering machine to respond to inquiries and publicize the number in local newspapers and your public participation publications.

3. **Assign someone to staff the office.** Establish **regular** hours, including some during the weekend and weekday evenings. Publicize the trailer's hours and the services it offers.

4. **Equip the office with the same materials normally contained in an information repository, if possible.** At a minimum, include key documents and summaries of other documents that are not available. Provide a copy machine so that the public can make copies of documents in the information repository.

When to Use

An on-scene information office may be used:

- When community interest or concern is high;

- During corrective actions;
- When cleanup involves complex technologies or processes;
- When the community perceives a high level of risk to health;
- When activities may disrupt the area surrounding the facility (e.g., traffic patterns); and
- When the area near the facility is densely populated.

Accompanying Activities

The on-scene staff person can conduct **meetings** and **question and answer sessions** to inform citizens about the status of the corrective actions or other facility operations. Staff may also prepare and distribute **fact sheets** and **newsletters** to local residents, conduct **facility tours**, and support the **telephone hotline**. With the **telephone contacts** they make, they can add to and update **mailing lists** and revise **public participation plans**. An on-scene information office may also be a good location for the **information repository**.

Individuals staffing an on-scene information office for an extended period of time will necessarily have a special role in the community. Involvement in other public participation activities may represent a large part of their function. In addition to distributing information to local residents, on-site staff may be responsible for maintaining data bases of residents' addresses, the status of access to property, and a daily log of inquiries. It is important that on-site staff monitor public perceptions and concerns daily. On-scene staff often can make useful recommendations regarding stakeholder concerns. Finally and perhaps most importantly, on-site staff members will frequently serve as a liaison with the public.

Advantages and Limitations

An on-scene information office can be an effective activity for ensuring that other stakeholders are adequately informed about permitting activities and that their concerns are addressed immediately.

An information office can be very expensive since it requires, at a minimum, a part-time staff person and a telephone. Hence, it should be used only when community concerns are currently high or may be high in the future.

Checklist for On-Scene Information Offices

- __ Determine need for an on-scene information office
- __ Identify staff to work in information office
- __ Rent a trailer or office space for the information office
- __ Equip the office with a telephone, office equipment (i.e., copier), and all materials contained in an information repository.
- __ Notify interested people of availability of on-scene information office
    - __ Public Notice
    - __ Fact sheet
    - __ Mailing to facility mailing list
- __ Maintain on-scene information office
    - __ Have staff conduct the following:
        - __ Maintain the mailing list
        - __ Review media coverage
        - __ Respond to calls from citizens and stakeholder groups

Question and Answer Sessions

Regulatory Requirements

None.

Description of Activity

A question and answer session makes knowledgeable staff available to stakeholders to discuss permitting and corrective action issues. Question and answer sessions typically accompany a presentation, briefing, or meeting. Anyone at the event who needs more information will have the opportunity to speak with officials after the event. These sessions can be informal or formal.

Level of Effort

Answering questions will add a small amount of staff time to other public participation activities.

How to Conduct the Activity

To conduct a question and answer session:

1. **Announce that someone will be available for questions after the event.** Pick an area where people can meet a knowledgeable staff person for questions and answers.

2. **Be responsive, candid, and clear.** Ensure that all questions are answered. If staff cannot answer the question on the spot, they should not be afraid to say "I don't know" and offer to answer the question after getting more information. The staffer should write down the question, discuss it with other staff, and respond -- as soon as possible -- by phone or letter. Try to avoid using jargon that people will not understand.

3. **Consider brainstorming ahead of time to develop potential questions and to prepare responses.**

When to Use

Question and answer sessions are appropriate whenever people at an event need more information or the presenting organization needs more feedback. Question and answer sessions are also appropriate when people may feel more comfortable asking questions in a one-on-one situation. If a particular issue, raised by one person at a meeting, is preventing other issues from making the floor at a meeting, you may want to offer to discuss the issue one-on-one after the meeting.

Accompanying Activities

Hold question and answer sessions after **exhibits**, **presentations**, **meetings**, **facility tours**, or on **observation decks**. Some events, such as **open**

houses, have built-in question and answer sessions. In responding to inquiries, you may want to provide written information, such as **fact sheets**, or refer the questioner to a **contact person**.

Advantages and Limitations

Question and answer sessions provide direct communication between your organization and citizens. They are a useful, easy, and inexpensive way of providing one-on-one explanations in an informal setting. One-on-one discussions may attract people who are intimidated from raising issues during a meeting. Such interactions may also increase public comfort and trust in your organization.

Citizens may not be pleased if you cannot answer a question on the spot; they will certainly not be pleased if your response is slow. Be sure to respond to all unanswered questions as soon as you can.

Checklist for Question and Answer Sessions

_ Brainstorm potential questions and prepare responses

_ If you are planning a Q&A session after a meeting or other event, let people know where it will be held by mentioning it during the meeting

_ Be candid and avoid jargon in your answers. If you cannot answer a question, take the questioner's phone number or address and respond to the question as soon as you can.

Information Tables

Regulatory Requirements

None.

Description of Activity

Information tables are simple public participation tools that you can use to interact with interested stakeholders. An information table consists of a table or booth set up at a meeting, hearing, or other event (e.g., a community fair or civic gathering). It is staffed by at least one member of your organization who is available to answer questions. Pamphlets, fact sheets, and brochures are available on the table, along with a sign-up sheet for interested people to add their names to the facility mailing list.

Level of Effort

This activity is time-intensive, with at least one staff person staying at the table during the entire event. The information table is less of a drain on other resources since the materials should already be available.

How to Conduct the Activity

To prepare for an information table:

1. **Learn from community interviews which local events are most frequented by citizens during the year.**

2. **Decide whether the table will be sufficient to address community concerns.** The information table may not be effective in highly-charged environments.

3. **Set up the table.** Include important fact sheets, answers to common questions, general descriptions of the RCRA program, contact names, and hotline numbers. Allow people to sign up for the facility mailing list. Use **exhibits** if appropriate.

When to Use

Use information tables when:

- You need to provide a feedback loop after a public event;
- The RCRA activity has raised significant public interest or technical issues may raise many questions among the public;
- You are gathering names for the facility mailing list;
- A local event, where tables are available, will attract a significant portion of the community.

Information tables may be useful in connection with a **public hearing** or

Accompanying Activities

meeting. EPA recommends using information tables as part of **availability sessions** and **open houses**. **Fact sheets**, **newsletters**, **project reports** and other information should be available at the table. People who come to the table should have the opportunity to sign up for the **mailing list**. **Exhibits** and diagrams can be helpful for explaining the process or technical issues. Provide the name of a **contact person** (or a list of contact people) for interested people to take with them. Information tables provide a good opportunity to distribute questionnaires and **surveys**.

Advantages and Limitations

An information table can provide a feedback loop that complements other events in the permitting process. Information tables at availability sessions and open houses can provide a comfortable way for people to approach project staff and ask questions. At county fairs or other events, they allow project staff to interact with the community and spread information about important permitting activities.

People who approach the information table may ask questions that staff cannot answer. To avoid any negative reactions, staff should record the question and contact the person with an answer by a certain date.

Checklist for Information Tables

(As appropriate):

- ☐ Determine a location for the information table
  - ☐ Facility name, location _____
  - ☐ Contact person at location _____
- ☐ Confirm availability of location for information tables
- ☐ Discuss guidelines for information tables with the event planner
- ☐ Assign staff to cover the information table
- ☐ Collect materials for the information table
  - ☐ Table and chairs
  - ☐ Table skirt
  - ☐ A sign that identifies your organization
  - ☐ Exhibits, time-lines, surveys
  - ☐ Mailing list sign-up sheet
  - ☐ Name tags for your staff
  - ☐ Pens and notepads
  - ☐ Fact sheets, reports, pamphlets, and other documents that people can take
  - ☐ Business cards with the name of a contact person at your organization
  - ☐ Reference documents for your use
- ☐ Keep a record of comments and questions for your files

Informal Meetings with Other Stakeholders

Regulatory Requirements

None. (This type of informal meeting is distinct from the pre-application meeting required under § 124.31 (and discussed under "Public Meetings" in this Chapter) which EPA has stated should be an informal discussion open to the public).

Description of Activity

Informal meetings are meetings your organization holds with individual stakeholder groups that have particular interest in a permitting activity. These meetings are held in an informal setting, such as a resident's home or a local meeting place. Informal meetings allow interested citizens and local officials to discuss issues and concerns. Staff responsible for the facility receive first-hand information from interested community members, special interest groups, and elected officials, while citizens have the opportunity to ask questions and explore topics of interest regarding the facility in question.

Public meetings, which are distinct from **public hearings**, are a special form of informal meetings where the entire community can participate. Public meetings allow all interested parties to discuss issues regarding the facility with each other as well as the regulatory agency. Public meetings can be especially useful for allowing discussion before a public hearing and can be scheduled immediately before the hearing. Comments made during a public meeting do not become part of the official administrative record as they do during a hearing. (See the sections on "Public Meetings" and "Public Hearings" in this Chapter for more details.)

Level of Effort

An informal meeting will take two to three days to plan and conduct. This includes about three hours to set up and schedule the meeting, five hours for preparation, four hours to conduct the meeting, and four hours to follow up on any issues raised during the meeting.

How to Conduct the Activity

To conduct informal meetings:

1. **Identify interested citizens and officials.** Contact each group and local agency that is directly affected by the facility, or contact individuals who have expressed concern regarding the facility. Interested citizen/public interest groups may also want to contact the agency or the facility to set up a meeting. Offer to discuss the permit or corrective action plans at a convenient time, taking into consideration the following elements that will affect levels of community interest and concern: for facilities at which emergency

actions are required, schedule the meeting after the agency has accurate information to share with the participants; for a corrective action, determine first when community concerns may be highest and schedule meetings accordingly. For instance, it may be appropriate to hold an informal meeting when the risk assessment report is released. Holding informal meetings early in the permit process can help prevent potentially volatile situations from developing by providing citizens with one-on-one attention.

2. **Limit attendance.** To increase effectiveness, restrict attendance to between five and 20 individuals or specify attendance by invitation only. The larger the group, the less likely it is that some people will candidly express their concerns. It is difficult to establish rapport with individuals in a large group. If a greater number of stakeholders are interested, you should schedule additional small meetings. If a greater number of participants appears than are expected at an informal meeting, divide the group into smaller groups to allow more one-on-one discussion to take place.

3. **Select a meeting date, time, and place convenient to attendants.** The meeting place should have chairs that can be arranged into a circle, or some other informal setting conducive to two-way communication. A private home, public library meeting room, community center, or church hall may be more likely to promote an exchange of ideas than a large or formal public hall. When scheduling the meeting, make sure that the date and time do not conflict with other public meetings that citizens may want to attend, such as town council meetings, or with holidays or other special occasions. Permitting agencies should be sure that the meeting location does not conflict with state "sunshine laws." In selecting a public meeting place, be attentive to the special needs of handicapped individuals (e.g., access ramps or elevators). Be aware that meetings will frequently have to be scheduled during evening hours to accommodate work schedules.

4. **Begin the meeting with a brief overview.** This short presentation should include a summary of the permit review schedule and how stakeholders can be involved in the decision. These opening remarks should be kept brief and informal (no more than a few minutes) to allow maximum opportunity for open discussion with meeting attenders. Cover whatever topics the public is interested in discussing, these may include:

   - Extent of the activity;
   - Safety and health implications;
   - Factors that might speed up or delay the regulatory and technical process; and

- How community concerns are considered in making decisions on permits and corrective actions.

5. **Identify the regulatory decision-makers** (major agencies and individuals responsible for enacting and enforcing RCRA regulations.) Citizens and other stakeholders will then know where to direct further questions or voice new ideas or suggestions.

6. **Gear the discussion to the audience.** Be sensitive to the level of familiarity that the citizens have with the more technical aspects of the activities discussed.

7. **Listen and take notes.** Find out what the meeting attendees want done. Some concerns may be addressed by making minor changes in a proposed action. Discuss the possibility for accommodating these concerns or explain the reasons why citizen requests appear to be unworkable or conflict with program or legal requirements.

8. **Promptly follow-up on any major concerns.** Stay in touch with the groups and contact any new groups that have formed, so that new or increasing concerns can be dealt with before problems develop.

9. **Write up brief minutes for your files.**

When to Use

Informal meetings can be used:

- When there is widely varying level of knowledge among community members;
- When the level of tension is high and large meetings may not be appropriate;
- When the community needs more personal contact to have trust in your organization or the process;
- When groups want to discuss specific issues in which the community as a whole isn't interested.

Accompanying Activities

Community interviews or calls to **telephone contacts** usually precede these meetings, since it is during these interviews that concerned citizens groups are identified and contacted. Possible meeting locations also can be identified during the community interviews.

Distributing **fact sheets** at these meetings also may be appropriate, depending on when they are held.

Advantages and

The primary benefit of informal meetings is that they allow two-way interaction between citizens, local officials, the permitting agency, and the

Limitations

facility. Not only will citizens be informed about the developments, but the facility owner/operator and officials responsible for the site can learn how citizens view the site.

Informal meetings also add a personal dimension to what might otherwise be treated as a purely technical problem. Informal meetings offer citizens, facility staff, and officials a chance to increase their familiarity with how the process works, increase awareness of each other's point of view, and actively promote public participation. Informal meetings also may diffuse any tension between stakeholders.

Some groups may perceive your efforts to restrict the number of attenders as a "divide and conquer" tactic to prevent large groups from exerting influence on potential actions and to exclude certain individuals or groups. One way to prevent this perception is to hold informal meetings with those organizations who express concern about being left out of the process.

Irate groups or individuals also may accuse your staff of telling different stories to different groups at these small meetings. You can avoid this criticism by inviting a cross-section of interests to each small meeting or by having a large public meeting. Alternatively, you can keep a written record of the informal discussions and make it available upon request or include it in the information repository. A record of discussions is required for any legally-required meetings held during the public comment period.

Checklist for Informal Meetings with Other Stakeholders

__ Determine purpose of meeting

__ Determine number of attenders: _____

__ Determine location(s) for meeting (complete for each available facility)

__ Facility name, location _____

__ Contact person at facility _____

__ Phone number _____

__ Occupancy size _____

__ Handicap accessibility _____

__ Features:
- __Restrooms
- __Public telephones
- __Adequate parking

__ Determine date, time of meeting:

Date:_____

Time:_____

__ Identify interested citizens and officials

__ Contact citizen groups, invite a representative to the meeting

__ Prepare meeting agenda

__ Overview of project

__ Identify decision-makers

__ Allow time for discussion, question/answers

__ Follow-up

Public Meetings

Regulatory Requirements

The pre-application meeting that a permit applicant is required to conduct under § 124.31 is a type of public meeting, though it need not be restricted to the type of meetings described in this section. In some cases, different meeting formats will fulfill the requirements (see "The Pre-Application Meeting" in Chapter 3). Permit holders are also required to hold public meetings when requesting a class 2 or 3 permit modification under § 270.42(b) or (c).

Description of Activity

Public meetings are not public hearings. **Public hearings** are regulatory requirements that provide a formal opportunity for the public to present comments and oral testimony on a proposed agency action. Public meetings, on the other hand, are less formal: anyone can attend, there are no formal time limits on statements, and the permitting agency and/or the facility usually answers questions. The purpose of the meeting is to share information and discuss issues, not to make decisions. Due to their openness and flexibility, public meetings are preferable to hearings as a forum for discussing complex or detailed issues.

Public meetings sometimes complement public hearings. Public meetings can be especially useful for allowing discussion before a public hearing and can be scheduled immediately before the hearing (**workshops**, see below, can also fulfill this need). Comments made during a public meeting do not become part of the official administrative record as they do during a hearing. Public meetings provide two-way communication, with community members asking questions and the permitting agency providing responses. Unlike the activity in the section above ("Informal Meetings with Other Stakeholders"), public meetings are open to everyone.

While public meetings are usually called and conducted by the permitting agency (e.g., before public hearings) or the facility (e.g., during permit modification procedures), it is common for civic, environmental, and community organizations to hold public meetings where ideas can be discussed freely.

EPA's regulations require several specific public meetings. Section 124.31 calls on prospective permit applicants to announce and hold an informal public meeting prior to submitting a permit application. The permitting agency is not required to attend the meeting. See Chapter 3 for more information about the pre-application meeting. Permittees are required to hold public meetings when requesting a class 2 or 3 modification under § 270.42.

Level of Effort

While a public meeting should require less planning than a public hearing, it may take several days to a week to arrange the location and logistics. See

the "Public Notice" section above in this chapter to determine the resources you will need to announce the meeting. Other activities include preparing and copying materials for distribution. You may be able to distribute some of the same materials at the meeting and the public hearing (if applicable).

How to Conduct the Activity

To hold a public meeting, you will follow many of the same steps as for a public hearing (see Chapter 3 for specific guidance regarding pre-application meetings under § 124.31):

1. **Anticipate the audience and the issues of concern.** Identify the audience's objectives, expectations, and desired results. With this information you will know what topics to spend time on and what materials and exhibits to provide. If a part of your audience does not speak English, arrange for a translator.

2. **Schedule the meeting location and time** so that citizens (particularly handicapped individuals) have easy access. Ensure the availability of sufficient seating, microphones, lighting, and recorders. Hold the meeting at a time and place that will accommodate the majority of concerned citizens.

3. **Announce the meeting** at least 30 days before the meeting date. Provide notice of the hearing in local newspapers, broadcast media, signs, and mailings to interested citizens (you can find requirements for pre-application meetings in § 124.31(d)). Choose communication methods that will give all segments of the community an equal opportunity to participate. Use multilingual notices where appropriate. Make follow-up phone calls to interested parties to ensure that the notice has been received. Provide the name of a contact person.

4. **Make relevant documents available for public review.** If you are a permittee requesting a class 2 or 3 permit modification, you must place a copy of the modification request and supporting documents in a location that is publicly accessible and in the vicinity of the facility (see § 270.42(b)(3) and (c)(3)). Announce the location in the public notice for the meeting. For other public meetings, you should consider making important documents available prior to the meeting.

5. **Provide an opportunity for people to submit written questions and comments.** Not all individuals will want, or be able, to attend the meeting. Announce in public notices and mailings that written comments and questions can be submitted to the contact person. You may want to raise some of these written comments and questions at the public meeting.

6. **Post a sign-up sheet** so that attendees can voluntarily provide their names and addresses. If you are a permit applicant holding a pre-application meeting under § 124.31, you can use this sheet to produce

and submit an attendee list as part of your part B application (as required under § 124.31© and § 270.14(b)(22)). The permitting agency will use the attendee list to help generate the facility mailing list.

7. **Take notes** about the major issues of concern and **prepare a summary of all oral and written comments.** If you are a permit applicant holding a pre-application meeting under § 124.31, you must submit a summary of the meeting as part of your part B permit application (as required under § 124.31© and § 270.14(b)(22)). For other public meetings, you should make a summary available for public review and announce where it is available.

When to Use

Some permitting agencies have had success in holding public meetings prior to a public hearing. Public hearings are often "staged" events with little opportunity for new input or discussion. Some participants have criticized them as opportunities for grandstanding. Public meetings, on the other hand, allow interested parties to ask questions and raise issues in an informal setting. A public meeting can provide a useful means of two-way communication at any significant stage during the permitting or corrective action process.

If you are a permit applicant required to hold a pre-application meeting under § 124.31, the public meeting format is one option you can use. Refer to the discussion in Chapter 3 for more information.

Accompanying Activities

Provide **public notice** of the meeting and designate a **contact person**. **Fact sheets** and **exhibits** can inform people about permitting issues at public meetings. You may also consider establishing an **information table** where people who may feel uneasy speaking during the meeting can ask questions and pick up materials. Another option is to make your staff available after in the meeting, in the same manner as an **availability session** or an **open house**. **Information repositories** can complement the meeting by making important documents available for public review.

Advantages and Limitations

A public meeting provides a forum where interested people can ask questions and discuss issues outside of the formality of a public hearing. They are flexible tools that are open to everyone.

Some citizens may be reluctant to speak up at public meetings. You can address this concern by providing one-on-one access to your staff via an information table or an open house, or by scheduling informal meetings. Public meetings, like public hearings, could become adversarial.

Checklist for Public Meetings

(As applicable):

__ Determine location for public meeting

- __ Facility name, location _____
- __ Contact person at location _____
- __ Phone number _____
- __ Occupancy size _____
- __ Handicap accessibility _____
- __ Features:
  - __ Restrooms
  - __ Public telephones
  - __ Adequate parking
  - __ Security

__ Determine date, time of public meeting:

Date: _____

Time: _____

__ Confirm availability at location (if location is not available, determine new location or new date)

__ Announce the public meeting. (Pre-application meetings under § 124.31 must be announced through a display advertizement in a newspaper of general circulation, over a broadcast medium, and through a sign posted on or near the site of the facility or proposed facility).

- __ Contact local officials
- __ Notify key agencies and other stakeholder groups

__ Provide an opportunity, in the notice, for people to submit written comments

__ Determine whether a translator is needed

__ Determine presentation requirements (depending upon the specific requirements of your presentation, some of these items may be optional)

- __ Electrical outlets
- __ Extension cords

Checklist for Public Meetings (continued)

- __ Accessible lighting control panel
- __ Podium
- __ Stage
- __ Table(s) and chairs for panel
- __ Table skirt
- __ Sign-up sheet for the mailing list. (If you are conducting a pre-application meeting under § 124.31, you are required to provide a sign-up sheet or another means for people to add their names to the facility mailing list. You must provide the sheet to the permitting agency as a component of your part B permit application).
- __ Water pitcher and glasses
- __ Sound system
- __ Microphones (stand, tabletop)
- __ Cables
- __ Speakers
- __ Technician/engineers available for hearing
- __ Visual aids
- __ Slides
- __ Slide projector
- __ Extra projector bulbs
- __ Flip chart
- __ Flip chart markers
- __ Overhead transparencies
- __ Overhead machine
- __ VCR and monitor
- __ Screen
- __ Table for projection equipment

Checklist for Public Meetings (continued)

- __ Security personnel (if necessary)
- __ Table for meeting recorder (who will produce a meeting transcript or summary)
- __ Registration table
- __ Registration cards
- __ Writing pens
- __ Signs
- __ Miscellaneous supplies:
- __ Scissors
- __ Tape (masking, transparent)
- __ Thumbtacks
- __ Public information materials (fact sheets, etc.)

__ Prepare meeting agenda. (Facility owners/operators conducting a pre-application meeting under § 124.31 should refer to chapter 3 of this manual for information on the subjects they should cover during the meeting).

__ Arrange contingency planning. Decide what to do if:
- C more people show up than capacity
- C equipment malfunctions

__ Prepare the meeting summary/transcript and make it available to the public. (Facility owners/operators conducting a pre-application meeting under § 124.31 must provide the summary to the permitting agency as a component of the part B application).

Public Hearings

Regulatory Requirements

Public hearings are required if requested (§ 124.11) by the public during the draft permit stage, during an agency-initiated modification under § 270.41, or a Class 3 permit modification under § 270.42(c)(6). The agency will also hold a public hearing at the draft permit stage when there is a high level of public interest (based on requests), or when the agency thinks that the hearing might clarify relevant issues (§ 124.12). The agency will also hold a hearing if these conditions apply during closure or post-closure at interim status facilities (§§ 265.112(d)(4) and 265.118(f)).

Description of Activity

Public hearings provide an opportunity for the public to provide formal comments and oral testimony on proposed agency actions. Occasionally the agency will present introductory information prior to receiving comments. All testimony received becomes part of the public record.

In contrast to a public hearing, a **public meeting** (see above in this Chapter) is intended to provide two-way discussion and is not always recorded for the public record.

Permittees and facility staff have no official role during a hearing. The hearing is a regulatory requirement of the permitting agency.

Level of Effort

Several days to a week may be required to arrange for a public hearing, including the location, hearing logistics, and agenda preparation. Other activities include preparing the notice for the hearing, conducting a dry-run of the hearing, and preparing and copying materials.

How to Conduct the Activity

To conduct public hearings:

1. **Anticipate the audience and the issues of concern.** Identify the audience's objectives, expectations, and desired results. With this information you can determine whether the hearing is likely to be confrontational, or if the audience will need more detailed information about a permit or corrective action. If a part of your audience does not speak English, arrange for a translator.

2. **Schedule the hearing location and time** so that citizens (particularly handicapped individuals) have easy access. Identify and follow any procedures established by the local and state governments for public hearings. Ensure the availability of sufficient seating, microphones, lighting, and recorders. Hold the hearing at a time and place that will accommodate the majority of concerned citizens.

3. **Arrange for a court reporter** to record and prepare a transcript of

the hearing.

4. **Announce the public hearing** at least 30 days before the hearing date. Provide notice of the hearing in local newspapers and mailings to interested citizens. Under § 124.10(b), you may combine the hearing notice with the draft permit notice. Make follow-up phone calls to interested parties to ensure that the notice has been received.

5. **Provide an opportunity for people to submit written comments.** Not all individuals will want to provide oral testimony. Publicize where written comments can be submitted and how they will be reviewed.

6. **Prepare a transcript of all oral and written comments.** Announce where the transcript will be available for public review.

The following are general tips on conducting public hearings:

Be clear and up front with meeting format and logistics. Public hearings are very limited in the amount of information that is exchanged and the extent to which responses are given. Participants should not expect the question and answer format found in public meetings.

Establish meeting format. Public hearings should be managed by a hearings officer or moderator, whose responsibility it is to ensure that all comments are taken for the public record.

- Establish a speakers list. A moderator should develop a list of speakers from the list of respondents to public notices (e.g., those responding to a notice saying, "those wishing to be placed on the list of commenters should contact ...") and/or by asking those wishing to speak to identify themselves on a sign-up list on the way into the hearing. While limiting commenters to a pre-developed list may be inappropriate, such lists serve as valuable management tools in bringing forward commenters in an orderly and expeditious manner.

- Establish time limits for commenters. A moderator should establish a set time limit for an individual to make comments. Typically the limit is five minutes or less. Those wishing to make more detailed comments should be encouraged to submit their comments in writing.

- Establish time limits (if any) for the hearing. Based on your speakers list, and assuming a limited speaking time for individual commenters, the moderator may establish time limits (if any) on the hearing. Most hearings last between two and five hours. However, for very controversial topics, public hearings have been known to extend over a period of days.

- Interacting with commenters. Because comments become part of the public record, the moderator should ask all commenters to give their

names and addresses. If there is doubt about spelling, the moderator should ask the commenters to spell names or street names. In cases where there may be litigation, it is common practice to further request that anyone legally representing any party as part of the permit process or decision identify that fact.

When giving the floor to a commenter, the moderator should also note the person's name, so that he/she can thank the commenters by name at the conclusion of the comment (e.g., "Thank you for those comments, Ms. Smith.").

- Speakers from the permitting agency. There are no set rules for who should participate or speak at a public hearing. In the spirit of the law, the participants from the agency should be those who will be most involved with making the actual decision -- that is, the permit writer, and senior staff who will weigh all information, including these public comments, prior to reaching a final decision. Speakers from the agency should be limited to explaining briefly the decision being made (e.g., "We are here to discuss a proposed modification to the facilities permit to conduct the following activities...").

When to Use

- When requested by a member of the public during a public comment period on a permit, closure, or corrective action. Once requested, hearings require a minimum 30-day advance notice.
- Public hearings are usually conducted during the public comment period following the issuance of a draft permit, major permit modification, or at the selection of a proposed corrective measure.
- Public hearings may be appropriate at other times during the process, especially if the level of community concern warrants a formal record of communication.

Accompanying Activities

Public notices distributed to the **mailing list** and published in local newspapers are used to announce hearings to the public. If a hearing is held to solicit comments on either a draft permit decision or proposed corrective measure, the agency must prepare a **response to comments**. The response to comments documents all submitted public comments and includes the agency's responses. An educational **workshop** or **public meeting** may be useful shortly before the public hearing to explain key issues of the proposed decision or corrective measure and respond to citizen concerns.

Advantages and Limitations

A hearing provides a record of communication so citizens can be sure that their concerns and ideas reach the permitting agency. Public hearings generally should not serve as the only forum for citizen input. They occur at the end of a process that should have provided earlier public access to information and opportunities for involvement. Earlier opportunities

should answer most questions and arguments that are based on curiosity, emotion, sensationalism, or a lack of knowledge about the situation, thereby freeing the hearing for factually-based questions. Meet citizens' needs for information before a formal hearing with techniques such as fact sheets, small-group meetings, and one-on-one briefings.

The formality of a public hearing often creates an atmosphere of "us versus them." There may be little opportunity to interact with citizens. This may be frustrating to some; however, informal gatherings and question and answer sessions are often effective ways to interact with the public on an interpersonal level. A variety of informal techniques, ranging from talking to citizens groups to holding workshops, are discussed throughout this chapter.

Public hearings can easily become adversarial. One way to avoid hostility or confrontation is to make sure the community has had an opportunity to express concerns in a less formal setting prior to the hearing. More frequent contact with concerned citizens before a formal public hearing will reduce the likelihood of a confrontation.

Checklist for Public Hearings

(As appropriate):

__ Determine location(s) for public hearing

- __ Facility name, location _____
- __ Contact person at facility _____
- __ Phone number _____
- __ Occupancy size _____
- __ Handicap accessibility _____
- __ Features:
  - __ Restrooms
  - __ Public telephones
  - __ Adequate parking
  - __ Security

__ Determine date, time of public hearing:

Date: _____

Time: _____

__ Confirm hearing facility availability (if facility not available, determine new facility or new hearing date)

__ Announce the public hearing through a public notice in at least one newspaper 30 days prior to the hearing

- __ Contact local officials
- __ Notify key agencies

__ Determine presentation requirements (depending upon the specific requirements of your presentation, some of these items may be optional)

- __ Electrical outlets
- __ Extension cords
- __ Accessible lighting control panel

Checklist for Public Hearings (continued)

- _ Podium
- _ Stage
- _ Table(s) and chairs for panel
- _ Table skirt
- _ Water pitcher and glasses
- _ Sound system
- _ Microphones (stand, tabletop)
- _ Cables
- _ Speakers
- _ Technician/engineers available for hearing
- _ Visual aids
- _ Slides
- _ Slide projector
- _ Extra projector bulbs
- _ Flip chart
- _ Flip chart markers
- _ Overhead transparencies
- _ Overhead machine
- _ VCR and monitor
- _ Screen
- _ Table for projection equipment
- _ Security personnel

Checklist for Public Hearings (continued)

- __ Table for court reporter
- __ Registration table
- __ Registration cards
- __ Writing pens
- __ Signs
- __ Miscellaneous supplies:
- __ Scissors
- __ Tape (masking, transparent)
- __ Thumbtacks
- __ Public information materials (fact sheets, etc.)

__ Prepare meeting agenda

__ Determine hearing participants/speakers

_____

_____

_____

_____

__ Prepare opening comments for hearing officer

__ Arrange contingency planning, decide what to do if:
- C more people show up than capacity
- C the crowd becomes disruptive

__ Coordinate with public involvement coordinator on notification of the media

__ Set date and time for debriefing following the hearing

Availability Sessions/Open Houses

Regulatory Requirements

None. (In some cases, an availability session or an open house may fulfill the pre-application meeting requirement under § 124.31, as long as the meeting achieves the standards of that section. See "The Pre-Application Meeting" in Chapter 3 for more detail.)

Description of Activity

Availability sessions/open houses are informal meetings in a public location where people can talk to involved officials on a one-to-one basis. The meetings allow citizens to ask questions and express their concerns directly to project staff. This type of gathering is helpful in accommodating individual schedules.

Availability sessions and open houses can be set up to allow citizens to talk with representatives from all interested organizations. Citizens can find out more about all sides of a permitting issue through conversations with agency officials, facility staff, and representatives of involved interest groups and civic organizations.

Level of Effort

An availability session/open house may take two to three days to plan and conduct. Allow sufficient time to select a date, time, and location for the meeting, plan for the session, prepare supporting materials, and meet with and brief your staff who will attend the meeting. You should plan for about five hours for the actual session.

How to Conduct the Activity

To conduct an availability session/open house:

1. **Select a date, time, and location for the availability session/open house that encourages attendance.** Evening hours usually are preferable. The location should be in an easily accessible building familiar to residents (such as a public library, school, or local meeting room).

2. **Anticipate the number of attenders and plan accordingly.** If a large number of people is expected, consider the possibility of holding two availability session/open houses to enable staff to meet and talk with each attender. Alternatively, you can increase the number of staff or the length of the availability session/open house. As a general rule, planning for one staff member per 15-20 attenders should foster an informal atmosphere for conversation, and thereby avoid the situation where a staff member has to speak to a "crowd."

3. **Develop or gather together appropriate explanatory materials.** These materials may include poster boards, handouts, or fact sheets.

4. **Publicize the availability session/open house at least two weeks ahead of time, if possible.** Send announcements to newspapers, television and radio stations, citizens on the mailing list, and any interested community organizations that publish newsletters.

5. **Ensure that appropriate staff attend,** so that citizens can meet those who will be responsible for facility activities. The staff present should be able to answer both technical and policy questions.

6. **Meet with and brief staff and rehearse for the session.** Anticipate questions that may be asked during the session and prepare answers.

When to Use

An availability session/open house is most appropriate:

- When scheduling of meetings is difficult because of community members' schedules;
- When new information is available on several different technical or regulatory issues that would make explaining it in its entirety would be too long for a more formal meeting;
- When community members have widely varying interests or levels of knowledge;
- When an informal setting is appropriate to enhance your credibility with the community;
- When staff is available;
- When larger crowds will make it difficult for certain members of the public to raise questions; and
- In some cases, to fulfill the pre-application meeting requirements in § 124.31 (see “Regulatory Requirements” above in this section).

Accompanying Activities

Exhibits and **fact sheets** can provide background information that enables citizens to ask more informed questions about the facility during the availability session/open house.

Advantages and Limitations

The one-to-one conversations during an availability session/open house can help build trust and establish a rapport between citizens and project staff. An informal, neutral setting will keep officials and the public relaxed and make communications smoother. Citizens can find out more about all viewpoints concerning a permitting action if public interest groups, civic

organizations, agency officials, and facility staff are present at the session.

Planning and conducting an availability session/open house can require a significant amount of staff time. A low turnout may not justify the effort. Hence, community interest in the site should be significant before an availability session/open house is planned.

Checklist for Availability Sessions/Open Houses

(* If you are conducting this activity to fulfill the requirements of § 124.31, the activity must meet the standards of that section. See Chapter 3 for more information).

(As appropriate):

- __ Determine location(s) for meeting (complete for each available facility)
  - __ Facility name, location _____
  - __ Contact person at facility_____
  - __ Phone number_____
  - __ Occupancy size_____
  - __ Handicap accessibility_____
  - __ Features:
    - __ Restrooms
    - __ Public telephones
    - __ Adequate parking
- __ Determine date, time of meeting:

  Date: _____

  Time: _____
- __ Prepare draft notice (public notice, flier)
- __ Coordinate internal review of notice
- __ Prepare final notice
- __ Determine what officials will attend availability session/open house
- __ If applicable, coordinate with other organizations that will be available at the session
- __ Notify citizens of availability session/open house
  - __ Direct mailing to citizens on facility mailing list
  - __ Verify that mailing list is up-to-date
  - __ Request mailing labels
  - __ Public notice in local newspaper(s)
- __ Prepare handouts, other informational material for availability session/open house

Workshops

Regulatory Requirements

None.

Description of Activity

Workshops are seminars or gatherings of small groups of people (usually between 10 and 30), led by a small number of specialists with technical expertise in a specific area. In workshops, participants typically discuss hazardous waste issues where citizens comment on proposed response actions and receive information on the technical issues associated with the permitting process and the RCRA program in general. Experts may be invited to explain the problems associated with releases of hazardous substances and possible remedies for these problems. Workshops may help to improve public understanding of permit conditions or hazardous waste problems at a facility and to prevent or correct misconceptions. Workshops also may identify citizen concerns and encourage public input.

Level of Effort

A one-day workshop may take about three days to a week to plan and execute. Another day will probably be required to follow up on any issues that arise during the workshop.

How to Conduct the Activity

To conduct a workshop:

1. **Determine the focus of the workshop.** Decide what topic or topics will be covered in either one or more workshops. Suggested topics include: purpose of RCRA; description of the permit process or corrective action program; proposed remedies; risk assessment; identified health or environmental problems; and/or method and format for receiving citizen comments on the proposed or ongoing actions. Determine what staff will be needed at each workshop and whether any outside experts will be needed.

2. **Plan the workshop.** Decide ahead of time on a minimum and maximum number of participants. If there are too few, consider holding an informal meeting and postpone the workshop until additional interest develops. Identify a convenient location and time for the workshop, and set a date that does not conflict with other important meetings or interests (for example, town council meetings, high school sporting events).

3. **Announce the workshop** by publishing a notice well in advance (at least 3 weeks) in the local newspapers. Send a notice of workshops with mailings to all citizens on the facility mailing list and distribute posters around town. Send out invitations and registration forms to

concerned citizens. Provide for multiple registrations on each form to accommodate friends who also might be interested in the workshop. Emphasize that the number of participants is limited, and provide a deadline for registration.

When to Use

Workshops are appropriate:

- When the RCRA process needs to be explained to community members interested in participating in the process;
- When specific topics needs to be discussed in detail, especially health or risk assessment issues; and
- When technical material needs to be explained and feedback from the community is important to make sure that citizens understand the material.

Accompanying Activities

Workshops can be conducted before formal **public hearings** or during **public comment periods** to give citizens some ideas on developing and presenting testimony. **Fact sheets** and **exhibits** can complement the workshop.

Advantages and Limitations

Workshops provide more information to the public than is possible through fact sheets or other written materials. Workshops have proven successful in familiarizing citizens with key technical terms and concepts before a formal public meeting. Workshops also allow two-way communication, making them particularly good for reaching opinion leaders, interest group leaders, and the affected public.

If only a limited number are held, workshops can reach only a small segment of the affected population.

When planning a workshop, you should make sure that it is announced in local newspapers, to help ensure that it will be well-attended. In addition, it may be helpful to specifically invite all residents who have expressed an interest in the site.

Checklist for Workshops

(As appropriate):

- __ Determine purpose of workshop _____
  - __ Determine number of attenders _____
- __ Plan the workshop
  - __ Identify topics to be presented
  - __ Identify agency officials to present topics, handle registration
  - __ Prepare handouts, other informational materials
- __ Determine location(s) for workshop (complete for each available facility)
  - __ Facility name, location _____
  - __ Contact person at facility _____
  - __ Phone number _____
  - __ Occupancy size _____
  - __ Handicap accessibility _____
  - __ Features:
    - __ Restrooms
    - __ Public telephones
    - __ Adequate parking
- __ Determine date, time of workshop:

  Date: _____

  Time: _____
- __ Prepare draft notice announcing workshop (public notice, flier)
- __ Coordinate internal review of notice
- __ Prepare final notice

Checklist for Workshops (continued)

- ___ Notify citizens of workshop
  - ___ Direct mailing to citizens on facility mailing list
  - ___ Verify that mailing list is up-to-date
  - ___ Request mailing labels
  - ___ Public notice in local newspaper(s)
- ___ Determine presentation requirements
  - ___ Electrical outlets
  - ___ Extension cords
  - ___ Accessible lighting control panel
  - ___ Window covers
  - ___ Podium
  - ___ Stage
  - ___ Table(s) and chairs for panel
  - ___ Water pitcher and glasses
  - ___ Sound system
  - ___ Microphones (stand, tabletop, lavaliere)
  - ___ Cables
  - ___ Speakers
  - ___ Technician/engineers available for hearing
  - ___ Visual aids
  - ___ Slides
  - ___ Slide projector

Checklist for Workshops (continued)

- _ Extra projector bulbs
- _ Flip chart
- _ Flip chart markers
- _ Overhead transparencies
- _ Overhead machine
- _ VCR and monitor
- _ Screen
- _ Table for projection equipment
- _ Registration table
- _ Registration cards
- _ Writing pens
- _ Signs
- _ Miscellaneous supplies:
- _ Scissors
- _ Tape (masking, transparent)
- _ Thumbtacks
- _ Public information materials (fact sheets, etc.)

_ Arrange and conduct at least one rehearsal

Attending Other Stakeholder Meetings and Functions

Regulatory Requirements

None. (The permitting agency may need to attend public meetings held by the permittee under § 270.42 in order to respond to public comments on the modification request. Agencies may also want to attend the applicant's pre-application meeting held under § 124.31. See the section on the "Pre-Application meeting" in Chapter 3 for more detail.)

Description of Activity

Permitting agencies, facilities, local governments, environmental organizations, religious and civic groups may all hold meetings or other gatherings during the permitting process. Some may be required by regulation and others may be informational meetings or discussions of important issues. As an involved stakeholder, you can learn more about the views of other stakeholders by attending their meetings. You can join in important discussions and provide information. Some groups may invite you to give a **presentation** or a **briefing**.

Level of Effort

The time you commit to attending other stakeholder meetings or functions will depend on the level of your participation. Meetings can vary in length; your resource commitment will be more substantial if you agree to give a **briefing** or a **presentation** (see those sections of this chapter for more information). You will need a few hours to prepare notes for your file after the meeting.

How to Conduct the Activity

If you decide to attend a meeting, you may want to inform the host organization that you plan to attend the meeting. If you choose to identify yourself at the meeting, be prepared to answer questions. You may want to bring fact sheets or other information you can provide upon request. In any case, be prepared to listen to the discussion and prepare notes for your files.

The host organization may ask you to provide a **briefing** or a **presentation**. See those sections of this chapter for more information.

When to Use

You may want to attend other stakeholders' meetings when the meetings are open and you want to learn more about the views held by other stakeholders. In some cases, a group may invite your organization to attend a meeting to provide input or answer questions. In such cases, you should be prepared to answer questions or present the views of your organization.

If appropriate, you may want to make **fact sheets** available upon request at

Accompanying Activities

the meeting. Provide the name of a **contact person**. If you are representing the permitting agency, let participants know about how to put their names on the facility **mailing list**.

Advantages and Limitations

Attending meetings or functions held by other stakeholders can provide useful insight to other opinions and concerns. This information can help you plan other public participation events and complement data you gather from community interviews.

This activity should not be used in place of informal meetings or other activities that may be more appropriate. If your attendance has the potential to cause problems, make sure to contact the host before the meeting.

Citizen Advisory Groups

Regulatory Requirements

None.

Description of Activity

A Citizen Advisory Group (CAG) provides a public forum for representatives of diverse community interests to present and discuss their needs and concerns with government and/or the facility. Although CAGs may come in many different forms and have different responsibilities and roles, they are generally composed of a board of stakeholders that meets routinely to discuss issues involving a particular facility. The purpose of a CAG is usually to advise a facility owner/operator or the permitting agency on permitting or corrective action activities.

CAGs can be a good way to increase active community participation in environmental decision-making and provide a voice for affected community members and groups. They promote direct, two-way communication among the community, the permitting agency, and the facility.

The make-up and mission of a CAG may vary -- there is no set formula governing the make-up or responsibilities of the group. The best type of CAG to use will depend on the situation. For instance, a citizen organization may create a CAG of affected community members to provide an official voice from the community. Facility owner/operators may create a CAG of affected community members to provide informal or formal advice. A permitting agency may form a CAG that includes stakeholders from the facility, the community, and the agency.

In establishing a CAG, it is important to bear in mind that the size of a group can often have an impact on its effectiveness -- for example, too large of a group can inhibit how efficiently it can work and come to consensus on issues, and too small of a group may not be adequate to represent diverse community concerns.

Forming a CAG does not necessarily mean that there will be universal agreement about permitting or corrective action issues. Nor does having a CAG mean there will be no controversy during the process. However, when decisions made by the facility or the permitting agency differ from the stated preferences of a CAG, the facility or the agency should accept the responsibility of explaining its decision to CAG members.

RCRA regulations do not require the use of advisory groups; however, EPA regulations do contain standards for advisory groups if EPA decides to require them under 40 CFR. These standards are located in 40 CFR 25.7.

Although these standards may not apply to all types of advisory groups used in conjunction with RCRA permitting, they provide useful guidance for agencies, facilities, and public interest groups who may want to use advisory groups. A copy of the part 25 regulations is available Appendix F.

EPA's Office of Emergency and Remedial Response has issued guidance on the use of CAGs at Superfund sites (see Appendix E). Although there are many differences between the Superfund and RCRA programs (most notably that Superfund often deals with abandoned sites while RCRA typically deals with existing or potential facilities), a large part of the Superfund CAG guidance discusses CAG development, membership, and training that may be applicable to some RCRA CAGs. Superfund terminology and process aside, the guidance contains some very useful, concise advice on various aspects of CAGs.

Although CAGs are a useful tool in many situations, they may not always be appropriate. See the section "When to Use" below for a list of factors you should consider before forming a CAG.

Level of Effort

CAGs can be a time-consuming and expensive endeavor. Membership selection, meeting preparation and follow-up, information dissemination, and training all take a lot of resources. Unlike the Superfund program, agencies that implement RCRA cannot provide Technical Assistance Grants (TAGs) to help defray the costs of CAGs.

How to Conduct the Activity

See EPA's *Guidance for Community Advisory Groups at Superfund Sites* and 40 CFR § 25.7 (in Appendices E and F) for information on how to set up CAGs. Keep in mind that CAGs under the RCRA program will differ from CAGs under Superfund. You may want to obtain a copy of the reference list of public participation and risk communication literature (available through the RCRA Hotline or the RCRA Information Center in Docket Number F-95-PPCF-FFFFF) to look for additional information sources on this topic.

When to Use

A CAG can be formed at any point in the permitting or corrective action process, and may be most effective in the early stages. Generally, the earlier a CAG is formed, the more members can participate in and impact decision-making.

CAGs may not be appropriate in every situation. If you are considering use of a CAG, you should consider the following factors:

- the level of community interest and concern;
- community interest in forming a CAG;
- the existence of groups with competing agendas in the community;

- environmental justice issues or concerns regarding the facility;
- the history of community involvement with the facility, or with environmental issues in general; and
- the working relationship between the facility, the community, and the permitting agency.

Accompanying Activities

Depending on the make-up and the purpose of the CAG, you may want to provide **public notice**, hold a **public meeting**, and issue a **news release** before forming the CAG. The CAG may choose to provide public participation activities (such as **meetings**, **newsletters**, or **availability sessions**) as part of its mission.

Advantages and Limitations

CAGs can increase active community participation in environmental decision-making and provide a voice for affected community members and groups. They promote direct, two-way communication among the community, the permitting agency, and the facility and can highlight your organization's commitment to inclusive stakeholder input.

CAGs can be time- and resource-intensive. CAGs that do not accurately reflect or account for public concerns may lose support in the community. In addition, uncertainty about the group's charter may cause conflict and hard feelings. If you plan to use a CAG, the mission and responsibilities of the CAG must be made clear from the start. Finally, CAGs can spend so much time agreeing on procedures that they drive away people who are concerned with substance. The need for elaborate procedures can be sharply reduced if an advisory group agrees to work on a consensus basis rather than by majority vote.

APPENDICES

APPENDIX A -- LIST OF EPA CONTACTS

EPA Headquarters

401 M Street, SW
Washington, DC 20460

Directory Assistance	(202) 260-2090 (TDD 260-3658)
Office of Solid Waste and Emergency Response	(202) 260-4610
Office of Solid Waste	(202) 260-4627
Office of Enforcement and Compliance Assurance	(202) 260-4134
RCRA Hotline	(800) 424-9346 (TDD 553-7672)
(Washington, DC Metro Area)	(703) 412-9810 (TDD 412-3323)
Hazardous Waste Ombudsman	(800) 262-7937
(Washington, DC Metro Area)	(202) 260-9361
Office of Environmental Justice	(800) 962-6215
(Washington, DC Metro Area)	(202) 260-6359
Pollution Prevention Information Clearinghouse	(202) 260-1023
Public Information Center	(202) 260-2080
RCRA Information Center	(703) 603-9230 (see brochure)

EPA Regional Offices

Region 1 (CT, ME, MA, NH, RI, VT)	JFK Federal Building Boston, MA 02203-0001 (617) 565-3420
Region 2 (NJ, NY, PR, VI)	290 Broadway New York, NY 10007-1866 (212) 637-3000
Region 3 (DE, DC, MD, PA, VA, WV)	841 Chestnut Building Philadelphia, PA 19107 (215) 597-9800
Region 4 (AL, FL, GA, KY, MS, NC, SC, TN)	345 Courtland St., NE Atlanta, GA 30365 (404) 347-4727
Region 5 (IL, IN, MI, MN, OH, WI)	77 West Jackson Blvd. Chicago, IL 60604-3507 (312) 353-2000
Region 6 (AR, LA, NM, OK, TX)	Fountain Place 12th Fl., Suite 1200 1445 Ross Avenue Dallas, TX 75702-2733 (214) 665-6444
Region 7 (IA, KS, MO, NE)	726 Minnesota Avenue Kansas City, KS 66101 (913) 551-7000

Region 8 (CO, MT, ND, SD, UT, WY)	999 18th Street, Suite 500 Denver, CO 80202-2466 (303) 293-1603
Region 9 (AZ, CA, HI, NV, AS, GU)	75 Hawthorne St. San Francisco, CA 94105 (415) 744-1305
Region 10 (AK, ID, OR, WA)	1200 Sixth Avenue Seattle, WA 98101 (206) 553-1200

organization, telephone number, and an explanation of what they need. Questions are usually answered within one business day.

Underground Storage Tank Docket

Telephone Number: 703 603-9231
Hours: Monday to Friday, 9:00 a.m. to 4:00 p.m. EST

Provides documents and regulatory information pertinent to RCRA's Subtitle I (the Underground Storage Tank program).

Superfund Docket

Telephone Number: 703 603-9232
Hours: Monday to Friday, 9:00 a.m. to 4:00 p.m. EST

Provides rulemaking material pertinent to the Superfund Program and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Hazardous Waste Ombudsman Program

Telephone Numbers: 800 262-7937, 202 260-9361
Contact: Robert Martin

Assists private citizens and organizations that have been unable to voice a complaint or resolve problems through normal channels in coping with the complexities of hazardous waste and Superfund legislation. Each region has an ombudsman representative. For more information, call the RCRA/Superfund/EPCRA Hotline or the contact cited above.

Small Business Ombudsman Hotline

Telephone Numbers: 800 368-5888, 703 305-5938
Hours: Monday to Friday, 8:30 a.m. to 5:00 p.m. EST

Helps small businesses comply with environmental laws and EPA regulations.

Pollution Prevention Information Clearinghouse (PPIC)

Telephone Number: 202 260-1023

A center for dissemination of pollution prevention information. PPIC's services include document distribution, access to a circulating and periodicals collection, and outreach.

Public Information Center (PIC)

Telephone Number: 202 260-2080

Hours: Monday to Friday, 8:00 a.m. to 5:30 p.m. EST for phone calls, 10:00 a.m. to 4:00 p.m. EST for walk-in visitors

Provides general, nontechnical environmental information through its brochures, booklets, and pamphlets.

EPA Headquarters Library

Reference Desk: 202 260-5921
Interlibrary Loan Desk: 202 260-5933

Hours: Monday to Friday, 9:00 a.m. to 5:00 p.m. EST for phone calls, 10:00 a.m. to 2:00 p.m. EST for walk-in visitors

The Headquarters Library is the reference library for the Agency. It offers a broad range of sources of environmental information including reports from various EPA offices and trade and environmental journals. The collection also features departments such as the "Water Collection," the "Hazardous Waste Collection," and "Infoterra," which accommodates foreign patrons' requests.

United States Environmental Protection Agency
EPA530-F-96-001
January 1996
Solid Waste and Emergency Response (5305W)

EPA How To Access the RCRA Information Center

Congress passed the Resource Conservation and Recovery Act (RCRA) in 1976 to create a framework for the proper management of hazardous and nonhazardous solid waste. The Act is continuously evolving as Congress amends it to reflect the nation's changing solid waste needs.

For each modification to the Act, EPA develops regulations that spell out how the statute's broad policies are to be carried out. The RCRA Information Center (RIC) was formed to house both documents used in writing these regulations as well as EPA publications produced for public guidance on solid waste issues.

The documents stored in the RIC are divided into two basic categories: (1) documents involved in various stages of rulemaking; and (2) general documents discussing the various aspects of recycling, treatment, and disposal of hazardous and solid waste.

Rulemaking Dockets

- Docket files generated from RCRA-related rulings. Each file is composed of two sections: (1) technical support documents that were used by EPA in the development of the particular rule; and (2) comments from companies, individuals, environmental organizations, and various levels of government.
- Reprints of *Federal Registers* containing RCRA-related issues.
- Administrative Records, which are rulemaking dockets that have undergone litigation.

General Documents/Collections

- *Catalog of Hazardous and Solid Waste Publications*, which lists the RIC's most popular documents. The catalog is updated periodically.
- Guidance documents, which provide directions for implementing the regulations for disposal and treatment of hazardous and solid wastes.
- Brochures, booklets, and executive summaries of reports concerning waste reduction and disposal issues surrounding solid and hazardous wastes.
- A historical collection of Office of Solid Waste documents.
- Selected Office of Solid Waste correspondence written by EPA officials in response to questions from organizations and individuals concerning hazardous and solid waste regulations.
- Health and Environmental Effects Profiles (HEEPs) and Health and Environmental Effects Documents (HEEDs).

Hours and Location

- The RIC is open to the public from 9:00 a.m. to 4:00 p.m., Monday through Friday.
- The RIC is located at:

  Crystal Gateway I, First Floor
  1235 Jefferson Davis Highway
  Arlington, VA

- It is recommended that visitors make an appointment so that the material they wish to view is ready when they arrive.
- Patrons may call for assistance at 703 603-9230, send a fax to 703 603-9234, or send an e-mail to rcra-docket@epamail.epa.gov.
- Patrons may write to the following address:

  RCRA Information Center (5305W)
  U.S. Environmental Protection Agency
  401 M Street, SW
  Washington, DC 20460

  (Please note that this address is for mailing purposes only.)

Photocopying and Microfilming

Many documents are available only in the original and, therefore, must be photocopied. Patrons are allowed 100 free photocopies. Thereafter they are charged 15 cents per page. When necessary, an invoice stating how many copies were made, the cost of the order, and where to send a check will be issued to the patron.

Documents also are available on microfilm. The RIC staff help patrons locate needed documents and operate the microfilm machines. The billing fee for printing microfilm documents is the same as for photocopying documents.

Patrons who are outside of the metropolitan Washington, DC, area can request documents by telephone. The photocopying and microfilming fee is the same as for walk-in patrons. If an invoice is necessary, RIC staff can mail one with the order.

Additional EPA Sources of Hazardous and Solid Waste Information

The RCRA/Superfund/EPCRA Hotline

Telephone Numbers: 800 424-9346
TDD: 800 553-7672 (hearing impaired)
For Washington, DC, and outside the United States: 703 412-9810
TDD: 703 412-3323 (hearing impaired)
Hours: Monday to Friday, 9:00 a.m. to 6:00 p.m. EST

The Hotline answers questions concerning technical aspects of RCRA. It also provides clarifications of sections of the *Code of Federal Regulations* that pertain to RCRA. The Hotline also takes requests and makes referrals for obtaining OSW publications.

OSW Methods Information Communication Exchange (MICE)

Telephone Number: 703 821-4690

A telephone service implemented by the EPA Office of Solid Waste to answer technical questions on test methods used on organic and inorganic chemicals. These tests are discussed in the EPA document *Test Methods for Evaluating Solid Waste: Physical/Chemical Methods* (Document Number: SW-846).

Patrons can call MICE 24 hours a day and are requested to leave a message stating their name,

APPENDIX B -- LIST OF STATE RCRA CONTACTS

Alabama Department of Environmental Management
1751 Cong. Wm. L. Dickinson Drive
Montgomery, AL 36130
(205) 271-7730

Alaska Department of Environmental Conservation
410 Willoughby Avenue, Suite 105
Juneau, AK 99801-1795
(907) 465-5150

For American Samoa, contact:
U.S. EPA Region 9
Hazardous Waste Management Division
75 Hawthorne Street
San Francisco, CA 98101
(415) 744-2098

Arizona Department of Environmental Quality
3303 N. Central Avenue
Phoenix, AZ 85012
(602) 207-4146

Arkansas Department of Pollution Control and Ecology
8001 National Drive
PO Box 8913
Little Rock, AR 72219-8913
(501) 562-7444

California Department of Toxic Substances Control
10151 Croydon Way, Suite 3
Sacramento, CA 95827
(916) 255-3618

Colorado Department of Health
4300 Cherry Creek Drive So.
HMWMD
Denver, CO 80222-1530
(303) 692-3300

Connecticut Department of Environmental Protection
State Office Building
165 Capitol Avenue
Hartford, CT 06106
(203) 566-4869

Delaware Department of Natural Resources and Environmental Control
PO Box 1401, 89 Kings Highway
Dover, DE 19903
(302) 739-3689

District of Columbia Department of Consumer and Regulatory Affairs
Environmental Regulation Administration
2100 Martin Luther King Jr. Ave., SE
Washington, DC 20020
(202) 404-1167

Florida Department of Environmental Regulation
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL 32399-2400
(904) 488-0300

Georgia Department of Natural Resources
1154 East Tower
205 Butler Street, SE
Atlanta, GA 30334
(404) 656-7802

Guam Environmental Protection Agency
Harmon Plaza, Complex Unit B-107
103 Orjas Street
Harmon, Guam 96911

Hawaii Department of Health
Five Waterfront Plaza, Suite 250
500 Ala Moana Boulevard
Honolulu, HI 96813

Idaho Department of Environmental Quality
1410 N. Hilton, Third Floor
Boise, ID 83706
(208) 334-5879

Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, IL 62706
(217) 785-8452

Indiana Department of Environmental Management
105 S. Meridian Street
PO Box 6015
Indianapolis, IN 46225

For Iowa, contact:
U.S. EPA Region 7
RCRA Branch
726 Minnesota Ave.
Kansas City, KS 66101
(913) 551-7646

Kansas Department of Health and Environment
Forbes Field, Building 740
Topeka, KS 66620
(913) 296-1600

Kentucky Department of Environmental Protection
Fort Boone Plaza, Building No. 2
14 Reilly Road
Frankfort, KY 40601
(502) 564-6716

Louisiana Department of Environmental Quality
PO Box 82178
Baton Rouge, LA 70884-2178
(504) 765-0332

Maine Department of Environmental Protection
State House Station #17
Augusta, ME 04333
(207) 289-2651

Maryland Department of the Environment
2500 Broening Highway
Baltimore, MD 21224
(410) 631-3343

Massachusetts Department of Environmental Protection
One Winter Street, 5th Floor
Boston, MA 02108
(617) 292-5851

Michigan Department of Natural Resources
Box 30241
Lansing, MI 48909
(517) 373-2730

Minnesota Pollution Control Agency
520 Lafayette Road, North
St. Paul, MN 55155
(612) 297-8330

Mississippi Department of Environmental Quality
PO Box 10385
Jackson, MI 39289-0385
(601) 961-5171

Missouri Department of Natural Resources
Jefferson Building
205 Jefferson Street (13/14 Floor)
PO Box 176
Jefferson City, MO 65102
(314) 751-3176

Montana Department of Health and Environmental Sciences
Cogswell Building
Helena, MT 59620
(406) 444-1430

Nebraska Department of Environmental Quality
State House Station
PO Box 98922
Lincoln, NE 68509-8922
(402) 471-2186

Nevada Division of Environmental Protection
333 West Lye Lane
Carson City, NV 89710
(702) 687-5872

New Hampshire Department of Health and Welfare
Health and Welfare Building
6 Hazen Drive
Concord, NH 03301
(603) 271-2900

New Jersey Department of Environmental Protection
120 South Stockton St.,CN-414
Trenton, NJ 08625
(609) 292-9880

New Mexico Environment Department
Harold Runnels Building
1190 St. Francis Drive
PO Box 26110
Santa Fe, NM 87502
(505) 827-2911

New York Department of Environmental Conservation
PO Box 7252
Albany, NY 12233-7251
(518) 457-9257

North Carolina Department of Environment, Health, and Natural Resources
PO Box 27687
Raleigh, NC 27611-7687
(919) 733-4996

North Dakota Department of Health and Consolidated Laboratories
1200 Missouri Ave.
PO Box 5520
Bismarck, ND 58502-5520
(701) 221-5166

For Northern Mariana Islands, contact:
U.S. EPA Region 9
Hazardous Waste Management Division
75 Hawthorne Street
San Francisco, CA 94105
(415) 744-2098

Ohio Environmental Protection Agency
1800 Watermark Drive
Columbus, OH 43215
(614) 644-2977

Oklahoma Department of Environmental Quality
1000 Northeast 10th Street
Oklahoma City, OK 73117-1212
(405) 271-5338

Oregon Department of Environmental Quality
811 Southwest 6th Avenue
Portland, OR 97204
(503) 229-5356

Pennsylvania Department of Environmental Resources
400 Market Street, 14th Floor
Harrisburg, PA 17105-8471
(717) 787-6239

For Puerto Rico, contact:
U.S. EPA Region 2
Air and Waste Management Division
26 Federal Plaza, Room 1037
New York, NY 10278
(212) 264-0504

Rhode Island Department of Environmental Management
204 Canon Building, 75 Davis Street
Providence, RI 02908
(401) 277-2797

South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201
(803) 734-4711

South Dakota Department of Environment and Natural Resources
319 Coteau
c/o 500 E. Capital Avenue
Pierre, SD 57501-5070
(605) 773-3153

Tennessee Department of Public Health
401 Church St.
LNC Tower, 5th Floor
Nashville, TN 37243-1535
(615) 532-0780

Texas Natural Resources Conservation Commission
P.O. Box 13087, Capitol Station
Austin, TX 78711-3087
(512) 908-1000

Utah Department of Environmental Quality
PO Box 144880
Salt Lake City, UT 84114-4880
(801) 538-6170

Vermont Agency of Environmental Conservation
103 South Main Street
Waterbury, VT 05676
(802) 241-3888

For Virgin Islands, contact:
U.S. EPA Region 2
Air and Waste Management Division
26 Federal Plaza, Room 1037
New York, NY 10278
(212) 264-0504

Virginia Department of Waste Management
Monroe Building, 11th Floor
101 North 14th Street
Richmond, VA 23219
(804) 225-2863

Washington Department of Ecology
PO Box 47658
Olympia, WA 98504-7658
(206) 459-6316

West Virginia Department of Commerce, Labor, and Environmental Protection
1356 Hansford Street
Charleston, WV 25301
(304) 558-5393

Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53707
(608) 266-1327

For Wyoming, contact:
U.S. EPA Region 8
Hazardous Waste Management Division
999 18th Street, Suite 500
Denver, CO 80202-2405
(303) 294-1361

APPENDIX C -- LEAGUE OF WOMEN VOTERS STATE CONTACTS

THE LEAGUE OF WOMEN VOTERS OF THE U.S.
1730 M STREET, NW
WASHINGTON, DC 20036-4587
202-429-1965 - FAX 202-429-0854

STATE
PRESIDENT'S NAME
OFFICE ADDRESS

ALABAMA

MS. SARAH M. MCDONALD
LWV OF ALABAMA
3357 CHEROKEE ROAD
BIRMINGHAM, AL 35223-1313
OFFICE PHONE: (205) 970-2389

ALASKA

MS. KAREN CRANE
LWV OF ALASKA
853 BASIN RD.
JUNEAU, AK 99801-1036

ARIZONA

JOYCE FORNEY
LWV OF ARIZONA
7239 EAST VISTA DRIVE
SCOTTSDALE, AZ 85250
OFFICE PHONE: (602) 423-5440

ARKANSAS

MS. BARBARA MARTIN
LWV OF ARKANSAS
THE EXECUTIVE BUILDING
2020 WEST THIRD #501
LITTLE ROCK, AR 72205
OFFICE PHONE: (501) 376-7760

CALIFORNIA

FRAN PACKARD
LWV OF CALIFORNIA
926 J STREET, #1000
SACRAMENTO, CA 95814
OFFICE PHONE: (916) 442-7215

COLORADO

MARILYN SHUEY
LWV OF COLORADO
1410 GRANT ST. #204-B
DENVER, CO 80203
OFFICE PHONE: (303) 863-0437

STATE
PRESIDENT'S NAME
OFFICE ADDRESS

CONNECTICUT

MRS. ANITA L. SILBERBERG
LWV OF CONNECTICUT
1890 DIXWELL AVE., #113
HAMDEN, CT 06514-3183
OFFICE PHONE: (203) 288-7996

DELAWARE

CATHY DEBOVIS
LWV OF DELAWARE
1800 N. BROOM ST, RM 207
WILMINGTON, DE 19802-3809
OFFICE PHONE: (302) 571-8948

DIST. OF COLUMBIA

JULIA C. GRAVES
LWV OF DISTRICT OF COLUMBIA
2025 EYE ST NW #917
WASHINGTON, DC 20006
OFFICE PHONE: (202) 331-4122

FLORIDA

FAY P. LAW
LWV OF FLORIDA
540 BEVERLY CT.
TALLAHASSEE, FL 32301-2506
OFFICE PHONE: (904) 224-2545

GEORGIA

DR. MARTHA ANN SAUNDERS
LWV OF GEORGIA
1776 PEACHTREE ST NW, #233N
ATLANTA, GA 30309-2350
OFFICE PHONE: (404) 874-7352

HAWAII

MS. JACQUELINE KIDO
LWV OF HAWAII
49 SOUTH HOTEL ST. #314
HONOLULU, HI 96813
OFFICE PHONE: (808) 531-7448

THE LEAGUE OF WOMEN VOTERS OF THE U.S.
1730 M STREET, NW
WASHINGTON, DC 20036-4587
202-429-1965 - FAX 202-429-0854

STATE
PRESIDENT'S NAME
OFFICE ADDRESS

IDAHO

MARY MCGOWN
LWV OF IDAHO
1824 N. 19TH ST.
BOISE, ID 83712

ILLINOIS

MS. SUZANNE B. CALDER
LWV OF ILLINOIS
332 SOUTH MICHIGAN AVE. #1142
CHICAGO, IL 60604-4301
OFFICE PHONE: (312) 939-5935

INDIANA

PAULETTE VANDEGRIFF
LWV OF INDIANA
2346 S. LYNHURST DR., SUITE 303
INDIANAPOLIS, IN 46241
OFFICE PHONE: (317) 241-8683

IOWA

DR. JANICE A. BERAN
LWV OF IOWA
4815 UNIVERSITY AVE., SUITE 3
DES MOINES, IA 50311-3303
OFFICE PHONE: (515) 277-0814

KANSAS

LINDA N. JOHNSON
LWV OF KANSAS
919-1/2 S. KANSAS AVE.
TOPEKA, KS 66612
OFFICE PHONE: (913) 234-5152

KENTUCKY

JEANNE M. GAGE
LWV OF KENTUCKY
CPO 825 BEREA COLLEGE
BEREA, KY 40404
OFFICE PHONE: (606) 986-7515

STATE
PRESIDENT'S NAME
OFFICE ADDRESS

LOUISIANA

ELIZABETH B. FRANKS
LWV OF LOUISIANA
850 NORTH 5TH ST. APT 103
BATON ROUGE, LA 70802-9980
OFFICE PHONE: (504) 344-3326

MAINE

SALLY W. BRYANT
LWV OF MAINE
335 WATER ST.
AUGUSTA, ME 04330
OFFICE PHONE: (207) 622-0256

MARYLAND

JOAN PAIK
LWV OF MARYLAND
200 DUKE OF GLOUCESTER ST
ANNAPOLIS, MD 21401
OFFICE PHONE: (410) 269-0232

MASSACHUSETTS

NANCY CARAPEZZA
LWV OF MASSACHUSETTS
133 PORTLAND ST. - LOWER LEVEL
BOSTON, MA 02114
OFFICE PHONE: (617) 523-2999

MICHIGAN

CONSTANCE H. FERGUSON
LWV OF MICHIGAN
200 MUSEUM DRIVE, SUITE 104
LANSING, MI 48933-1997
OFFICE PHONE: (517) 484-5383

MINNESOTA

MS. ANNE C. BORGEN
LWV OF MINNESOTA
550 RICE STREET, SUITE 201
ST PAUL, MN 55104-2144
OFFICE PHONE: (612) 224-5445

STATE

THE LEAGUE OF WOMEN VOTERS OF THE U.S.
1730 M STREET, NW
WASHINGTON, DC 20036-4587
202-429-1965 - FAX 202-429-0854

PRESIDENT'S NAME
OFFICE ADDRESS

MISSISSIPPI

JOAN JEBSON
LWV OF MISSISSIPPI
PO BOX 55505
JACKSON, MS 39296-5505
OFFICE PHONE: (601) 352-4616

MISSOURI

LINDA C. MCDANIEL
LWV OF MISSOURI
8706 MANCHESTER RD., SUITE 104
BRENTWOOD, MO 63144-2724
OFFICE PHONE: (314) 961-6869

MONTANA

BARBARA SEEKINS
LWV OF MONTANA
401 BEN HOGAN DR.
MISSOULA, MT 59803-2416

NEBRASKA

ANDREA M. NELSON
LWV OF NEBRASKA
THE APOTHECARY
140 NORTH 8TH ST, #418
LINCOLN, NE 68508
OFFICE PHONE: (402) 475-1411

NEVADA

MS. MARGARET QUINN
LWV OF NEVADA
6 SAVAGE CIRCLE
CARSON CITY, NV 89703

NEW HAMPSHIRE

LILLIAN N. NELLIGAN
LWV OF NEW HAMPSHIRE
207 NORTH MAIN STREET #2
CONCORD, NH 03301-5048
OFFICE PHONE: (603) 225-5344

STATE
PRESIDENT'S NAME
OFFICE ADDRESS

NEW JERSEY

MS. KATHERINE BECKER
LWV OF NEW JERSEY
204 W. STATE STREET
TRENTON, NJ 08608
OFFICE PHONE: (609) 394-3303

NEW MEXICO

KATHLEEN TOLMAN
LWV OF NEW MEXICO
621 OLD SANTA FE TRAIL, #10
SANTA FE, NM 87501
OFFICE PHONE: (505) 982-9766

NEW YORK

EVELYN STOCK
LWV OF NEW YORK
35 MAIDEN LA
ALBANY, NY 12207-2712
OFFICE PHONE: (518) 465-4162

NORTH CAROLINA

BERNADETTE PARKER
LWV OF NORTH CAROLINA
505 OBERLIN RD, SUITE 100
RALEIGH, NC 27605
OFFICE PHONE: (919) 839-5532

NORTH DAKOTA

MOLLY SPAIN
LWV OF NORTH DAKOTA
714 COTTONWOOD ST.
GRAND FORKS, ND 58201-4824
OFFICE PHONE: (701) 772-7940

OHIO

MARY LOU JONES
LWV OF OHIO
17 SOUTH HIGH ST, SUITE 650
COLUMBUS, OH 43215-3413
OFFICE PHONE: (614) 469-1505

STATE
PRESIDENT'S NAME

THE LEAGUE OF WOMEN VOTERS OF THE U.S.
1730 M STREET, NW
WASHINGTON, DC 20036-4587
202-429-1965 - FAX 202-429-0854

OFFICE ADDRESS

OKLAHOMA

CAROL WOODWARD
LWV OF OKLAHOMA
525 NW 13TH STREET
OKLAHOMA CITY, OK 73103
OFFICE PHONE: (405) 236-5338

OREGON

MARY KRAHN
LWV OF OREGON
2659 COMMERCIAL ST. SE #220
SALEM, OR 97302-4450
OFFICE PHONE: (503) 581-5722

PENNSYLVANIA

MS. ELLEN GRILL
LWV OF PENNSYLVANIA
226 FORSTER ST.
HARRISBURG, PA 17102-3220
OFFICE PHONE: (717) 234-1576

RHODE ISLAND

JOYCE MORGENTHALER
LWV OF RHODE ISLAND
PO BOX 28678
PROVIDENCE, RI 02908-0678
OFFICE PHONE: (401) 453-1111

SOUTH CAROLINA

MS. MARY ANN BURTT
LWV OF SOUTH CAROLINA
1314 LINCOLN ST. #212
COLUMBIA, SC 29201-3108
OFFICE PHONE: (803) 771-0063

SOUTH DAKOTA

MINA E. HALL
LWV OF SOUTH DAKOTA
601 S. LINCOLN AVE.
SIOUX FALLS, SD 57104-3830
OFFICE PHONE: (605) 334-7966

STATE
PRESIDENT'S NAME
OFFICE ADDRESS

OFFICE ADDRESS

TENNESSEE

MS. JUDY POULSON
LWV OF TENNESSEE
1701 21ST AVE., SOUTH #425
NASHVILLE, TN 37212-3797
OFFICE PHONE: (615) 297-7134

TEXAS

RUTHANN J. GEER
LWV OF TEXAS
1212 GUADALUPE, #107
AUSTIN, TX 78701-1800
OFFICE PHONE: (512) 472-1100

UTAH

MS. NANCY L. COOPER
LWV OF UTAH
3804 HIGHLAND DR., SUITE 8D
SALT LAKE CITY, UT 84106-4209
OFFICE PHONE: (801) 272-8683

VERMONT

MARY MACEWAN
LWV OF VERMONT
PO BOX 8314
ESSEX, VT 05451

VIRGIN ISLANDS

CLOVIS E. EMANUEL
LWV OF VIRGIN ISLANDS
PO BOX 638
ST THOMAS, VI 00804

VIRGINIA

LULU K. MEESE
LWV OF VIRGINIA
27 STONERIDGE DRIVE
WAYNESBORO, VA 22980-9548
OFFICE PHONE: (540) 943-2766

STATE
PRESIDENT'S NAME
OFFICE ADDRESS

WASHINGTON

KAREN E. VERRILL
LWV OF WASHINGTON
1411 4TH AVENUE #803
SEATTLE, WA 98101-2216
OFFICE PHONE: (206) 622-8961

WEST VIRGINIA

MS. HELEN GIBBONS
LWV OF WEST VIRGINIA
6128 GIDEON RD.
HUNTINGTON, WV 25705-2241

WISCONSIN

MS. MARY JO TIETGE
LWV OF WISCONSIN
122 STATE ST. SUITE 405
MADISON, WI 53703-2500
OFFICE PHONE: (608) 256-0827

WYOMING

ROSEMARY SHOCKLEY
LWV OF WYOMING
P.O. BOX 687
POWELL, WY 82435-0687

APPENDIX D -- ENVIRONMENTAL JUSTICE PUBLIC PARTICIPATION CHECKLIST

Introduction:

The environmental justice movement has sparked a lot of discussion on ways to improve communications and working relations among agencies, industries, and communities. The InterAgency Working Group on Environmental Justice, led by EPA, developed a Public Participation Checklist that lays out ways to identify, inform, and involve stakeholders (e.g., environmental organizations, business and trade associations, civic/public interest groups, grassroots/community-based organizations, tribal governments, and industry). It reflects a combination of: guiding principles for setting up and conducting activities, such as public meetings; specific activities for ensuring widespread and meaningful involvement; and recommendations on how to effectively carry out those activities.

Although the checklist was initially developed in the context of environmental justice, to help federal agencies prepare for the first public meeting to discuss their EJ strategies, it embodies sound principles that apply to public participation for all communities.

Revised 1/13/95

ENVIRONMENTAL JUSTICE
PUBLIC PARTICIPATION CHECKLIST

1. Ensure that Agency's public participation policies are consistent with the requirements of the Freedom of Information Act, the Emergency Planning and Community Right to Know Act and the National Environmental Policy Act.

2. Obtain Senior Management Support to ensure that the Agency's policies and activities are modified to ensure early, effective and meaningful public participation, especially with regard to Environmental Justice stakeholders. Identify internal stakeholders and establish partnering relationships.

3. Use following Guiding Principles in setting up all public meetings:
   - Maintain honesty and integrity throughout the process.
   - Recognize community\indigenous knowledge.
   - Encourage active community participation.
   - Utilize cross-cultural formats and exchanges.

4. Identify external Environmental Justice stakeholders and provide opportunities to offer input into decisions that may impact their health, property values and lifestyles. Consider at a minimum individuals from the following organization as appropriate:

Environmental Organizations
Business and Trade Organizations
Civic / Public Interest Groups
Grassroots \ Community-based Organizations
Congress
Federal Agencies
Homeowner and Resident Organizations
International Organizations
Labor Unions
Local and State Government
Media \ Press
Indigenous People
Tribal Governments
Industry
White House
Religious Groups
Universities and Schools

5. Identify key individuals who can represent various stakeholder interests. Learn as much as

possible about stakeholders and their concerns through personal consultation, phone, or written contacts. Ensure that information gathering techniques include modifications for minority and low -income communities, for example, consider language \ cultural barriers, technical background, literacy, access to respondent, privacy issues and preferred types of communications.

6. Solicit stakeholder involvement early in the policymaking process, beginning in the planning and development stages and continuing through implementation and oversight.

7. Develop co-sponsoring/co-planning relationships with community organizations, providing resources for their needs.

8. Establish a central point of contact within the Federal agency to assist in information dissemination, resolve problems and to serve as a visible and accessible advocate of the public's right to know about issues that affect health or environment.

9. Regionalize materials to insure cultural sensitivity and relevance. Make information readily accessible (handicap access, Braille, etc.) and understandable. Unabridged documents should be placed in repositories. Executive summaries/fact sheets should be prepared in layman's language. Whenever practicable and appropriate, translate targeted documents for limited English-speaking populations.

10. Make information available in a timely manner. Environmental Justice stakeholders should be viewed as full partners and Agency customers. They should be provided with information at the same time it is submitted for formal review to state, tribal and/or Federal regulatory agencies.

11. Ensure that personnel at all levels in the Agency clearly understand policies for transmitting information to Environmental Justice stakeholders in a timely, accessible and understandable fashion.

12. Establish site-specific community advisory boards where there is sufficient and sustained interest. To determine whether there is sufficient and sustained interest, at a minimum, review correspondence files, review media coverage, conduct interviews with local community members and advertise in local newspapers. Ensure that the community representation includes all aspects and diversity of the population. Organize a member selection panel. Solicit nominations from the community. Consider providing administrative and technical support to the community advisory board.

13. Schedule meetings and/or public hearings to make them accessible and user-friendly for Environmental Justice stakeholders. Consider time frames that don't conflict with work schedules, rush hours, dinner hours and other community commitments that may decrease attendance. Consider locations and facilities that are local, convenient and which represent

neutral turf. Ensure that facility meets American with Disabilities Act Statements for equal access. Provide assistance for hearing impaired individuals. Whenever practical and appropriate provide translators for limited-English speaking communities. Advertise the meeting and its proposed agenda in a timely manner in the print and electronic media. Provide a phone number and/or address for communities to find out about pending meetings, issues, enter concerns or to seek participation or alter meeting agenda.

Create an atmosphere of equal participation (avoid a "panel of experts" or "head table"). A two day meeting is suggested with the first day reserved for community planning and education. Organize meetings to provide an open exchange of ideas and enough time to consider issues of community concern. Consider the use of a neutral facilitator who is sensitive and trained in environmental justice issues. Ensure that minutes of the meetings are publically available. Develop a mechanism to provide communities with feedback after meetings occur on actions being considered.

14. Consider other vehicles to increase participation of Environmental Justice stakeholders including:

Posters and Exhibits
Participation in Civic and Community Activities
Public Database and Bulletin Boards
Surveys
Telephone Hotlines
Training and Education Programs, Workshops and Materials

15. Be sure that trainers have a good understanding of the subject matter both technical and administrative. The trainers are the Ambassadors of this program. If they don't understand - no one will.

16. Diversity in the workplace: whenever practical be sure that those individuals that are the decision makers reflect the intent of the Executive Order and come from diverse backgrounds, especially those of a community the agency will have extensive interaction with.

17. After holding a public forum in a community establish a procedure to follow up with concrete actions to address the communities' concerns. This will help to establish credibility for your agency as having an active role in the federal government.

18. Promote interagency coordination to ensure that the most far reaching aspects of environmental justice are sufficiently addressed in a timely manner. Environmental problems do not occur along departmental lines. Therefore, solutions require many agencies and other stakeholders to work together efficiently and effectively.

19. Educate stakeholders about all aspects of environmental justice (functions, roles, jurisdiction, structure and enforcement).

20. Ensure that research projects identify environmental justice issues and needs in communities, and how to meet those needs through the responsible agencies.

21. Establish interagency working groups (at all levels) to address and coordinate issues of environmental justice.

22. Provide information to communities about the government's role as it pertains to short term and long term economic and environmental needs and health effects.

23. Train staff to support inter and intra agency coordination, and make them aware of the resources needed for such coordination.

25. Provide agency staff who are trained in cultural, linguistic and community outreach techniques.

26. Provide effective outreach, education and communications. Findings should be shared with community members with an emphasis on being sensitive and respectful to race, ethnicity, gender, language, and culture.

27. Design and implement education efforts tailored to specific communities and problems. Increase the involvement of ethnic caucuses, religious groups, the press, and legislative staff in resolution of Environmental Justice issues.

28. Assure active participation of affected communities in the decisionmaking process for outreach, education, training and communities programs -- including representation on advisory councils and review committees.

29. Encourage federal and state governments to "reinvent government" -- overhaul the bureaucratic in favor of community responsive.

30. Link environmental issues to local economic issues to increase level of interest.

31. Use local businesses for environmental cleanup or other related activities.

32. Utilize, as appropriate, historically Black Colleges and Universities (HBCU) and Minority

Institutes (MI), Hispanic Serving Colleges and Universities (HSCU) and Indian Centers to network and form community links that they can provide.

33. Utilize, as appropriate, local expertise for technical and science reviews.

34. Previous to conducting the first agency meeting, form an agenda with the assistance of community and agency representatives.

35. Provide "open microphone" format during meetings to allow community members to ask questions and identify issues from the community.

Bibliography:

"Interim report of the Federal Facilities Environmental Restoration Dialogue Committee," February 1993, Environmental Protection Agency and the Keystone Center

"Community Relations in Superfund: A Handbook," January 1992, Environmental Protection Agency, Document # EPA-540-R-92-009 and # PB92-963341

DRAFT "Partnering Guide for DoD Environmental Missions," July 1994, Institute for Water Resources, U.S.A.C.E

"Improving Dialogue with Communities: A Short Guide for Government Risk Communications," September 1991, Environmental Communications Research Program, New Jersey Agriculture Experiment Station, Cook College, Rutgers University

OSD/DUSD/ES/OR/Ann Davlin/703/695-3329/28 September 94

APPENDIX E -- GUIDANCE FOR COMMUNITY ADVISORY GROUPS AT SUPERFUND SITES

United States
Environmental Protection
Agency

Emergency and
Remedial Response
(5201G)

OSWER Directive 9230.0-28
PB94-963293
EPA 540-K-96-001
December 1995

Guidance for Community Advisory Groups at Superfund Sites

Acknowledgments

The Community Advisory Group guidance is the product of the efforts of many people; individuals from the following groups have participated in its review and development: EPA Regional Offices, EPA OSWER Offices, OERR Environmental Justice Task Force, National Environmental Justice Advisory Committee, Association of State and Territorial Solid Waste Management Officials and EPA's Office of General Counsel. In particular, the Community Involvement Team (OERR), Linda Garczynski (OSWER), Hale Hawbecker (OGC), Jane Lemke (WI), Verne McFarland (R6), Marilu Martin (R5), Marcia Murphy (CA), Murray Newton (OERR), Charles Openchowski (OGC), Sonya Pennock (R8), and Suzanne Wells (OERR) each have made valuable contributions to the development and quality of this guidance.

— Diana Hammer (OERR), Project Manager

Notice

The policies set out in this memorandum are intended solely as guidance. They are not intended, nor can they be relied upon, to create any rights enforceable by any party in litigation with the United States. EPA officials may decide to follow the guidance provided in this memorandum, or to act at variance with the guidance, based on an analysis of specific site circumstances. The Agency also reserves the right to change this guidance at any time without public notice.

For More Information on CAGs

Contact your Regional Community Involvement Manager or a staff member of the Community Involvement and Outreach Center at EPA Headquarters. (See the list of contacts in Appendix E.)

Contents

1. Background

- **Environmental Justice Task Force**
- **Purpose of this Guidance**
- **Selecting Sites**

The United States Environmental Protection Agency (EPA) is committed to involving the public in the Superfund cleanup process. In fact, there are many examples throughout the Superfund program where community involvement has enhanced, rather than impeded the Superfund cleanup decision-making process. While recognizing that providing additional opportunities for community involvement may require additional time and slow the cleanup process down initially, EPA believes this is time well spent, and that early and effective community involvement will actually save time in the long run.

EPA is committed to early, direct, and meaningful public involvement and provides numerous opportunities for the public to participate in site cleanup decisions. One of these opportunities for community involvement, is the EPA's Technical Assistance Grants (TAGs) program. EPA awards TAGs to eligible community groups so they can hire their own, independent Technical Advisor, enabling community members to participate more effectively in the decision-making process at Superfund sites. For more information on the TAG program, see the "Superfund Technical Assistance Grants" quick reference fact sheet (EPA 540-K-93-001; PB93-963301).

Community Advisory Groups (CAGs) are another mechanism designed to enhance community involvement in the Superfund process. CAGs respond to a growing awareness within EPA and throughout the Federal government that particular populations who are at special risk from environmental threats—such as minority and low-income populations—may have been overlooked in past efforts to encourage public participation. CAGs are an effective mechanism to facilitate the participation of community members, particularly those from low-income and minority groups, in the decision-making process at Superfund sites.

1.1 Environmental Justice Task Force

The Office of Solid Waste and Emergency Response (OSWER) Environmental Justice (EJ) Task Force was established in 1993 to analyze environmental justice issues specific to waste programs and develop recommendations to address these issues. The EJ Task Force advised that the creation of Community Advisory Groups would enhance public involvement in the Superfund cleanup process. Specifically in its April 1994 report, titled OSWER Environmental Justice Task Force Draft Final Report (EPA 540-R-94-004), the Task Force recommended implementing a program involving CAGs at a minimum of ten sites nationwide by the end of FY94 and providing guidance to support the CAG activities.

1.2 Purpose of this Guidance

As lead Agency at a Superfund site, EPA has an important role to play in encouraging the use of Community Advisory Groups (see Section 10.3, under "Roles and Responsibilities"). This guidance document is designed to assist EPA staff [primarily Community Involvement Coordinators (CICs) and Site Managers, such as Remedial Project Managers, On-Scene Coordinators, and Site Assessment Managers] in working with CAGs at Superfund sites (this includes remedial and appropriate removal sites).

This guidance addresses the objectives, functions, membership, and scope of authority for CAGs. It emphasizes practical approaches and activities, and is designed to be flexible enough to meet the unique needs of individual local communities. The guidance is based on the Agency's experience in carrying out community involvement activities pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), the Superfund Amendments and Reauthorization Act of 1986 (SARA), and policy documents issued by EPA and other Federal agencies. It also draws on concepts articulated in the President's Executive Order on Environmental Justice 12898, EPA/OSWER's Environmental Justice Task Force report, the "Restoration Advisory Board Implementation Guidelines" developed by the EPA and the Department of Defense (9/94), and the "Interim Guidance for Implementing Restoration Advisory Boards" drafted by the California Environmental Protection Agency (11/93).

This guidance provides a number of considerations to assist Community Involvement Coordinators (CICs) and Site Managers in working with a successful CAG. **CAGs need not conform to all aspects of this guidance.** Consequently, this guidance is intended to provide a starting point or frame of reference to help groups organize and begin meeting. A CAG's structure and operation, however, should reflect the unique needs of its community.

EPA will not establish or control CAGs; however, the Agency will assist interested communities in CAG activities. Further, EPA anticipates that the CAGs will serve primarily as a means to foster interaction among interested members of an affected community, to exchange facts and information, and to express individual views of CAG participants while attempting to provide, if possible, consensus recommendations from the CAG to EPA.

1.3 Selecting Sites

While EPA is initially focusing the CAG concept and guidance on Superfund sites with environmental justice concerns, the methods and principles are intended to be applied broadly and to include other Superfund sites as well. In some cases, the sites selected for a CAG may already have some form of community advisory group and EPA could help formalize the group, recognizing it as being representative of the community. In other cases, sites may be selected where a community advisory group doesn't yet exist, but where a CAG would be useful to encourage full community participation in site cleanup activities. See Section 2.2, "Determining the Need for a CAG" for more information on appropriate sites for a CAG.

2. Community Advisory Group (CAG) Development

- **CAG Scope of Authority**
- **Determining the Need for a CAG**
- **Preparation for the CAG Information Meeting**
- **CAG Information Meeting**

Community Advisory Groups are important tools for enhancing community involvement in the Superfund process. Through CAGs, EPA seeks to achieve direct, regular, and meaningful consultation with all interested parties throughout all stages of a response action.

2.1 CAG Scope of Authority

A CAG should serve as a public forum for representatives of diverse community interests to present and discuss their needs and concerns related to the Superfund decision-making process with appropriate Federal and State/Tribal/local governments. The CAG is designed as a mechanism for all affected and interested parties in a community to have a voice and actively participate in the Superfund process. However, it is important to remember that the CAG is not the only mechanism for community involvement at a site; as the lead Agency, EPA continues to have the obligation to inform and involve the entire community through regular as well as innovative community involvement activities.

EPA cannot, by law, abrogate its responsibility to make the final decisions at a site; however, by providing the perspective of the local community, the CAG can assist EPA in making better decisions. A CAG that is broadly representative of the affected community offers EPA a unique opportunity to hear—and seriously consider —community preferences for site cleanup and remediation. It is particularly important that in instances where an EPA decision and/or response differs from a stated CAG preference regarding site cleanup, EPA accepts the responsibility of explaining its decision and/or response to CAG members.

A CAG allows the Agency to exchange information with members of the affected community and encourages CAG members to discuss site issues and activities among themselves. The CAG also can provide a public service to the rest of the affected community by representing the community in discussions regarding the site and by relaying information from these discussions back to the rest of the community. CAGs thus can be a valuable tool for both the Agency and communities throughout the cleanup process.

2.2 Determining the Need for a CAG

The CIC should consult with other site team members (for example, the Site Manager and Attorney) in selecting an appropriate site for a CAG. The team may consider a number of factors during the selection process, including: Generally, what is the level of community interest and concern about the site?

- Might that level of community interest and concern warrant a CAG?
- Has the community expressed an interest in forming a CAG?
- Does a group similar to a CAG exist?
- Do groups with competing agendas exist at the site?
- Are there any environmental justice issues or concerns regarding the site?
- What is the history of community involvement at the site?
- What is the likelihood of long-term cleanup activity at the site?

Depending on the status of the cleanup process at the site, substantial information may exist about the community. For example, if the site is in the RI/FS phase, the Community Relations Plan, developed based on interviews with community members, is a good information source.

A community with a high level of interest and concern about site activities should be a strong candidate for a CAG. In addition, a site in the

early stages of a long-term cleanup without an existing community group may be a strong candidate site for an effective CAG. Communities at removal sites, particularly non-time critical removal sites, also may benefit from a CAG (keeping in mind, however, the time necessary to begin CAG operations when considering a CAG for removal sites).

If a group exists which is representative of the local community (for example, a local environmental group that has been active at the site or a TAG recipient group), a CAG may not be appropriate—if the existing group can fulfill the role of a CAG. If competing groups exist at a site, however, their disparate interests and agendas can undermine even the best efforts of agencies, elected officials, and concerned citizens to forge a CAG. This situation should be given serious consideration in making the decision to promote CAGs at such sites.

A CAG can be formed at any point in the cleanup process but may be most effective early in the cleanup process. Generally, the earlier a CAG is formed, the more CAG members can participate in and impact site activities and cleanup decisions.

2.3 Preparation for the CAG Information Meeting

The CAG Information Meeting is the setting for introducing the CAG concept to the community. Before the CAG Information Meeting, the CIC may begin the process of informing and educating the community about the purposes of the CAG and opportunities for membership and participation. This is especially important at Superfund sites where the community may have had relatively limited participation in the Superfund process. This section offers suggestions, concerns, and methods that EPA (in conjunction with others such as State/Tribal/local governments) may use to notify a community about the formation of a CAG. These are not the only options—techniques will necessarily vary from site to site and from community to community. In many instances, it may be useful to target multiple newspapers as well as alternative media (for example, public service announcements on the radio, public access channels on cable television, free circulation newspapers) to more effectively reach out to communities. Other outreach options include flyers, announcements in local churches, etc. Remember also, that another important and effective method to "spread the word" about the CAG is through the personal relationships that Agency representatives have established in the community. No matter what method or media is used, EPA (in conjunction with others such as State/Tribal/local governments) must provide the information in a manner readily understandable to community members.

2.3.1 Fact Sheet

EPA (in conjunction with others such as State/Tribal/local governments) may prepare and distribute a brief fact sheet describing the CAG prior to the CAG Information Meeting. A sample CAG fact sheet is included as Appendix A. In preparing the fact sheet, EPA may consult with the State/Tribal/local government. EPA may wish to expand existing networks used in distributing information about public involvement activities for the distribution of CAG-related fact sheets and other materials.

Community interviews conducted prior to development of the Community Relations Plan for the site, as well as the plan itself, are potential sources of information to identify effective methods for distributing the CAG fact sheet.

Depending on the status of the response action, the interviews and plan may not have been completed for all sites. If this is the case, EPA staff may conduct limited community interviews with local officials and community leaders, making special effort to contact those leaders with ties to the environmental justice and other site-related concerns of the community. For example, these sources could include churches and community organizations in minority and low-income neighborhoods. This will ensure that credible information sources identified by members of the community are used to supplement and reinforce direct mailing of the fact sheet. In addition, copies of the fact sheet should be available in the information repositories and at the CAG Information Meeting.

The fact sheet is designed to describe the purpose of the CAG and membership opportunities and delineate the role of CAG members. If a significant segment of the community is non-English speaking or visually impaired, EPA (in conjunction with others such as State/Tribal/local governments) should translate the fact sheet for distribution to these members of the community.

2.3.2 Public Notice

EPA (in conjunction with others such as State/Tribal/local governments) may prepare a public notice or display ad to advertise the CAG Information Meeting in general circulation newspapers serving the affected communities around the site. To ensure that all segments of the affected population are notified, notices in newspapers that serve low-income, minority, and non-English speaking audiences in the community also should be considered.

The notice should be published approximately two weeks in advance of the CAG Information Meeting and should include the following information:

- Time and location of the meeting;
- CAG purpose and membership opportunities;
- The roles and responsibilities of CAG members;
- A statement that the meeting is open for public attendance and participation;
- Topics for consideration at the CAG Information Meeting; and
- Name and phone number of contact person(s) to obtain more information.

The public notice should appear in a prominent section of the newspapers, where it is likely to be read by the majority of community members. A sample CAG public notice is included as Appendix B.

2.3.3 News Release

EPA personnel (in conjunction with others such as State/Tribal/local governments) may prepare and distribute to the local media a news release to explain the purpose of the CAG and announce the time and location of the initial information meeting. Depending on local media coverage of Superfund and other environmental issues related to the site, it may be appropriate to prepare a more extensive media packet of information to update the local media on public involvement activities and overall response plans and progress.

2.3.4 Agenda

EPA, in consultation with the State/Tribal/local governments and residents, may develop an initial agenda for the CAG Information Meeting. The agenda should reflect important

community concerns raised in relation to the Superfund response. Again, the results of community interviews conducted in the process of developing Community Relations Plans and other community involvement activities may provide a source of information and background on community concerns. Demonstrating an awareness of and sensitivity to concerns expressed by the community is an important element in maximizing the potential benefits of CAGs.

2.4 CAG Information Meeting

EPA may sponsor the CAG Information Meeting and may consult with the State/Tribal/local government in its preparation. EPA (in conjunction with others such as State/Tribal/local governments) should attempt to hold the CAG Information Meeting as early as possible in the cleanup process.

EPA personnel (and/or others such as State/Tribal/local governments) may facilitate the CAG Information Meeting; however, for this and subsequent meetings, it may be preferable to have someone from the community with facilitation experience or a professional meeting facilitator serve as facilitator. A neutral facilitator is particularly effective at sites where some controversy is anticipated. Facilitation may produce a better sense of fairness and independence, helping to ensure more productive discussions.

The Information Meeting should serve to introduce the CAG concept to the community. The following topics may be appropriate to discuss at the meeting:

- Purpose and overview of the CAG;
- Goal of representing diverse community interests;
- Interface between the CAG and other community involvement activities;
- Membership opportunities;
- Suggested member selection process and timetable;
- Examples of a CAG Mission Statement and operating procedures (including community leadership);
- Suggested member responsibilities;
- Overview of site cleanup plans and progress; and
- Open discussion/question and answer period.

The Information Meeting and subsequent CAG meetings should be held in a central location and at a convenient time for community members. In addition, EPA (and/or others such as State/Tribal/local governments) should consider requirements of the Americans with Disabilities Act (ADA) and the Rehabilitation Act of 1994 in choosing a location (for example, accessibility by wheelchairs and availability of signers and readers, as necessary, to assist hearing and visually impaired participants).

Resources permitting, EPA (and/or others such as the State/Tribal/local governments) may provide appropriate administrative and logistical support for arranging the meeting and documenting its proceedings. Preparation of a concise and easy-to-read summary of the meeting also should be considered. Such a summary will help facilitate effective communication with local community members. The summary should be translated for interested members of the community who are non-English speaking or visually impaired. The summary should be made available for public review in the information repositories and through other dissemination methods no later than one month

after the Information Meeting. Copies of the summary also may be mailed to all community members who attend the initial meeting and to those who are on mailing lists used for other community involvement activities related to the site.

3. CAG Startup

The time period between the CAG Information Meeting and the implementation of a fully functional CAG may vary from site to site. EPA should encourage CAGs to be in full operation within six months after the information meeting, in order to maximize their effectiveness in the Superfund cleanup decision-making process. There are several key activities that should be completed during this time period to ensure successful CAG operation. These activities are described in the following sections.

4. CAG Membership

- **Size of the CAG**
- **Membership Composition**
- **Roles and Responsibilities of CAG Members**
- **Membership Solicitation**
- **Membership Selection Models**

4.1 Size of the CAG

The number of members in the CAG may vary from site to site depending on the composition and needs of the affected community. The CAG should determine the size of its membership; when doing so, the CAG should consider the following factors:

- Diversity of the community;
- CAG workload; and
- Effective group discussion and decision-making (i.e., pros/cons of larger vs. smaller groups).

Federal Facility Environmental Restoration Advisory Boards, groups similar to CAGs, generally average around 20 members. While it often is difficult to ensure that everyone has an opportunity to participate and to achieve closure on discussions in larger groups, the CAG should be large enough to adequately reflect the diversity of community interests regarding site cleanup and reuse.

4.2 Membership Composition

To the extent possible, membership in the CAG should reflect the composition of the community near the site and the diversity of local interests, including the racial, ethnic, and economic diversity present in the community—the CAG should be as inclusive as possible. At least half of the members of the CAG should be local community members (sometimes referred to as "near neighbors").

CAG membership should be drawn from the following groups:

- Residents or owners of residential property near the site and those who may be affected directly by site releases;
- Those who potentially may be affected by releases from the site, even if they do not live or own property near the site;

- Local medical professionals practicing in the community;
- Native American tribes and communities;
- Representatives of minority and low-income groups;
- Citizens, environmental, or public interest group members living in the community;
- TAG recipients, if a TAG has been awarded at the site;
- Local government, including pertinent city or county governments, and governmental units that regulate land use in the vicinity of the site;
- Representatives of the local labor community;
- Facility owners and other significant PRPs;
- The local business community; and
- Other local, interested individuals.

Clearly, persons with an obvious conflict of interest at the site should not be members of the CAG, e.g., remedy vendors, lawyers involved in pending site litigation, non-local representatives of national groups, and others without a direct, personal interest in the site.

In order to prevent the PRP (or another interest group) from dominating CAG discussions, the community shall have the authority to limit the number of these representatives or designate them as ex-officio members.

4.3 Roles and Responsibilities of CAG Members

Generally, CAG members will be expected to participate in CAG meetings, provide data and information to EPA on site issues, and share information with their fellow community members. EPA (along with State/Tribal/local governments, as appropriate) should help the CAG clearly define and maintain these roles and responsibilities (see Section 10.2, under "Roles and Responsibilities").

4.4 Membership Solicitation

For the CAG concept to be successful, the membership of each CAG should reflect the diverse interests of the community in which the Superfund site is located. It is also important that each community have the lead role in determining the membership appropriate for its CAG. This will help encourage participation in and support for the CAG. EPA should not select or approve/disapprove individual CAG members but must certify that the CAG is representative of the diverse interests of the community.

EPA, in coordination with the State/Tribal/local governments, should inform the community about the purposes of the CAG and opportunities for membership and participation. This public outreach effort needs to be tailored to the individual community in which the CAG is to be formed. This is especially important at sites which are in the early stages of the Superfund cleanup process, sites at which opportunities for community participation have been limited, and/or sites where there has been relatively little community or media interest.

EPA (in coordination with others such as the State/Tribal/local governments) should make every effort to ensure that all individuals and groups representing community interests are informed about the CAG and the potential for membership so that each has the opportunity to participate in the CAG. For example, EPA

may begin the public outreach effort regarding CAG membership before the CAG Information Meeting by distributing the CAG fact sheet and publishing public notices and news releases.

Depending on the results of community-wide efforts to solicit nominations for CAG membership, it may be necessary to refine and further focus efforts for specific groups. These efforts may be reinforced with a letter to individuals and groups representing diverse community interests. A sample letter regarding CAG membership is included as Appendix C. CAG information also can be mailed to those expressing interest generally in the site and/or specifically in the CAG. CAG information also should be made available through the local information repositories. The information also may be reformatted and posted in other visible locations such as information kiosks and community centers.

If there is not enough community interest to form a CAG after all solicitation efforts have been exhausted, EPA (in conjunction with others such as State/Tribal/local governments) may issue a public notice through all available outlets to announce that efforts to form a CAG have been unsuccessful. A sample of such a public notice is included as Appendix D.

4.5 Membership Selection Models

The selection of CAG members should be accomplished in a fair and open manner in order to maintain the level of trust needed for successful CAG operation. The members of the CAG should reflect the composition of the community and represent the diversity of local interests. In designing the method for developing a CAG that is most appropriate for the affected community, it may be useful for EPA (in conjunction with others such as State/Tribal/local governments) to offer some type of facilitation.

The following Membership Selection models are examples that may be used and adapted to best meet the particular needs of a community. Of course, each community is unique and no one model will work in all instances; in fact, it may be appropriate to develop an entirely different model for selecting CAG members. Similarly, formal membership selection models, such as those described in this section, may not always be necessary. For example, selecting a group may be as simple as widely advertising the opportunity to join the CAG and then recognizing the CAG as consisting of the respondents. The key is that the CAG represent the interests of the community and that the CAG be able to function as a group. The exact selection process is secondary, as long as the process is fair and open.

4.5.1 Screening Panel Model

Under this model, EPA, consulting with and involving the State/Tribal/local government, could assist the community in organizing a short-term Screening Panel to review nominations for membership on the CAG prior to final member selection. After the opportunity to form a CAG has been announced, the local community should identify (using a fair and open manner) CAG members who represent the diverse interests of the community. The panel should, to the extent practical, reflect the diversity of interests in the community since the panel would be expected to choose CAG members who are equally representative. The panel may select a chairperson from among its members.

The Screening panel should consider establishing and publicizing the following:

- Procedures for nominating members for the CAG, including the way members of the community can nominate themselves to be CAG members (panel members also may nominate themselves to be CAG members.);
- The process for screening nominations and making recommendations for membership;
- The criteria to be used in screening nominations and determining membership recommendations; and
- A list of any recommended nominees for membership on the CAG.

The Screening Panel Chairperson may forward the panel's recommended list of nominees to the appropriate EPA Regional Administrator for review and comment (not for approval/disapproval of individuals) with regard to its ability to represent the interests of the community.

4.5.2 Existing Group Model

Under this model, an existing group in the community—such as a group with a history of involvement at the Superfund site—may be selected as the CAG for that community, if, in fact, it does represent the diverse interests in the community. If the group does not appear representative of the community, EPA may ask the group to expand its membership to include any community interests not represented.

4.5.3 Core Group Model

Under this model, EPA, consulting with and involving the State/Tribal/local governments, could select a Core Group that represents the diverse interests of the community. EPA (in conjunction with others such as State/Tribal/local governments) may remind the community that a person may nominate himself or herself through the application process. For example, members of the Core Group could include seven members representing the following interests: two local residents, local government, environmental, civic, labor, and business. The members of this Core Group then would select the remaining members of the CAG in a fair and open manner.

4.5.4 Self-Selecting Group Model

Under this model, after EPA (in conjunction with others such as State/Tribal/local governments) announces the opportunity to form a CAG, the local community identifies (in a fair and open manner) CAG members who they believe represent the diverse interests of their community. Realistically, it may take some communities a significant amount of time to fully select the CAG members.

4.5.5 Local Government Group Model

Under this model, the local government would select, in a fair and open manner, members of the community to serve on the CAG. This model may be appropriate at sites where a positive working relationship and established communication channels exist between the local government and the community.

5. CAG Member Training

Many of those selected as members of the CAG may require some initial training to enable them to perform their duties. EPA may work with the State/Tribal agencies, the local government(s), local universities, the PRP(s), and others, to provide training and prepare

briefing materials for CAG members. EPA also may work with these organizations and appropriate local groups to develop a method for quickly informing and educating new CAG members about cleanup issues, plans, and progress. Every effort should be made to tailor the training to the specific needs of the CAG members. For example, some CAG members may require more extensive training than others; similarly, some may need training materials in alternative formats, such as in a language other than English. It is extremely important for the success of the CAG process that all members have an adequate opportunity to understand the Superfund process and the cleanup issues related to their respective sites. It also is important that the CAG function as a group, meaning some CAGs may need training on how to function effectively as a group.

Training may be accomplished at regular CAG meetings and/or through activities such as the following:

- Formal training sessions;
- Briefing books, fact sheets, and maps; and
- Site tours.

Every effort should be made to provide CAG members with appropriate and necessary training, subject to available resources.

Technical staff from local, State/Tribal, and Federal agencies involved in site cleanup may attend CAG meetings. They may serve as technical resources and provide information about their respective areas of expertise to CAG members.

6. Administrative Support for the CAG

EPA, together with State/Tribal governments, the local government(s), local universities, the PRP(s), and others may assist the CAG with administrative support on issues relevant to the Superfund site cleanup and decision-making process.

Resources permitting, EPA also may expand existing site contractor support work assignments, for example, to provide administrative support and translate documents with EPA staff oversight.

Administrative support for the CAG may include the following:

- Arranging for meeting space in a central location;
- Preparing and distributing meeting notices and agenda;
- Taking notes during meetings and preparing meeting summaries;
- Duplicating site-related documents for CAG review;
- Duplicating and distributing CAG review comments, fact sheets, and other materials;
- Providing mailing services and postage;
- Preparing and placing public notices in local newspapers;
- Maintaining CAG mailing lists;
- Translating or interpreting outreach materials and CAG meetings in cases where there is a

significant non-English speaking portion of the community; and

- Facilitating CAG meetings and special-focus sessions, if requested by the CAG.

After CAG members have been selected, EPA, in coordination with the State/Tribal agencies and the local government, may assist the CAG in developing a news release or fact sheet announcing the startup of the CAG and providing the names of CAG members. The news release or fact sheet also can be used as a vehicle for publicly thanking all members of the community who expressed an interest in CAG participation, encouraging their continued involvement through attendance at CAG meetings, and announcing the first CAG meeting.

7. CAG Operations

- **Chairperson**
- **Mission Statement and Operating Procedures**
- **Meetings**

7.1 Chairperson

CAG members may select a Chairperson from within their ranks and determine an appropriate term of office. It may be useful to advise that the Chairperson be committed to the CAG and willing to serve for an extended period of time (e.g., two years) to ensure continuity. Members have the right and responsibility to replace the Chairperson as they believe necessary. The processes for selecting and dismissing a Chairperson should be detailed in the CAG's operating procedures.

7.2 Mission Statement and Operating Procedures

Each CAG should develop a Mission Statement describing the CAG's specific purpose, scope, goals, and objectives. The mission statement and subsequent CAG activities should focus on actions related to Superfund site issues consistent with the purpose of a CAG.

Each CAG should develop its own letterhead. Each CAG also should develop a set of procedures to guide day-to-day operations. Topics to be addressed in these operating procedures include the following:

- How to fill membership vacancies;
- How often to hold meetings;
- The process for reviewing and commenting on documents and other materials;
- How to notify the community of CAG meetings;
- How the public can participate in and pose questions during CAG meetings; and
- How to determine when the CAG has fulfilled its role and how it will disband.

7.3 Meetings

All CAG meetings should be open to the public. The meetings should be announced publicly (via display ads in newspapers, flyers, etc.) well enough in advance (e.g., two weeks) to encourage maximum participation of CAG and community members.

EPA personnel (and/or others such as State/Tribal/local governments) may facilitate CAG meetings, however, it may be preferable to use

someone from the community with facilitation experience or a professional meeting facilitator. A neutral facilitator is particularly effective at sites where some controversy is anticipated. Facilitation may produce a better sense of fairness and independence, helping to ensure more productive discussions. If a facilitator is regularly used during CAG meetings, it may be helpful to further clarify both the Chairperson's and facilitator's roles to avoid direct conflict between the facilitator and Chairperson.

The intent of the CAG is to ensure ongoing community involvement in Superfund response actions. As such, regular attendance at CAG meetings by all CAG members should be anticipated. Even though they are not CAG members, the EPA Site Manager and the CIC may attend meetings and encourage representatives of other pertinent Federal agencies and State/Tribal/local governments to attend meetings as well. Governmental attendees should not be so numerous, however, as to inhibit meeting discussions. Consistent attendance, however, can demonstrate commitment to meaningful public participation in the cleanup process.

7.3.1 Meeting Frequency

CAG meetings should be scheduled on a regular basis. CAG members should determine the frequency of CAG meetings based on the needs at their particular site. Meetings should be held often enough to allow the CAG to respond to site issues within specified timeframes and allow for timely communication of CAG actions and site activities to the rest of the community. Frequency of meetings should be covered in the CAG's operating procedures.

7.3.2 Location

The CAG meetings should be held in a location agreed upon by CAG members. It is useful to consider a location convenient to CAG members, as well as central enough to encourage attendance by other interested members of the community. Meeting spaces such as local libraries, high schools, and senior centers may be acceptable locations. The location should meet requirements of the Americans with Disabilities Act and the Rehabilitation Act of 1994 (for example, accessibility for those in wheelchairs).

7.3.3 Meeting Format

The format for CAG meetings may vary depending on the needs of the CAG. A basic meeting format might include:

- Review of "old" business;
- Status update by the project technical staff and CAG member discussion;
- Discussion and question/answer session involving members of the public in attendance;
- Summary and discussion of "action items" for the CAG; and
- Discussion of the next meeting's agenda.

Prior to announcing each meeting, CAG members may wish to agree upon the meeting's purpose, agenda, and format. If necessary, arrangements should be made to provide a translator or interpreter and/or facilitator. EPA (in conjunction with others such as State/Tribal/local governments) may assist the CAG in making appropriate arrangements.

7.3.4 Special-Focus Sessions

The CAG also may consider holding special-focus sessions from time to time. These meetings would focus on a single topic and provide an opportunity for the CAG to solicit input, discuss, or gather information on a specific issue

requiring attention. If an expert cannot attend a special-focus session—travel and attendance in person may not always be possible—it may be useful for the CAG to schedule a conference call with that expert to discuss a particular issue. EPA (in conjunction with others such as State/Tribal/local governments) may provide support for special-focus sessions on issues relevant to the Superfund site cleanup and decision-making process.

7.3.5 Meeting Documentation

The CAG should prepare a concise summary of each meeting, highlighting the topics discussed, agreements reached, and action items identified. EPA and others such as the State/Tribal/local governments may provide support for this effort. The CAG may want to consider preparing a summary, rather than a verbatim transcript, to facilitate effective communication with local communities. If a significant segment of the affected population is non-English-speaking or visually impaired, they also should translate the summary, as appropriate, for these members of the community.

The meeting summary should be available for public review in the information repositories and through other dissemination methods within one month of the meeting. Copies of the summary also may be mailed to all community members who attended the meeting and to those who are on the CAG mailing list. If the CAG mailing list is larger than EPA's site mailing list, EPA may expand its mailing list to include interested community members from the CAG list.

8. CAG Response to Requests for Comments

EPA (in conjunction with others such as State/Tribal/local governments) should make every effort to involve the CAG during the early stages of developing documents—for example, during the scoping stage.

When EPA offers CAG members the opportunity to review and comment on documents, it may be helpful for EPA's technical staff (and from other appropriate agencies) to conduct a brief walk-through of each document prior to the CAG members' review. This overview may include explaining the goals and significance of each document in the cleanup process.

EPA should consider making all documents available to the CAG for the same length of time as to other groups—such as the State/Tribal and peer review groups. The duration of comment periods for some Superfund site-related documents, such as the Remedial Investigation/Feasibility Study (RI/FS) and the Proposed Plan and Records of Decision (RODs), are already established. CAG members, however, may be asked to review and comment on a variety of documents and other information for which comment period durations have not been established. EPA should explain to the CAG that, in some cases, time allotted for review of these materials may have to be less than 30 days. In those cases, the CAG should be ready to complete its review and provide comments in the shorter time period.

The CAG may determine the most efficient way to respond to requests for review and comment on key documents. The CAG

should choose, on a case-by-case basis, the most appropriate mechanism to ensure that comments are provided within specified timeframes. One option available for the CAG to gather input from its constituents is by holding a special-focus meeting. To assist in the process, EPA (in conjunction with others such as State/Tribal/local governments) should prepare executive summaries in plain language describing the document and its key points.

9. EPA Response to Comments from the CAG

Since EPA representatives may attend CAG meetings regularly, EPA may have the opportunity to respond to many CAG comments on key documents and other issues in the context of meeting discussions. These responses should be documented as part of the interchange during the CAG meeting and, unless otherwise stated, should not be considered part of the formal Agency "Response to Comments" (as required under Sections 113 and 117 of CERCLA and 40 CFR 300 of the National Contingency Plan). EPA should recognize the nature of the comments (whether statements of individual preferences or statements supported by all CAG members), and give the comments corresponding weight for consideration. In cases where there are numerous comments to address in a meeting context, EPA may respond to them in writing.

10. Roles and Responsibilities

- **CAG Chairperson**
- **CAG Members**
- **EPA (as Lead Agency)**
- **State/Tribal Regulatory Agency**
- **CAG - TAG Interface**

EPA is committed to early, direct, and meaningful public involvement. Through CAGs, community members have a direct line of communication with EPA (as well as with the State/Tribal/local governments, depending on their level of involvement) and many opportunities for expressing their opinions. As a representative public forum, CAG members are able to voice their views on cleanup issues and play an important role in cleanup decisions. This is especially important before key points in the cleanup process. For example, CAG members may express preferences for the type of remedy, cleanup levels, future land use, and interaction with the regulatory agencies. Since the CAG, by definition, is intended to be representative of the affected community, the regulatory agencies will give substantial weight to the preferences expressed by CAG members. This is particularly important if the preferences reflect the position of most CAG members or represent a consensus from the CAG. EPA must not only listen to views expressed by CAG members but address their views when making site decisions.

EPA, the State/Tribal/local governments, the CAG Chairperson, and CAG members each have an important role to play in the development and operation of the CAG and in contributing to its effectiveness as a forum for meaningful public participation in Superfund response actions.

The following list, while not comprehensive, includes some of the key functions of each player.

10.1 CAG Chairperson

1. Prepare and distribute an agenda prior to each CAG meeting.
2. Ensure that CAG meetings are conducted in a manner that encourages open and constructive participation by all members and invites participation by other interested parties in the community.
3. Ensure that all pertinent community issues and concerns related to the Superfund site response are raised for consideration and discussion.
4. Attempt, whenever possible, to reach consensus among CAG members by providing official comments or stating positions on relevant issues and key documents.
5. Facilitate dissemination of information on key issues to the community.

10.2 CAG Members

1. Serve as a direct and reliable conduit for information flow to and from the community. CAG members have a responsibility to share information with other members of the affected community—the people they represent. Their names should be publicized widely within the local community to ensure that community members and interest groups have ready access to CAG members. If CAG members do not wish to have their phone numbers listed publicly, an alternative contact system should be explored to ensure that the community has access to CAG members.
2. Represent not only their own personal views, but also the views of other community members while serving on the CAG. CAG members should honestly and fairly present information they receive from members of the community; tentative conclusions should be identified properly as such.
3. Review information concerning site cleanup plans, including technical documents, proposed and final plans, status reports, and consultants' reports and provide comments and other input at CAG meetings and other special-focus meetings.
4. Play an important role at key points in the cleanup decision-making process by expressing individual community preferences on site issues.
5. Attempt, whenever possible, to achieve consensus with their fellow members before providing official comments or stating positions on relevant issues and key documents.
6. Assist the Chairperson in disseminating information on key issues to the community.
7. Attend all CAG meetings.
8. Be committed to the CAG and willing to serve for an extended period of time (e.g., two years). Terms may be staggered for continuity.
9. Serve voluntarily and without compensation.

10.3 EPA (as Lead Agency)

1. Provide information on the opportunity to form the CAG.

2. Attend CAG meetings to provide information and technical expertise on Superfund site cleanup.
3. Facilitate discussion of issues and concerns relative to Superfund actions.
4. Listen and respond to views expressed by CAG members, giving them substantial consideration when making site decisions, especially when views are those of most or all CAG members.
5. Work with others, as appropriate, to support and participate in training to be provided to CAG members.
6. Assist the CAG with administrative and logistical support and meeting facilities.

10.4 State/Tribal Regulatory Agency

1. Attend all CAG meetings.
2. Serve as an information referral and resource bank for the CAG on State- or Tribal-related issues.
3. Support training to be provided to CAG members.
4. If the lead agency, assume responsibilities under Section 10.3.

10.5 CAG - TAG Interface

TAG recipients can use their TAG funds to hire their own independent Technical Advisor to help them better understand and more effectively participate in the decision-making process at Superfund sites.

If a TAG has been awarded to a community group for work at this particular site (with the CAG), the Region should encourage a representative of the TAG group to be a member of the CAG. The Regions also should encourage the TAG and CAG to work together toward common goals with respect to site remediation.

If no TAG currently exists for this site, community members are still eligible and are encouraged to apply for a TAG. *Having a CAG at a site in no way precludes an eligible group at that same site from receiving a TAG.*

Points to Keep in Mind Regarding Community Advisory Groups

- Consult with and involve appropriate State and Tribal Governments.
- Consult with and involve appropriate local governments.
- Involve communities EARLY in the Superfund process.
- Maintain open communication channels.
- Share information.
- Be sincere.

11. Appendices

COMMUNITY ADVISORY GROUP (CAG) (*Name and Location of Site*)

The U.S. Environmental Protection Agency (EPA) believes it may be useful for the community (*communities*) of (*name of community or communities affected*) to establish a Community Advisory Group (CAG) to ensure that all segments of the community have an opportunity to participate in the decision-making process at (*name of the site*).

The Superfund program under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) covers the cleanup of sites involving the improper disposal of hazardous substances throughout the country. Community involvement is an important element of the Superfund process, and EPA encourages it. EPA's comprehensive Community Involvement Program for (*name of the site*) began in (*date*). (*Provide a brief description of accomplishments of the Community Involvement Program at this site, if possible.*)

EPA, in cooperation with (*name of the State/Tribal Regulatory Agency and any other parties to the cleanup agreement*), has begun work to cleanup (*name of the site*).

(*Provide a brief description of the site and the cleanup-related activities to date.*)

A Community Advisory Group (CAG) provides a setting in which representatives of the local community can get up-to-date information about the status of cleanup activities, as well as discuss community views and concerns about the cleanup process with EPA, the State/Tribal regulatory agency, and other parties involved in cleanup of the Superfund site. **The CAG is a public forum in which all affected and interested parties in a community can have a voice and actively participate in the Superfund process.**

Getting Involved. CAGs are made up of members of the community. CAG membership is voluntary and members should be willing to serve two-year terms. CAG members will meet regularly and review and comment on technical documents and plans related to the environmental studies and cleanup activities at (*name of site*). Members will help EPA and the community exchange information about site activities and community concerns. CAG members will meet with individuals and groups in the community to obtain their views and hear their concerns related to site cleanup. **All CAG meetings will be open to the public.** CAG members will be chosen from among nominations submitted by individuals and groups in the community. (*May provide more details about the specific membership selection model here.*) **The deadline for membership application is (*date*).**

For More Information Contact: (*local contact name, address, and telephone number*).

(*Name and Location of Site*)
Formation of Community Advisory Group

The U.S. Environmental Protection Agency (EPA) believes it may be useful for the community (*communities*) of (*name of community or communities affected*) to establish a Community Advisory Group (CAG) to ensure that all segments of the community have an opportunity to participate in the decision-making process at (*name of the site*).

The Superfund program involves cleaning up hazardous waste sites throughout the country. EPA encourages community involvement and considers it to be an important element of the Superfund process.

The CAG will provide a setting in which representatives of the local community can get up-to-date information about the status of cleanup activities, as well as discuss community views and concerns about the cleanup process with EPA, the State regulatory agency, and other parties involved in cleanup of the site. **The CAG will be a public forum in which all affected and interested parties in a community can have a voice and actively participate in the Superfund process.**

EPA will sponsor a meeting on (*date*) at (*time*) to discuss the purpose of the CAG, provide information on how CAG members should be chosen, and answer questions concerning cleanup plans and activities at the site. (*Provide a brief description of specific site-related issues to be discussed*.) The meeting will be held at (*meeting location address*).

The CAG will be made up of members of the community. CAG membership is voluntary and members serve without compensation. Members should be willing to serve two-year terms. The CAG will meet regularly to review and comment on technical documents and plans related to the environmental studies and cleanup activities at (name of site) and to relay community views and concerns related to the site. **All CAG meetings will be open to the public, and all members of the community are encouraged to participate.**

For more information about the CAG, contact: (*local contact name, address, and telephone number*).

APPENDIX C: Sample CAG Letter

Dear (*name of Community Member/Organization*):

The community (*communities*) of (*name of community or communities affected*) is establishing a Community Advisory Group (CAG) to ensure that all segments of the community have an opportunity to participate in the decision-making process at (*name of the site*).

The Superfund program involves cleaning up hazardous waste sites throughout the country. EPA encourages community involvement—an important element of the Superfund process.

The CAG will provide a setting in which representatives of the local community can get up-to-date information about the status of cleanup activities, as well as discuss community views and concerns about the cleanup process with EPA, the State/Tribal regulatory agency, and other parties involved in cleanup of the site.

The CAG will be made up of members of the community, and members should reflect the diverse interests in the community. CAG membership is voluntary and members serve without compensation. Members should be willing to serve two-year terms. The CAG will meet regularly to review and comment on technical documents and plans related to the environmental studies and cleanup activities at (*name of site*) and to relay information between EPA and the community about the ongoing activities at the site. They will be expected to meet often with individuals and groups in the community to obtain their views and hear their concerns related to site cleanup issues.

CAG membership offers an outstanding opportunity to represent the community and help ensure the most effective remediation of the (*name of site*).

If you have any questions about CAGs, please call _____ at _____.

Sincerely,

(name of EPA Regional CIC
and, if possible, a local community leader)

Enclosure

(*Name and Location of Site*) Insufficient Community Interest for Community Advisory Board (CAG)

The U.S. Environmental Protection Agency (EPA) believed it would be useful for the community (or communities) of (*name of community or communities affected*) to establish a Community Advisory Group (CAG) to ensure that all segments of the community have an opportunity to participate in the decision-making process at (*name of the site*).

The CAG would provide a setting in which representatives of the local community could get up-to-date information about the status of cleanup activities, as well as discuss community views and concerns about the cleanup process with EPA, the State/Tribal regulatory agency, and other parties involved in cleanup of the site. **The CAG would be a public forum in which all affected and interested parties in a community would have a voice and could participate actively in the Superfund process.**

Efforts to encourage members of the community to serve as CAG members began on (*date*). These efforts included direct communication with individuals and organizations in the community (*be specific in terms of the outreach effort*) as well as a public meeting in which the purpose of the CAG and the roles and responsibilities of CAG members were discussed.

Despite these efforts, members of the community have not expressed enough interest so far to ensure full participation by all segments of the community. Since these efforts to stimulate interest in a CAG in (*name of community*), have not been successful, EPA will not continue to encourage a CAG to form at (*name of site*). If in the future, community members express an interest in forming a CAG, EPA may reconsider this decision.

If You Have Any Questions Contact: (*local contact name, address, and telephone number*).

APPENDIX E: List of Community Involvement Managers Nationwide

Region 1 CT, ME, MA, NH, RI, VT
US EPA - Region 1 (RPS-74)
John F. Kennedy Federal Bldg.
Boston, MA 02203-0001
1-888 EPA-REG1 (1-888-372-7341)*
617-565-4592

Region 2 NJ, NY, Puerto Rico, & Virgin Islands
US EPA - Region 2 (26-OEP)
290 Broadway, 26th Floor
New York, NY 10007
212-637-3673

Region 3 DE, DC, MD, PA, VA, WV
US EPA - Region 3 (3HS43)
1650 Arch Street
Philadelphia, PA 19103-2029
1-800-553-2509*
215-814-5131

Region 4 AL, FL, GA, MS, KY, NC, SC, TN
US EPA - Region 4
Waste Management Division
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303
AL, FL, GA, MS: 1-800-435-9234
KY, NC, SC, TN: 1-800-435-9233

Region 5 IL, IN, MI, MN, OH, WI
US EPA - Region 5 (PS19-J)
Metcalfe Federal Bldg.- 19th floor
77 W. Jackson Blvd.
Chicago, IL 60604-3507
1-800-621-8431*
312-353-2072

Region 6 AR, LA, MN, OK, TX
US EPA - Region 6 (6 SF-P)
Wells Fargo Bank
1445 Ross Ave., Suite 1200
Dallas, TX 75202-2733
1-800-533-3508*
214-665-8157

Region 7 IA, KS, MO, NE
US EPA - Region 7
726 Minnesota Ave.
Kansas City, KS 66101
1-800-223-0425*
913-551-7003

Region 8 CO, MT, ND, SD, UT, WY
US EPA - Region 8 (8-OC)
Office of Communications
999 18th St., Suite 500
Denver, CO 80202-2466
1-800-227-8917*
303-312-6312

Region 9 AZ, CA, HI, NV, & U.S. Territories
US EPA - Region 9 (SFD-3)
Office of Community Relations
75 Hawthorne Street
San Francisco, CA 94105
1-800-231-3075*

Region 10 AK, ID, OR, WA
US EPA -Region 10 (ECO-081)
Community Relations & Outreach Unit
1200 6th Ave.
Seattle, WA 98101
1-800-424-4372*
206-553-1272

Headquarters

Community Involvement and Outreach Center
Office of Emergency and Remedial Response
US EPA (5204G)
401 M St., SW
Washington DC 20460
Suzanne Wells
703-603-8863
Leslie Leahy
703-603-9929

*800 & 888 numbers only work within the Region

APPENDIX F -- PUBLIC PARTICIPATION REGULATIONS IN 40 CFR 25

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

Subpart A—Introduction

Subpart B—Headquarters

Subpart C—Field Installations

AUTHORITY: 5 U.S.C. 552.

SOURCE: 50 FR 26721, June 28, 1985, unless otherwise noted.

Subpart A—Introduction

§ 1.1 Creation and authority.

Reorganization Plan 3 of 1970, established the U.S. Environmental Protection Agency (EPA) in the Executive branch as an independent Agency, effective December 2, 1970.

§ 1.3 Purpose and functions.

The U.S. Environmental Protection Agency permits coordinated and effective governmental action to assure the protection of the environment by abating and controlling pollution on a systematic basis. Reorganization Plan 3 of 1970 transferred to EPA a variety of research, monitoring, standard setting, and enforcement activities related to pollution abatement and control to provide for the treatment of the environment as a single interrelated system. Complementary to these activities are the Agency's coordination and support of research and antipollution activities carried out by State and local governments, private and public groups, individuals, and educational institutions. EPA reinforces efforts among other Federal agencies with respect to the impact of their operations on the environment.

§ 1.5 Organization and general information.

(a) The U.S. Environmental Protection Agency's basic organization consists of Headquarters and 10 Regional Offices. EPA Headquarters in Washington, DC maintains overall planning, coordination and control of EPA programs. Regional Administrators head the Regional Offices and are responsible directly to the Administrator for the execution of the Agency's programs within the boundaries of their Regions.

(b) EPA's Directives System contains definitive statements of EPA's organization, policies, procedures, assignments of responsibility, and delegations of authority. Copies are available for public inspection and copying at the Management and Organization Division, 401 M Street SW., Washington, DC 20460. Information can be obtained from the Office of Public Affairs at all Regional Offices.

(c) EPA conducts procurement pursuant to the Federal Property and Administrative Services Act, the Federal Procurement Regulations, and implementing EPA regulations.

§ 1.7 Location of principal offices.

(a) The EPA Headquarters is in Washington, DC. The mailing address is 401 M Street SW., Washington, DC 20460.

(b) The addresss of (and States served by) the EPA Regional Offices (see § 1.61) are:

(1) Region I, U.S. Environmental Protection Agency, room 2203, John F. Kennedy Federal Building, Boston, MA 02203. (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.)

(2) Region II, U.S. Environmental Protection Agency, Room 900, 26 Federal Plaza, New York, NY 10278. (New Jersey, New York, Puerto Rico, and the Virgin Islands.)

(3) Region III, U.S. Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107. (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia.)

(4) Region IV, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, GA 30365. (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.)

(5) Region V, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604. (Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin.)

(6) Region VI, U.S. Environmental Protection Agency, 1201 Elm Street, Dallas, TX 75270. (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.)

(7) Region VII, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101. (Iowa, Kansas, Missouri, and Nebraska.)

(8) Region VIII, U.S. Environmental Protection Agency, 999 18th street, One Denver Place, Denver, CO 80202. (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.)

(9) Region IX, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105. (Arizona, California, Hawaii, Nevada, American Samoa, Trust Territories of the Pacific Islands, Guam, Wake Islands, and the Northern Marianas.)

(10) Region X, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101. (Alaska, Idaho, Oregon, and Washington.)

[50 FR 26721, June 28, 1985, as amended at 62 FR 1833, Jan. 14, 1997]

Subpart B—Headquarters

§ 1.21 General.

EPA Headquarters is comprised of:

(a) The Office of the Administrator;

(b) Two Associate Administrators and four staff offices which advise the Administrator on cross-cutting Agency headquarters and regional issues and conduct programs with respect to EPA's interface with other national and international governmental organizations;

(c) The Office of Inspector General;

(d) The Office of General Counsel; and

(e) Nine operational offices, each headed by an Assistant Administrator, responsible for carrying out EPA's major environmental and administrative programs.

§ 1.23 Office of the Administrator.

The Environmental Protection Agency is headed by an Administrator who is appointed by the President, by and with the consent of the Senate. The Administrator is responsible to the President for providing overall supervision to the Agency, and is assisted by a Deputy Administrator also appointed by the President, by and with the consent of the Senate. The Deputy Administrator assists the Administrator in the discharge of Agency duties and responsibilities and serves as Acting Administrator in the absence of the Administrator.

§ 1.25 Staff Offices.

(a) *Office of Administrative Law Judges.* The Office of Administrative Law Judges, under the supervision of the Chief Administrative Law Judge, is responsible for presiding over and conducting formal hearings, and issuance of initial decisions, if appropriate, in such proceedings. The Office provides supervision of the Administrative Law Judges, who operate as a component of the Office of Administrative Law Judges, in certain Agency Regional Offices. The Office provides the Agency Hearing Clerk.

(b) *Office of Civil Rights.* The Office of Civil Rights, under the supervision of a Director, serves as the principal adviser to the Administrator with respect to EPA's civil rights programs. The Office develops policies, procedures, and regulations to implement the Agency's civil rights responsibilities, and provides direction to Regional and field activities in the Office's area of responsibilities. The Office implements and monitors the Agency's equal employment opportunity program; provides advice and guidance to EPA program officials and Regional Administrators on EEO matters; serves as advocate for furthering career opportunities for minorities and women; and processes complaints of discrimination for Agency disposition. The office assures:

(1) Maximum participation of minority business enterprises under EPA contracts and grants;

(2) Equal employment opportunity under Agency service contracts, construction contracts, and grants;

(3) Compliance with the Davis-Bacon Act and related acts;

(4) Compliance with the provisions of laws affecting Agency programs requiring nondiscrimination on account of age and physical handicap and;

(5) Services or benefits are dispensed under any program or activity receiving Agency financial assistance on a nondiscrimination basis.

(c) *Science Advisory Board.* The Science Advisory Board, under the direction of a Director, provides expert and independent advice to the Administrator on the scientific and technical issues facing the Agency. The Office advises on broad, scientific, technical and policy matters; assesses the results of specific research efforts; assists in identifying emerging environmental problems; and advises the Administrator on the cohesiveness and currency of the Agency's scientific programs.

(d) *Office of Small and Disadvantaged Business Utilization.* The Office of Small and Disadvantaged Business Utilization, under the supervision of a Director, is responsible for developing policy and procedures implementing the Agency's small and disadvantaged business utilization responsibilities. The Office provides information and assistance to components of the Agency's field offices responsible for carrying out related activities. The Office develops and implements a program to provide the maximum utilization of women-owned business enterprises in all aspects of EPA contract

work; in collaboration with the Procurement and Contracts Management Division, develops programs to stimulate and improve involvement of small and minority business enterprises; and recommends the assignment of technical advisers to assist designated Procurement Center Representatives of the Small Business Administration in their duties. The Office represents EPA at hearings, interagency meetings, conferences and other appropriate forums on matters related to the advancement of these cited business enterprises in EPA's Federal Contracting Program.

(e)(1) *Environmental Appeals Board.* The Environmental Appeals Board is a permanent body with continuing functions composed of three Board Members designated by the Administrator. The Environmental Appeals Board shall decide each matter before it in accordance with applicable statutes and regulations. The Environmental Appeals Board shall decide each matter by majority vote. Two Board Members constitute a quorum, and if the absence or recusal of a Board Member so requires, the Board shall sit as a Board of two Members. In the case of a tie vote, the matter shall be referred to the Administrator to break the tie.

(2) *Functions.* The Environmental Appeals Board shall exercise any authority expressly delegated to it in this title. With respect to any matter for which authority has not been expressly delegated to the Environmental Appeals Board, the Environmental Appeals Board shall, at the Administrator's request, provide advice and consultation, make findings of fact and conclusions of law, prepare a recommended decision, or serve as the final decisionmaker, as the Administrator deems appropriate. In performing its functions, the Environmental Appeals Board may consult with any EPA employee concerning any matter governed by the rules set forth in this title, provided such consultation does not violate applicable ex parte rules in this title.

(3) *Qualifications.* Each member of the Environmental Appeals Board shall be a graduate of an accredited law school and a member in good standing of a recognized bar association of any state or the District of Columbia. Board Members shall not be employed by the Office of Enforcement, the Office of the General Counsel, a Regional Office, or any other office directly associated with matters that could come before the Environmental Appeals Board. A Board Member shall recuse himself or herself from deciding a particular case if that Board Member in previous employment performed prosecutorial or investigative functions with respect to the case, participated in the preparation or presentation of evidence in the case, or was otherwise personally involved in the case.

[50 FR 26721, June 28, 1985, as amended at 57 FR 5323, Feb. 13, 1992]

§ 1.27 Offices of the Associate Administrators.

(a) *Office of International Activities.* The Office of International Activities, under the supervision of an Associate Administrator, provides direction to and supervision of the activities, programs, and staff assigned to the Office of International Activities. All of the functions and responsibilities of the Associate Administrator are Agencywide, and apply to all international activities of the Agency. The Office develops policies and procedures for the direction of the Agency's international programs and activities, subject to U.S. foreign policy, and assures that adequate program, scientific, and legal inputs are provided. It conducts continuing evaluations of the Agency's international activities and makes appropriate recommendations to the Administrator. The Office advises the Administrator and principal Agency officials on the progress and effect of foreign and international programs and issues. The Office serves as the Administrator's representative in contacts with the Department of State and other Federal agencies concerned with international affairs. It negotiates arrangements or understandings relating to international cooperation with foreign organizations. The Office coordinates Agency international contacts and commitments; serves as the focal point for responding to requests for information relating to EPA international activities; and provides an initial point of contact for all foreign visitors. The Office maintains liaison with all relevant international organizations and provides representation where appropriate. It establishes Agency policy, and approves annual plans and modifications for travel abroad and attendance at international conferences and events. It provides administrative support for the general activities of the Executive Secretary of the U.S. side of the US–USSR/PRC agreements on environmental protection and of the U.S. Coordinator for the NATO Committee on the Challenges of Modern Society. The Office supervises these programs with respect to activities which are completely within the purview of EPA.

(b) *Office of Regional Operations.* The Office of Regional Operations, under the supervision of an Associate Administrator, reports directly to the Administrator and Deputy Administrator. The Office serves as the primary communications link between the Administrator/Deputy Administrator and the Regional Administrators. It provides a Headquarters focus for ensuring the involvement of Regions, or consideration of Regional views and needs, in all aspects of the Agency's work. The

Office is responsible for assuring Regional participation in Agency decision-making processes, assessing the impact of Headquarters actions on Regional operations, and acting as ombudsman to resolve Regional problems on behalf of the Administrator. The Associate Administrator coordinates Regional issues, organizes Regional Administrator meetings and work groups; and coordinates Regional responses to specific issues. In addition, the Office is responsible for working with the Regional Offices to further the consistent application of national program policies by reinforcing existing administrative, procedural, and program policy mechanisms as well as through initiation of reviews of significant Regional issues of interest to the Administrator. It continually monitors responsiveness and compliance with established policies and technical needs through formal and informal contact and free dialogue. The Office initiates and conducts on-site field visits to study, analyze, and resolve problems of Regional, sectional, and national scale.

§ 1.29 Office of Inspector General.

The Office of Inspector General assumes overall responsibility for audits and investigations relating to EPA programs and operations. The Office provides leadership and coordination and recommends policies for other Agency activities designed to promote economy and efficiency and to prevent and detect fraud and abuse is such programs and operations. The Office of the Inspector General informs the Administrator, Deputy Administrator, and Congress of serious problems, abuses and deficiencies relating to EPA programs and operations, and of the necessity for and progress of corrective action; and reviews existing and proposed legislation and regulations to assess the impact on the administration of EPA's programs and operations. The Office recommends policies for, and conducts or coordinates relationships between, the Agency and other Federal, State and local government agencies, and nongovernmental entities on all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered by the Agency.

§ 1.31 Office of General Counsel.

The Office of General Counsel is under the supervision of the General Counsel who serves as the primary legal adviser to the Administrator. The office provides legal services to all organizational elements of the Agency with respect to all Agency programs and activities and also provides legal opinions, legal counsel, and litigation support; and assists in the formulation and administration of the Agency's policies and programs as legal adviser.

§ 1.33 Office of Administration and Resources Management.

The Office of Administration and Resources Management is under the supervision of the Assistance Administrator for Administration and Resources Management who provides services to all of the programs and activities of the Agency, except as may be specifically noted. In addition, the Assistant Administrator has primary responsibility Agencywide for policy and procedures governing the functional areas outlined below. The major functions of the Office include resources management and systems (including budget and financial management), personnel services, occupational health and safety, administrative services, organization and management analysis and systems development, information management and services, automated data processing systems, procurement through contracts and grants, and human resources management. This Office is the primary point of contact and manages Agencywide internal controls, audit resolution and follow up, and government-wide management improvement initiatives. In the performance of the above functions and responsibilities, the Assistant Administrator for Administration and Resources Management represents the Administrator in communications with the Office of Management and Budget, Office of Personnel Management, General Accounting Office, General Services Administration, Department of the Treasury, and other Federal agencies prescribing requirements for the conduct of Government budget, fiscal management and administrative activities.

(a) *Office of Administration and Resources Management, Research Triangle Park, North Carolina, (RTP).* The Office of Administration and Resources Management (OARM), RTP, under the supervision of a Director, provides services to all of the programs and activities at RTP and certain financial and automated data processing services Agencywide. The major functions of the Office include personnel services, financial management, procurement through contracts, library and other information services, general services (including safety and security, property and supply, printing, distribution, facilities and other administrative services) and providing both local RTP and Agencywide automated data processing systems services. The Director, OARM, RTP, supervises the Office of Administration, Financial Management and Data Processing, RTP.

(b) *Office of Administration, Cincinnati, Ohio.* The Office of Administration at Cincinnati, Ohio, under the supervision of a Director, provides and administers personnel, procurement, safety and security, property and supply, printing, distribution, facilities, and other administrative service programs at Cincinnati and other specified geographic locations.

(c) *Office of the Comptroller.* The Office of the Comptroller, under the supervision of the Comptroller, is responsible for Agencywide budget, resources management and financial management functions, including program analysis and planning; budget formulation, preparation and execution; funding allotments and allocations; and developing and maintaining accounting systems, fiscal controls, and systems for payroll and disbursements. The Assistant Administrator's resource systems responsibilities are administered by this Office.

(d) *Office of Administration.* The Office of Administration, under the supervision of a Director, is responsible for the development and conduct of programs for personnel policies, procedures and operations; organization and management systems, control, and services; facilities, property and space management; personnel and property security; policies, procedures, and operations related to procurement through grants, contracts, and interagency agreements; and occupational health and safety.

(e) *Office of Information Resources Management.* The Office of Information Resources Management (OIRM), under the supervision of a Director, provides for an information resource management program (IRM) consistent with the provisions of Public Law 96–511. The Office establishes policy, goals and objectives for implementation of IRM; develops annual and long-range plans and budgets for IRM functions and activities; and promotes IRM concepts throughout the Agency. The Office coordinates IRM activities; plans, develops and operates information systems and services in support of the Agency's management and administrative functions, and other Agency programs and functions as required. The Office oversees the performance of these activities when carried out by other Agency components. The Office performs liaison for interagency sharing of information and coordinates IRM activities with OMB and GSA. The Office ensures compliance with requirements of Public Law 96–511 and other Federal laws, regulations, and guidelines relative to IRM; and chairs the Agency's IRM Steering Committee. The Office develops Agency policies and standards; and administers or oversees Agency programs for library systems and services, internal records management, and the automated collection, processing, storage, retrieval and transmission of data by or for Agency components and programs. The Office provides national program policy and technical guidance for: The acquisition of all information technology, systems and services by or for Agency components and programs, inculding those systems and services acquired by grantees and contractors using Agency funds; the operation of all Agency computers and telecommunications hardware and facilities; and the establishment and/or application of telecommunications and Federal information processing standards. The Office reviews and evaluates information systems and services, including office automation, which are operated by other Agency components; and sets standards for and approves the selection of Agency personnel who are responsible for the technical management of these activities. The Office coordinates its performance of these functions and activities with the Agency's information collection policies and budgets managed by the Office of Policy, Planning and Evaluation.

(f) *The Office of Human Resources Management.* The Office of Human Resources Management (OHRM), under the supervision of a Director, designs strategies, plans, and policies aimedat developing and training all employees, revitalizing EPA organizations, and matching the right people with the right jobs. The Office is responsible for developing and assuring implementation of policies and practices necessary for EPA to meet its present and future workforce needs. This includes consideration of the interrelationships between the environmental protection workforce needs of EPA and State governments. For Senior Executive Service (SES) personnel, SES candidates, Presidential Executive Interchange Participants, and Management Interns, OHRM establishes policies; assesses and projects Agency executive needs and workforce capabilities; creates, establishes, and implements training and development strategies and programs; provides the full range of personnel functions; supports the Performance Review Board (PRB) and the Executive Resources Board (ERB); and reassigns SES personnel with the concurrence of the ERB. For the areas of workforce management and employee and organizational development, OHRM develops strategies, plans, and policies; coordinates Agencywide implementation of those strategies, plans, and policies; and provides technical assistance to operating personnel offices and States. OHRM, in cooperation with the Office of the Comptroller, evaluates problems with previous workyear use, monitors current workyear utilization, and projects future workyear needs in coordination with the Agency's budget process. The Office is the lead office for coordination of human resources management with the Agency's Strategic Planning and Management System. The Office develops methodologies and procedures for evaluations of Agency human resources management activities; conducts evaluations of human resources management activities Agencywide; and carries out human resources management projects of special interest to Agency management. The Office coordinates its efforts with the Office of Administration (specifically the Personnel Management Division and the Management and Orga-

nization Division), the Office of the Comptroller, the Office of Information Resources Management, and the Office of Policy, Planning and Evaluation.

§ 1.35 Office of Enforcement and Compliance Monitoring.

The Office of Enforcement and Compliance Monitoring, under the supervision of the Assistant Administrator for Enforcement and Compliance Monitoring, serves as the principal adviser to the Administrator in matters concerning enforcement and compliance; and provides the principal direction and review of civil enforcement activities for air, water, waste, pesticides, toxics, and radiation. The Assistant Administrator reviews the efforts of each Assistant and Regional Administrator to assure that EPA develops and conducts a strong and consistent enforcement and compliance monitoring program. The Office manages the national criminal enforcement program; ensures coordination of media office administrative compliance programs, and civil and criminal enforcement activities; and provides technical expertise for enforcement activities.

§ 1.37 Office of External Affairs.

(a) *Office of Federal Activities.* The Office of Federal Activities is headed by a Director who reports to the Assistant Administrator for External Affairs and supervises all the functions of the Office. The Director acts as national program manager for five major programs that include:

(1) The review of other agency environmental impact statements and other major actions under the authority of Section 309 of the Clean Air Act;

(2) EPA compliance with the National Environmental Policy Act (NEPA) and related laws, directives, and Executive policies concerning special environmental areas and cultural resources;

(3) Compliance with Executive policy on American Indian affairs and the development of programs for environmental protection on Indian lands; and

(4) The development and oversight of national programs and internal policies, strategies, and procedures for implementing Executive Order 12088 and other administrative or statutory provisions concerning compliance with environmental requirements by Federal facilities. The Director chairs the Standing Committee on Implementation of Executive Order 12088. The Office serves as the Environmental Protection Agency's (EPA) principal point of contact and liaison with other Federal agencies and provides consultation and technical assistance to those agencies relating to EPA's areas of expertise and responsibility. The Office administers the filing and information system for all Federal Environmental Impact Statements under agreement with the Council on Environmental Quality (CEQ) and provides liaison with CEQ on this function and related matters of NEPA program administration. The Office provides a central point of information for EPA and the public on environmental impact assessment techniques and methodologies.

(b) *Office of Public Affairs.* The Office of Public Affairs is under the supervision of a Director who serves as chief spokesperson for the Agency and as a principal adviser, along with the Assistant Administrator for External Affairs, to the Adminstrator, Deputy Administrator, and Senior Management Officials, on public affairs aspects of the Agency's activities and programs. The Office of Public Affairs provides to the media adequate and timely information as well as responses to queries from the media on all EPA program activities. It assures that the policy of openness in all information matters, as enunciated by the Administrator, is honored in all respects. Develops publications to inform the general public of major EPA programs and activities; it also develops informational materials for internal EPA use in Headquarters and at the Regions, Labs and Field Offices. It maintains clearance systems and procedures for periodicals and nontechnical information developed by EPA for public distribution, and reviews all publications for public affairs interests. The Office of Public Affairs provides policy direction for, and coordination and oversight of EPA's community relations program. It provides a system for ensuring that EPA educates citizens and responds to their concerns about all environmental issues and assures that there are opportunities for public involvement in the resolution of problems. The Office supervises the production of audio-visual materials, including graphics, radio and video materials, for the general public and for internal audiences, in support of EPA policies and programs. The Office provides program direction and professional review of the performance of public affairs functions in the Regional Offices of EPA, as well as at laboratories and other field offices. The Office of Public Affairs is responsible for reviewing interagency agreements and Headquarters purchase request requisitions expected to result in contracts in the area of public information and community relations. It develops proposals and reviews Headquarters grant applications under consideration when public affairs goals are involved.

(c) *Office of Legislative Analysis.* The Office of Legislative Analysis, under the supervision of a Director who serves in the capacity of Legislative Counsel, is responsible for legislative drafting and liaison activities relating to the Agency's programs. It exercises responsibility for legislative drafting; reports to the Office of Management and Budget and congressional committees on proposed legislation and pending and enrolled bills, as re-

quired by OMB Circular No. A–19 and Bulletin No. 72–6; provides testimony on legislation and other matters before congressional committees; and reviews transcripts of legislative hearings. It maintains liaison with the Office of Congressional Liaison on all Agency activities of interest to the Congress. The Office works closely with the staffs of various Assistant Administrators, Associate Administrators, Regional Administrators, and Staff Office Directors in accordance with established Agency procedures, in the development of the Agency's legislative program. The Office assists the Assistant Administrator for External Affairs and the Agency's senior policy officials in guiding legislative initiatives through the legislative process. It advises the Assistant Administrator for Administration and Resources Management in matters pertaining to appropriations legislation. It works closely with the Office of Federal Activities to assure compliance with Agency procedures for the preparation of environmental impact statements, in relation to proposed legislation and reports on legislation. The Office coordinates with the Office of Management and Budget, other agencies, and congressional staff members on matters within its area of responsibility; and develops suggested State and local environmental legislative proposals, using inputs provided by other Agency components. The Legislative Reference Library provides legislative research services for the Agency. The Library secures and furnishes congressional materials to all EPA employees and, if available, to other Government agencies and private organizations; and it also provides the service of securing, upon request, EPA reports and materials for the Congress.

(d) *Office of Congressional Liaison.* The Office of Congressional Liaison is under the supervision of a Director who serves as the principal adviser to the Administrator with respect to congressional activities. All of the functions and responsibilities of the Director are Agencywide and apply to the provision of services with respect to all of the programs and activities of the Agency. The Office serves as the principal point of congressional contact with the Agency and maintains an effective liaison with the Congress on Agency activities of interest to the Congress and, as necessary, maintains liaison with Agency Regional and field officials, other Government agencies, and public and private groups having an interest in legislative matters affecting the Agency. It assures the provision of prompt response to the Congress on all inquiries relating to activities of the Agency; and monitors and coordinates the continuing operating contacts between the staff of the Office of the Comptroller and staff of the Appropriations Subcommittees of Congress.

(e) *Office of Community and Intergovernmental Relations.* The Office of Community and Intergovernmental Relations is under the supervision of a Director who serves as the principal point of contact with public interest groups representing general purpose State and local governments, and is the principal source of advice and information for the Administrator and the Assistant Administrator for External Affairs on intergovernmental relations. The Office maintains liaison on intergovernmental issues with the White House and Office of Management and Budget (OMB); identifies and seeks solutions to emerging intergovernmental issues; recommends and coordinates personal involvement by the Administrator and Deputy Administrator in relations with State, county, and local government officials; coordinates and assists Headquarters components in their handling of broad-gauged and issue-oriented intergovernmental problems. It works with the Regional Administrators and the Office of Regional Operations to encourage the adoption of improved methods for dealing effectively with State and local governments on specific EPA program initiatives; works with the Immediate Office of the Administrator, Office of Congressional Liaison, Office of Public Affairs, and the Regional Offices to develop and carry out a comprehensive liaison program; and tracks legislative initiatives which affect the Agency's intergovernmental relations. It advises and supports the Office Director in implementing the President's Environmental Youth Awards program.

[50 FR 26721, June 28, 1985, as amended at 52 FR 30359, Aug. 14, 1987]

§ 1.39 Office of Policy, Planning and Evaluation.

The Assistant Administrator for Policy, Planning and Evaluation services as principal adviser to the Administrator on Agency policy and planning issues and as such is responsible for supervision and management of the following: Policy analysis; standards and regulations; and management strategy and evaluation. The Assistant Administrator represents the Administrator with Congress and the Office of Management and Budget, and other Federal agencies prescribing requirements for conduct for Government management activities.

(a) *Office of Policy Analysis*. The Office of Policy Analysis is under the supervision of a Director who performs the following functions on an Agencywide basis: economic analysis of Agency programs, policies, standards, and regulations, including the estimation of abatement costs; research into developing new benefits models; benefit-cost analyses; impact assessments; intermediate and long-range strategic studies; consultation and analytical assistance in the areas described above to senior policy and program officials and other offices in the Agency; development and coordination

proposals for major new Agency initiatives; liaison with other agencies; universities, and interest groups on major policy issues and development of a coordinated Agency position; and development of integrated pollution control strategies for selected industrial and geographical areas.

(b) *Office of Standards and Regulations.* The Office of Standards and Regulations is under the supervision of a Director who is responsible for: involving the Office of Policy, Planning and Evaluation (OPPE) in regulatory review; conducting technical and statistical analyses of proposed standards, regulations and guidelines; serving as the Agency focal point for identifying, developing and implementing alternatives to conventional ''command and control'' regulations; conducting analyses of Agency activities related to chemical substances and providing mechanisms for establishing regulatory priorities and resolving scientific issues affecting rulemaking; ensuring Agency compliance with the Paperwork Reduction Act; evaluating and reviewing all Agency information collection requests and activities, and, in cooperation with the Office of Administration and Resources Management and the Office of Management Systems and Evaluation, evaluating Agency management and uses of data for decision-making.

(c) *Office of Management Systems and Evaluation.* The Office of Management Systems and Evaluation is under the supervision of a Director who directs and coordinates the development, implementation and administration of Agencywide systems for planning, tracking, and evaluating the accomplishments of Agency programs. In consultation with other offices, the Office develops a long-range policy framework for Agency goals, and objectives, identifies strategies for achieving goals, establishes timetables for objectives, and ensures that programs are evaluated against their accomplishments of goals.

§ 1.41 Office of Air and Radiation.

The Office of Air and Radiation is under supervision of the Assistant Administrator for Air and Radiation who serves as principal adviser to the Administrator in matters pertaining to air and radiation programs, and is responsible for the management of these EPA programs: Program policy development and evaluation; environmental and pollution sources' standards development; enforcement of standards; program policy guidance and overview, technical support or conduct of compliance activities and evaluation of Regional air and radiation program activities; development of programs for technical assistance and technology transfer; and selected demonstration programs.

(a) *Office of Mobile Sources.* The Office of Mobile Sources, under the supervision of a Director, is responsible for the mobile source air pollution control functions of the Office of Air and Radiation. The Office is responsible for: Characterizing emissions from mobile sources and related fuels; developing programs for their control, including assessment of the status of control technology and in-use vehicle emissions; for carrying out, in coordination with the Office of Enforcement and Compliance Monitoring as appropriate, a regulatory compliance program to ensure adherence of mobile sources to standards; and for fostering the development of State motor vehicles emission inspection and maintenance programs.

(b) *Office of Air Quality Planning and Standards.* The Office of Air Quality Planning and Standards, under the supervision of a Director, is responsible for the air quality planning and standards functions of the Office of Air and Radiation. The Director for Air Quality Planning and Standards is responsible for emission standards for new stationary sources, and emission standards for hazardous pollutants; for developing national programs, technical policies, regulations, guidelines, and criteria for air pollution control; for assessing the national air pollution control program and the success in achieving air quality goals; for providing assistance to the States, industry and other organizations through personnel training activities and technical information; for providing technical direction and support to Regional Offices and other organizations; for evaluating Regional programs with respect to State implementation plans and strategies, technical assistance, and resource requirements and allocations for air related programs; for developing and maintaining a national air programs data system, including air quality, emissions and other technical data; and for providing effective technology transfer through the translation of technological developments into improved control program procedures.

(c) *Office of Radiation Programs.* The Office of Radiation Programs, under the supervision of a Director, is responsible to the Assistant Administrator for Air and Radiation for the radiation activities of the Agency, including development of radiation protection criteria, standards, and policies; measurement and control of radiation exposure; and research requirements for radiation programs. The Office provides technical assistance to States through EPA Regional Offices and other agencies having radiation protection programs; establishes and directs a national surveillance and investigation program for measuring radiation levels in the environment; evaluates and assesses the impact of radiation on the general public and the environment; and maintains liaison with other public and private organizations involved in environmental radiation protection activities. The Office coordinates with and assists the Office of Enforcement and Compliance Monitoring in enforcement

activities where EPA has jurisdiction. The Office provides editorial policy and guidance, and assists in preparing publications.

§ 1.43 Office of Prevention, Pesticides and Toxic Substances.

The Assistant Administrator serves as the principal adviser to the Administrator in matters pertaining to assessment and regulation of pesticides and toxic substances and is responsible for managing the Agency's pesticides and toxic substances programs under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act; the Toxic Substances Control Act (TSCA); and for promoting coordination of all Agency programs engaged in toxic substances activities. The Assistant Administrator has responsibility for establishing Agency strategies for implementation and integration of the pesticides and the toxic substances programs under applicable Federal statutes; developing and operating Agency programs and policies for assessment and control of pesticides and toxic substances; developing recommendations for Agency priorities for research, monitoring, regulatory, and information-gathering activities relating to pesticides and toxic substances; developing scientific, technical, economic, and social data bases for the conduct of hazard assessments and evaluations in support of toxic substances and pesticides activities; directing pesticides and toxic substances compliance programs; providing toxic substances and pesticides program guidance to EPA Regional Offices; and monitoring, evaluating, and assessing pesticides and toxic substances program operations in EPA Headquarters and Regional Offices.

(a) *Office of Pesticide Programs.* The Office of Pesticide Programs, under the management of a Director and Deputy Director are responsible to the Assistant Administrator for leadership of the overall pesticide activities of the Agency under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act and several provisions of the Federal Food, Drug, and Cosmetic Act, including the development of strategic plans for the control of the national environmental pesticide situation. Such plans are implemented by the Office of Pesticide Programs, other EPA components, other Federal agencies, or by State, local, and private sectors. The Office is also responsible for establishment of tolerance levels for pesticide residues which occur in or on food; registration and reregistration of pesticides; special review of pesticides suspected of posing unreasonable risks to human health or the environment; monitoring of pesticide residue levels in food, humans, and nontarget fish and wildlife; preparation of pesticide registration guidelines; development of standards for the registration and reregistration of pesticide products; provision of program policy direction to technical and manpower training activities in the pesticides area; development of research needs and monitoring requirements for the pesticide program and related areas; review of impact statements dealing with pesticides; and carrying out of assigned international activities.

(b) *Office of Pollution Prevention and Toxics.* The Office of Pollution Prevention and Toxics (OPPT), under the management of a Director and Deputy Director is responsible to the Assistant Administrator for those activities of the Agency mandated by the Toxic Substances Control Act. The Director is responsible for developing and operating Agency programs and policies for new and existing chemicals. In each of these areas, the Director is responsible for information collection and coordination; data development; health, environmental and economic assessment; and negotiated or regulatory control actions. The Director provides operational guidance to EPA Regional Offices, reviews and evaluates toxic substances activities at EPA Headquarters and Regional Offices; coordinates TSCA activities with other EPA offices and Federal and State agencies, and conducts the export notification required by TSCA and provides information to importers. The Director is responsible for developing policies and procedures for the coordination and integration of Agency and Federal activities concerning toxic substances. The Director is also responsible for coordinating communication with the industrial community, environmental groups, and other interested parties on matters relating to the implementation of TSCA; providing technical support to international activities managed by the Office of International Activities; and managing the joint planning of toxic research and development under the auspices of the Pesticides/Toxic Substances Research Committee.

(c) *Office of Compliance Monitoring.* The Office of Compliance Monitoring, under the supervision of a Director, plans, directs, and coordinates the pesticides and toxic substances compliance programs of the Agency. More specifically, the Office provides a national pesticides and toxic substances compliance overview and program policy direction to the Regional Offices and the States, prepares guidance and policy on compliance issues, establishes compliance priorities, provides technical support for litigation activity, concurs on enforcement actions, maintains liaison with the National Enforcement Investigations Center, develops annual fiscal budgets for the national programs, and manages fiscal and personnel resources for the Headquarters programs. The Office directs and manages the Office of Prevention, Pesticides and Toxic Substances' laboratory data integrity program which conducts laboratory inspections and audits of testing data. The Office issues

civil administrative complaints and other administrative orders in cases of first impression, overriding national significance, or violations by any entity located in more than one Region. The office coordinates with the Office of General Counsel and the Office of Enforcement and Compliance Monitoring in an attorney-client relationship, with those Offices providing legal support for informal and formal administrative resolutions of violations; for conducting litigation; for interpreting statutes, regulations and other legal precedents covering EPA's activities; and for advising program managers on the legal implications of alternative courses of action. The Office of Compliance Monitoring coordinates with the Office of Pesticide Programs in the conduct of pesticide enforcement compliance and registration programs under the Federal Insecticide, Fungicide, and Rodenticide Act and participates in decisions involving the cancellation or suspension of registration. The Office establishes policy and operating procedures for pesticide compliance activities including sampling programs, export certification, monitoring programs to assure compliance with experimental use permits, pesticide use restrictions, and recordkeeping requirements, and determines when and whether compliance actions are appropriate. The Office establishes policy and guidance for the State cooperative enforcement agreement program and the applicator training and certification program. The Office of Compliance Monitoring also coordinates with the Office of Pollution Prevention and Toxics in the conduct of regulatory and compliance programs under the Toxic Substances Control Act and participates in regulation development for TSCA. The Office participates in the control of imminent hazards under TSCA, inspects facilities subject to TSCA regulation as a part of investigations which are national in scope or which require specialized expertise, and samples and analyzes chemicals to determine compliance with TSCA. The Office coordinates and provides guidance to other TSCA compliance activities, including the State cooperative enforcement agreement program and the preparation of administrative suits.

[50 FR 26721, June 28, 1985, as amended at 57 FR 28087, June 24, 1992]

§ 1.45 Office of Research and Development.

The Office of Research and Development is under the supervision of the Assistant Administrator for Research and Development who serves as the principal science adviser to the Administrator, and is responsible for the development, direction, and conduct of a national research, development and demonstration program in: Pollution sources, fate, and health and welfare effects; pollution prevention and control, and waste management and utilization technology; environmental sciences; and monitoring systems. The Office participates in the development of Agency policy, standards, and regulations and provides for dissemination of scientific and technical knowledge, including analytical methods, monitoring techniques, and modeling methodologies. The Office serves as coordinator for the Agency's policies and programs concerning carcinogenesis and related problems and assures appropriate quality control and standardization of analytical measurement and monitoring techniques utilized by the Agency. The Office exercises review and concurrence responsibilities on an Agencywide basis in all budgeting and planning actions involving monitoring which require Heardquarters approval.

(a) *Office of Acid Deposition, Environmental Monitoring and Quality Assurance.* The Office of Acid Deposition, Environmental Monitoring and Quality Assurance (OADEMQA), under the supervision of an Office Director, is responsible for planning, managing and evaluating a comprehensive program for:

(1) Monitoring the cause and effects of acid deposition;

(2) Research and development on the causes, effects and corrective steps for the acid deposition phenomenon;

(3) Research with respect to the transport and fate of pollutants which are released into the atmosphere;

(4) Development and demonstration of techniques and methods to measure exposure and to relate ambient concentrations to exposure by critical receptors;

(5) Research, development and demonstration of new monitoring methods, systems, techniques and equipment for detection, identification and characterization of pollutants at the source and in the ambient environment and for use as reference or standard monitoring methods;

(6) Establishment, direction and coordination of Agencywide Quality Assurance Program; and

(7) Development and provision of quality assurance methods, techniques and material including validation and standardization of analytical methods, sampling techniques, quality control methods, standard reference materials, and techniques for data collection, evaluation and interpretation. The Office identifies specific research, development, demonstration and service needs and priorities; establishes program policies and guidelines; develops program plans including objectives and estimates of resources required to accomplish objectives; administers the approved program and activities; assigns program responsibility and resources to the laboratories assigned by the Assistant Administrator; directs and supervises assigned laboratories in program administration; and con-

ducts reviews of program progress and takes action as necessary to assure timeliness, quality and responsiveness of outputs.

(b) *Office of Environmental Engineering and Technology Demonstration.* The Office of Environmental Engineering and Technology Demonstration (OEETD) under the supervision of a Director, is responsible for planning, managing, and evaluating a comprehensive program of research, development, and demonstration of cost effective methods and technologies to:

(1) Control Environmental impacts associated with the extraction, processing, conversion, and transportation of energy, minerals, and other resources, and with industrial processing and manufacturing facilities;

(2) Control environmental impacts of public sector activities including publicly-owned waste water and solid waste facilities;

(3) Control and manage hazardous waste generation, storage, treatment, and disposal;

(4) Provide innovative technologies for response actions under Superfund and technologies for control of emergency spills of oils and hazardous waste;

(5) Improve drinking water supply and system operations, including improved understanding of water supply technology and water supply criteria;

(6) Characterize, reduce, and mitigate indoor air pollutants including radon; and

(7) Characterize, reduce, and mitigate acid rain precursors from stationary sources. Development of engineering data needed by the Agency in reviewing premanufacturing notices relative to assessing potential release and exposure to chemicals, treatability by waste treatment systems, containment and control of genetically engineered organisms, and development of alternatives to mitigate the likelihood of release and exposure to existing chemicals. In carrying out these responsibilities, the Office develops program plans and manages the resources assigned to it; implements the approved programs and activities; assigns objectives and resources to the OEETD laboratories; conducts appropriate reviews to assure the quality, timeliness, and responsiveness of outputs; and conducts analyses of the relative environmental and socioeconomic impacts of engineering methods and control technologies and strategies. The Office of Environmental Engineering and Technology Demonstration is the focal point within the Office of Research and Development for providing liaison with the rest of the Agency and with the Department of Energy on issues associated with energy development. The Office is also the focal point within the Office of Research and Development for liaison with the rest of the Agency on issues related to engineering reseach and development and the control of pollution discharges.

(c) *Office of Environmental Processes and Effects Research.* The Office of Environmental Processes and Effects Research, under the supervision of the Director, is responsible for planning, managing, and evaluating a comprehensive research program to develop the scientific and technological methods and data necessary to understand ecological processes, and predict broad ecosystems impacts, and to manage the entry, movement, and fate of pollutants upon nonhuman organisms and ecosystems. The comprehensive program includes:

(1) The development of organism and ecosystem level effect data needed for the establishment of standards, criteria or guidelines for the protection of nonhuman components of the environment and ecosystems integrity and the prevention of harmful human exposure to pollutants;

(2) The development of methods to determine and predict the fate, transport, and environmental levels which may result in human exposure and exposure of nonhuman components of the environment, resulting from the discharge of pollutants, singly or in combination into the environment, including development of source criteria for protection of environmental quality;

(3) The development and demonstration of methods for the control or management of adverse environmental impacts from agriculture and other rural nonprofit sources;

(4) The development and demonstration of integrated pest management strategies for the management of agriculture and urban pests which utilize alternative biological, cultural and chemical controls;

(5) The development of a laboratory and fieldscale screening tests to provide data that can be used to predict the behavior of pollutants in terms of movement in the environmental, accumulation in the food chain, effects on organisms, and broad escosystem impacts;

(6) Coordination of interagency research activities associated with the health and environmental impacts of energy production and use; and

(7) development and demonstration of methods for restoring degraded ecosystem by means other than source control.

(d) *Office of Health Research.* The Office of Health Research under the supervision of a Director, is responsible for the management of planning, implementing, and evaluating a comprehensive, integrated human health research program which documents acute and chronic adverse effects to man from environmental exposure to pollutants and determines those exposures which have a potentially adverse effect on humans. This documentation is utilized by ORD for criteria development and scientific assessments in support of the Agency's regulating and standard-setting activities. To attain this objective, the program develops tests

systems and associated methods and protocols, such as predictive models to determine similarities and differences among test organisms and man; develops methodology and conducts laboratory and field research studies; and develops interagency programs which effectively use pollutants. The Office of Health Research is the Agency's focal point within the Office of Research and Development for providing liaison relative to human health effects and related human exposure issues (excluding issues related to the planning and implementation of research on the human health effects of energy pollutants that is conducted under the Interagency Energy/Environment Program). It responds with recognized authority to changing requirements of the Regions, program offices and other offices for priority technical assistance. In close coordination with Agency research and advisory committees, other agencies and offices, and interaction with academic and other independent scientific bodies, the Office develops health science policy for the Agency. Through these relationships and the scientific capabilities of its laboratories and Headquarters staffs, the Office provides a focal point for matters pertaining to the effects of human exposure to environmental pollutants.

(e) *Office of Health and Environmental Assessment (OHEA).* The Office of Health and Environmental Assessment, under the supervision of a Director, is the principal adviser on matters relating to the development of health criteria, health affects assessment and risk estimation, to the Assistant Administrator for Research and Development. The Director's Office: Develops recommendations on OHEA programs including the identification and development of alternative program goals, priorities, objectives and work plans; develops recommendations on overall office policies and means for their implementation; performs the critical path planning necessary to assure a timely production of OHEA information in response to program office needs; serves as an Agency health assessment advocate for issue resolution and regulatory review in the Agency Steering Committee, Science Advisory Board, and in cooperation with other Federal agencies and the scientific and technical community; and provides administrative support services to the components of OHEA. The Director's Office provides Headquarters coordination for the Environmental Criteria and Assessment Offices.

(f) *Office of Exploratory Research.* The Office of Exploratory Research (OER), under the supervision of a Director, is responsible for overall planning, administering, managing, and evaluating EPA's anticipatory and extramural grant research in response to Agency priorities, as articulated by Agency planning mechanisms and ORD's Research Committees. The Director advises the Assistance Administrator on the direction, scientific quality and effectiveness of ORD's long-term scientific review and evaluation; and research funding assistance efforts. The responsibilities of this office include: Administering ORD's scientific review of extramural requests for research funding assistance; developing research proposal solicitations; managing grant projects; and ensuring project quality and optimum dissemination of results. The OER is responsible for analyzing EPA's long-range environmental research concerns; forecasting emerging and potential environmental problems and manpower needs; identifying Federal workforce training programs to be used by State and local governments; assuring the participation of minority institutions in environmental research and development activities; and conducting special studies in response to high priority national environmental needs and problems. This office serves as an ORD focal point for university relations and other Federal research and development agencies related to EPA's extramural research program.

[50 FR 26721, June 28, 1985, as amended at 52 FR 30360, Aug. 14, 1987]

§ 1.47 Office of Solid Waste and Emergency Response.

The Office of Solid Waste and Emergency Response (OSWER), under the supervision of the Assistant Administrator for Solid Waste and Emergency Response, provides Agencywide policy, guidance, and direction for the Agency's solid and hazardous wastes and emergency response programs. This Office has primary responsibility for implementing the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA—''Superfund''). In addition to managing those programs, the Assistant Administrator serves as principal adviser to the Administrator in matters pertaining to them. The Assistant Administrator's responsibilities include: Program policy development and evaluation; development of appropriate hazardous waste standards and regulations; ensuring compliance with applicable laws and regulations; program policy guidance and overview, technical support, and evaluation of Regional solid and hazardous wastes and emergency response activities; development of programs for technical, programmatic, and compliance assistance to States and local governments; development of guidelines and standards for the land disposal of hazardous wastes; analyses of the recovery of useful energy from solid waste; development and implementation of a program to respond to uncontrolled hazardous waste sites and spills (including oil spills); long-term strategic planning and special studies; economic and long-term environmental

analyses; economic impact assessment of RCRA and CERCLA regulations; analyses of alternative technologies and trends; and cost-benefit analyses and development of OSWER environmental criteria.

(a) *Office of Waste Programs Enforcement.* The Office of Waste Programs Enforcement (OWPE), under the supervision of a Director, manages a national program of technical compliance and enforcement under CERCLA and RCRA. The Office provides guidance and support for the implementation of the CERCLA and RCRA compliance and enforcement programs. This includes the development of program strategies, long-term and yearly goals, and the formulation of budgets and plans to support implementation of strategies and goals. The Office provides program guidance through the development and issuance of policies, guidance and other documents and through training and technical assistance. The Office oversees and supports Regions and States in the implementation of the CERCLA and RCRA enforcement programs. The Office may assume responsibility for direct management of a limited number of CERCLA and RCRA enforcement actions which are multi-regional in nature or are cases of national significance. The Office serves as the national technical expert for all matters relating to CERCLA and RCRA compliance and enforcement. It represents the interest of the CERCLA and RCRA enforcement programs to other offices of the Agency. In coordination with the Office of External Affairs (OEA) and IO–OSWER, represents the program to external organizations, including the Office of Management and Budget (OMB), Congress, U.S. Department of Justice and other Federal agencies, the media, public interest and industry groups, State and local governments and their associations and the public.

(b) *Office of Solid Waste.* The Office of Solid Waste, under the supervision of a Director, is responsible for the solid and hazardous waste activities of the Agency. In particular, this Office is responsible for implementing the Resource Conservation and Recovery Act. The Office provides program policy direction to and evaluation of such activities throughout the Agency and establishes solid and hazardous wastes research requirements for EPA.

(c) *Office of Emergency and Remedial Response.* The Office of Emergency and Remedial Response, under the supervision of a Director, is responsible for the emergency and remedial response functions of the Agency (i.e., CERCLA). The Office is specifically responsible for:

(1) Developing national strategy, programs, technical policies, regulations, and guidelines for the control of abandoned hazardous waste sites, and response to and prevention of oil and hazardous substance spills;

(2) Providing direction, guidance, and support to the Environmental Response Teams and overseeing their activities;

(3) Providing direction, guidance, and support to the Agency's non-enforcement emergency and remedial response programs, including emergency and remedial responses to hazardous waste sites;

(4) Developing national accomplishment plans and resources;

(5) Scheduling the guidelines for program plans;

(6) Assisting in the training of personnel;

(7) Monitoring and evaluating the performance, progress, and fiscal status of the Regions in implementing emergency and remedial response program plans;

(8) Maintaining liaison with concerned public and private national organizations for emergency response;

(9) Supporting State emergency response programs; and

(10) Coordinating Office activities with other EPA programs.

(d) *Office of Underground Storage Tanks.* The Office of Underground Storage Tanks, under the supervision of a Director, is responsible for defining, planning, and implementing regulation of underground storage tanks containing petroleum, petroleum products, and chemical products. In particular, this Office is responsible for overseeing implementation of Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended. The Office develops and promulgates regulations and policies including notification, tank design and installation, corrective action, and State program approvals. It also plans for an oversees utilization of the Underground Storage Tank Trust Fund established by the Superfund Amendments and Reauthorization Act of 1986 (SARA).

[50 FR 26721, June 28, 1985, as amended at 52 FR 30360, Aug. 14, 1987]

§ 1.49 Office of Water.

The Office of Water, under the supervision of the Assistant Administrator for Water who serves as the principal adviser to the Administrator in matters pertaining to water programs, is responsible for management of EPA's water programs. Functions of the Office include program policy development and evaluation; environmental and pollution source standards development; program policy guidance and overview; technical support; and evaluation of Regional water activities; the conduct of compliance and permitting activities as they relate to drinking water and water programs; development of programs for technical assistance and technology transfer; development of selected demonstration programs; economic and long-term

environmental analysis; and marine and estuarine protection.

(a) *Office of Water Enforcement and Permits.* The Office of Water Enforcement and Permits, under the supervision of a Director, develops policies, strategies, procedures and guidance for EPA and State compliance monitoring, evaluation, and enforcement programs for the Clean Water Act and the Marine Protection Research and Sanctuaries Act. The Office also provides national program direction to the National Pollutant Discharge Elimination System permit program. The office has overview responsibilities and provides technical assistance to the regional activities in both enforcement and permitting programs.

(b) *Office of Water Regulations and Standards.* The Office of Water Regulations and Standards, under the supervision of a Director, is responsible for the Agency's water regulations and standards functions. The Office is responsible for developing an overall program strategy for the achievement of water pollution abatement in cooperation with other appropriate program offices. The Office assures the coordination of all national water-related activities within this water program strategy, and monitors national progress toward the achievement of water quality goals and is responsible for the development of effluent guidelines and water quality standards, and other pollutant standards, regulations, and guidelines within the program responsibilities of the Office. It exercises overall responsibility for the development of effective State and Regional water quality regulatory control programs. The Office is responsible for the development and maintenance of a centralized water programs data system including compatible water quality, discharger, and program data files utilizing, but not displacing, files developed and maintained by other program offices. It is responsible for developing national accomplishment plans and resource and schedule guidelines for monitoring and evaluating the performance, progress, and fiscal status of the organization in implementing program plans. The Office represents EPA in activities with other Federal agencies concerned with water quality regulations and standards.

(c) *Office of Municipal Pollution Control.* The Office of Municipal Pollution Control, under the supervision of a Director, is responsible for the Agency's water program operations functions. The Office is responsible for developing national strategies, program and policy recommendations, regulations and guidelines for municipal water pollution control; for providing technical direction and support to Regional Offices and other organizations; and for evaluating Regional and State programs with respect to municipal point source abatement and control, and manpower development for water-related activities. The Office assures that priority Headquarters and regional activities are planned and carried out in a coordinated and integrated fashion, including developing and implementing data submission systems.

(d) *Office of Drinking Water.* The Office of Drinking Water, under the supervision of a Director, is responsible for water supply activities of the Agency, including the development of an implementation strategy which provides the national policy direction and coordination for the program. This Office develops regulations and guidelines to protect drinking water quality and existing and future underground sources of drinking water, develops program policy and guidance for enforcement and compliance activities, and recommends policy for water supply protection activities. The office provides guidance and technical information to State agencies, local utilities, and Federal facilities through the Regional Offices on program planning and phasing; evaluates the national level of compliance with the regulations; plans and develops policy guidance for response to national, Regional, and local emergencies; reviews and evaluates, with Regional Offices, technical data for the designation of sole-source aquifers; designs a national program of public information; provides program policy direction for technical assistance and manpower training activities in the water supply area; identifies research needs and develops monitoring requirements for the national water supply program; develops national accomplishments' plans and resource schedule guidelines for monitoring and evaluating the program plans, and program performance, and fiscal status; develops program plans, and budget and program status reports for the water supply program; coordinates water supply activities with other Federal agencies as necessary; and serves as liaison with the National Drinking Water Advisory Council.

(e) *Office of Ground-Water Protection.* The Office of Ground-Water Protection, under the supervision of a Director, oversees implementation of the Agency's Ground-water Protection Strategy. This Office coordinates support of Headquarters and regional activities to develop stronger State government organizations and programs which foster ground-water protection. The Office directs and coordinates Agency analysis and approaches to unaddressed problems of ground-water contamination; is principally responsible for establishing and implementing a framework for decision-making at EPA on ground-water protection issues; and serves as the focus of internal EPA policy coordination for ground-water.

(f) *Office of Marine and Estuarine Protection.* The Office of Marine and Estuarine Protection, under the supervision of a Director, is responsible for the development of policies and strategies and implementation of a program to protect the ma-

rine/estuarine environment, including ocean dumping. The Office provides national direction for the Chesapeake Bay and other estuarine programs, and policy oversight of the Great Lakes Program.

(g) *Office of Wetlands Protection.* The Office of Wetlands Protection, under the supervision of a Director, administers the 404/Wetlands Program and develops policies, procedures, regulations, and strategies addressing the maintenance, enhancement, and protection of the Nations Wetlands. The Office coordinates Agency issues related to wetlands.

[50 FR 26721, June 28, 1985, as amended at 52 FR 30360, Aug. 14, 1987]

Subpart C—Field Installations

§ 1.61 Regional Offices.

Regional Administrators are responsible to the Administrator, within the boundaries of their Regions, for the execution of the Regional Programs of the Agency and such other responsibilities as may be assigned. They serve as the Administrator's prinicipal representatives in their Regions in contacts and relationships with Federal, State, interstate and local agencies, industry, academic institutions, and other public and private groups. Regional Administrators are responsible for:

(a) Accomplishing national program objectives within the Regions as established by the Administrator, Deputy Administrator, Assistant Administrators, Associate Administrators, and Heads of Headquarters Staff Offices;

(b) Developing, proposing, and implementing approved Regional programs for comprehensive and integrated environmental protection activities;

(c) Total resource management in their Regions within guidelines provided by Headquarters;

(d) Conducting effective Regional enforcement and compliance programs;

(e) Translating technical program direction and evaluation provided by the various Assistant Administrators, Associate Administrators and Heads of Headquarters Staff Offices, into effective operating programs at the Regional level, and assuring that such programs are executed efficiently;

(f) Exercising approval authority for proposed State standards and implementation plans; and

(g) Providing for overall and specific evaluations of Regional programs, both internal Agency and State activities.

PART 2—PUBLIC INFORMATION

Subpart A—Requests for Information

Subpart B—Confidentiality of Business Information

Subpart C—Testimony by Employees and Production of Documents in Civil Legal Proceedings Where the United States Is Not a Party

AUTHORITY: 5 U.S.C. 301, 552 (as amended), 553; secs. 114, 205, 208, 301, and 307, Clean Air Act, as amended (42 U.S.C. 7414, 7525, 7542, 7601, 7607); secs. 308, 501 and 509(a), Clean Water Act, as amended (33 U.S.C. 1318, 1361, 1369(a)); sec. 13, Noise Control Act of 1972 (42 U.S.C. 4912); secs. 1445 and 1450, Safe Drinking Water Act (42 U.S.C. 300j–4, 300j–9); secs. 2002, 3007, and 9005, Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6927, 6995); secs. 8(c), 11, and 14, Toxic Substances Control Act (15 U.S.C. 2607(c), 2610, 2613); secs. 10, 12, and 25, Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136h, 136j, 136w); sec. 408(f), Federal Food, Drug and Cosmetic Act, as amended (21 U.S.C. 346(f)); secs. 104(f) and 108, Marine Protection Research and Sanctuaries Act of 1972 (33 U.S.C. 1414(f), 1418); secs. 104 and 115, Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9604 and 9615); sec. 505, Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2005).

SOURCE: 41 FR 36902, Sept. 1, 1976, unless otherwise noted.

Subpart A—Requests for Information

§ 2.100 Definitions.

For the purposes of this part:

(a) *EPA* means the United States Environmental Protection Agency.

(b) *EPA Record* or, simply *record* means any document, writing, photograph, sound or magnetic recording, drawing, or other similar thing by which information has been preserved, from which the information can be retrieved and copied, and over which EPA has possession or control. It may include copies of the records of other Federal agencies (see § 2.111(d)). The term includes informal writings (such as drafts and the like), and also includes information preserved in a form which must be translated or deciphered by machine in order to be intelligible to humans. The term includes documents and the like which were created or acquired by EPA, its predecessors, its officers, and its employees by use of Government funds or in the course of transacting official business. However, the term does not include materials which are the personal records of an EPA officer or employee. Nor does the term include materials published by non-Federal organizations which are readily available to the public, such as books, journals, and periodicals available through reference libraries, even if such materials are in EPA's possession.

(c) *Request* means a request to inspect or obtain a copy of one or more records.

(d) *Requestor* means any person who has submitted a request to EPA.

(e) The term *commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requestor or the person on whose behalf the request is made. In determining whether a requestor properly belongs in this category, EPA must determine the use to which a requestor will put the documents requested. Moreover, where EPA has reasonable cause to doubt the use to which a requestor will put the records sought, or where that use is not clear from the request itself, EPA may seek additional clarification before assigning the request to a specific category.

(f) The term *non-commercial scientific institution* refers to an institution that is not operated on a *commercial* basis as that term is referenced in paragraph (e) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(g) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution or professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(h) The term *representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of *freelance* journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but EPA may also look to the past publication record of a requestor in making this determination.

(i) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searching for material must be done in the most efficient and least expensive manner so as to minimize costs for both the EPA and the requestor. For example, EPA will not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. *Search* will be distinguished, moreover, from *review* of material in order to determine whether the material is exempt from disclosure (see paragraph (j) of this section). Searches may be done manually or by computer using existing programming.

(j) The term *review* refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (e) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them

for release. Review does not include time spent resolving legal or policy issues regarding the application of exemptions. (Documents must be reviewed in responding to all requests; however, review time may only be charged to Commercial Use Requesters.)

(k) The term *duplication* refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

[41 FR 36902, Sept. 1, 1976, as amended at 50 FR 51658, Dec. 18, 1985; 53 FR 216, Jan. 5, 1988]

§ 2.101 Policy on disclosure of EPA records.

(a) EPA will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of persons in business information entitled to confidential treatment, and the need for EPA to promote frank internal policy deliberations and to pursue its official activities without undue disruption.

(b) All EPA records shall be available to the public unless they are exempt from the disclosure requirements of 5 U.S.C 552.

(c) All nonexempt EPA records shall be available to the public upon request regardless of whether any justification or need for such records has been shown by the requestor.

(d) When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, EPA will inform the requester of the steps necessary to obtain records from the sources.

[41 FR 36902, Sept. 1, 1976, as amended at 53 FR 216, Jan. 5, 1988]

§ 2.102 [Reserved]

§ 2.103 Partial disclosure of records.

If a requested record contains both exempt and nonexempt material, the nonexempt material shall be disclosed, after the exempt material has been deleted in accordance with § 2.119.

§ 2.104 Requests to which this subpart applies.

(a) This subpart applies to any written request (other than a request made by another Federal agency) received by any EPA office, whether or not the request cites the Freedom of Information Act, 5 U.S.C. 552. See §§ 2.107(a) and 2.112(b) regarding the treatment of requests which are directed by the requestor to offices other than those listed in § 2.106.

(b) Any written request to EPA for existing records prepared by EPA for routine public distribution, e.g., pamphlets, copies of speeches, press releases, and educational materials, shall be honored. No individual determination under § 2.111 is necessary in such cases, since preparation of the records for routine public distribution itself constitutes a determination that the records are available to the public.

§ 2.105 Existing records.

(a) The Freedom of Information Act, 5 U.S.C. 552, does not require the creation of new records in response to a request, nor does it require EPA to place a requestor's name on a distribution list for automatic receipt of certain kinds of records as they come into existence. The Act establishes requirements for disclosure of existing records.

(b) All existing EPA records are subject to routine destruction according to standard record retention schedules.

§ 2.106 Where requests for agency records shall be filed.

(a) A request for records may be filed with the EPA Freedom of Information Officer, A–101, 401 M Street, SW., Washington, DC 20460.

(b) Should the requestor have reason to believe that the records sought may be located in an EPA regional office, he may transmit his request to the appropriate regional Freedom of Information Office indicated below:

(1) Region I (Massachusetts, Connecticut, Maine, New Hampshire, Rhode Island, Vermont):

U.S. Environmental Protection Agency, Freedom of Information Officer, Room 2303, John F. Kennedy Federal Building, Boston, MA 02203.

(2) Region II (New Jersey, New York, Puerto Rico, Virgin Islands):

U.S. Environmental Protection Agency, Freedom of Information Officer, Room 1005, 26 Federal Plaza, New York, NY 10007.

(3) Region III (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia):

U.S. Environmental Protection Agency, Freedom of Information Officer, 841 Chestnut Street, Philadelphia, PA 19107.

(4) Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee):

U.S. Environmental Protection Agency, Freedom of Information Officer, 345 Courtland Street, NE., Atlanta, GA 30365.

(5) Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin):

U.S. Environmental Protection Agency, Freedom of Information Officer, 77 West Jackson Boulevard, Chicago, IL 60604.

(6) Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas):

U.S. Environmental Protection Agency, Freedom of Information Officer (6M–MC), 1201 Elm Street, Dallas, TX 75270.

(7) Region VII (Iowa, Kansas, Missouri, Nebraska):

U.S. Environmental Protection Agency, Freedom of Information Officer, 726 Minnesota Avenue, Kansas City, KS 66101.

(8) Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming):

U.S. Environmental Protection Agency, Freedom of Information Officer, One Denver Place, 999 18th Street, Suite 1300, Denver, CO 80202–2413.

(9) Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Guam, Trust Territory of Pacific Islands):

U.S. Environmental Protection Agency, Freedom of Information Officer, 215 Fremont Street, San Francisco, CA 94105.

(10) Region X (Alaska, Idaho, Oregon, Washington):

U.S. Environmental Protection Agency, Freedom of Information Officer, 1200 Sixth Avenue, Seattle, WA 98101.

[41 FR 36902, Sept. 1, 1976, as amended at 50 FR 51659, Dec. 18, 1985; 62 FR 1833, Jan. 14, 1997]

§ 2.107 Misdirected written requests; oral requests.

(a) EPA cannot assure that a timely or satisfactory response under this subpart will be given to written requests that are addressed to EPA offices, officers, or employees other than the Freedom of Information Officers listed in § 2.106. Any EPA officer or employee who receives a written request for inspection or disclosure of EPA records shall promptly forward a copy of the request to the appropriate Freedom of Information Officer, by the fastest practicable means, and shall, if appropriate, commence action under § 2.111. For purposes of § 2.112, the time allowed with respect to initial determinations shall be computed from the day on which the appropriate Freedom of Information Officer receives the request.

(b) While EPA officers and employees will attempt in good faith to comply with requests for inspection or disclosure of EPA records made orally, by telephone or otherwise, such oral requests are not required to be processed in accordance with this subpart.

[41 FR 36902, Sept. 1, 1976, as amended at 50 FR 51659, Dec. 18, 1985]

§ 2.108 Form of request.

A request shall be made in writing, shall reasonably describe the records sought in a way that will permit their identification and location, and should be addressed to one of the addresses set forth in § 2.106, but otherwise need not be in any particular form.

§ 2.109 Requests which do not reasonably describe records sought.

(a) If the description of the records sought in the request is not sufficient to allow EPA to identify and locate the requested records, the EPA office taking action under § 2.111 will notify the requestor (by telephone when practicable) that the request cannot be further processed until additional information is furnished.

(b) EPA will make every reasonable effort to assist in the identification and description of records sought and to assist the requestor in formulating his request. If a request is described in general terms (e.g., all records having to do with a certain area), the EPA office taking action under § 2.111 may communicate with the requestor (by telephone when practicable) with a view toward reducing the administrative burden of processing a broad request and minimizing the fees payable by the requestor. Such attempts will not be used as a means to discourage requests, but rather as a means to help identify with more specificity the records actually sought.

§ 2.110 Responsibilities of Freedom of Information Officers.

(a) Upon receipt of a written request, the Freedom of information Officer (whether at EPA Headquarters or at an EPA region) shall mark the request with the date of receipt, and shall attach to the request a control slip indicating the date of receipt, the date by which response is due, a unique Request Identification Number, and other pertinent administrative information. The request and control slip shall then be forwarded immediately to the EPA office believed to be responsible for maintaining the records requested. (If the records requested are believed to be located at two or more EPA offices, each such office shall be furnished a copy of the request and control slip, with instructions concerning which office shall serve as the lead office for coordinating the response.) The Freedom of Information Officer shall retain a file copy of the request and control slip, and shall monitor the handling of the request to ensure a timely response.

(b) The Freedom of Information Officer shall maintain a file concerning each request received, which shall contain a copy of the request, initial and appeal determinations, and other pertinent correspondence and records.

(c) The Freedom of Information officer shall collect and maintain the information necessary to compile the reports required by 5 U.S.C. 552(d).

§ 2.111 Action by office responsible for responding to request.

(a) Whenever an EPA office becomes aware that it is responsible for responding to a request, the office shall:

(1) Take action under § 2.109, if required, to obtain a better description of the records requested;

(2) Locate the records as promptly as possible, or determine that the records are not known to exist, or that they are located at another EPA office, or that they are located at another Federal agency and not possessed by EPA;

(3) When appropriate, take action under § 2.120(c) to obtain payment or assurance of payment;

(4) If any located records contain business information, as defined in § 2.201(c), comply with subpart B of this part;

(5) Determine which of the requested records legally must be withheld, and why (see § 2.119(b));

(6) Of the requested records which are exempt from mandatory disclosure but which legally may be disclosed (see § 2.119(a)), determine which records will be withheld, and why;

(7) Issue all initial determination within the allowed period (see § 2.112), specifying (individually or by category) which records will be disclosed and which will be withheld, and signed by a person authorized to issue the determination under § 2.113(b). Denials of requests shall comply with § 2.113; and

(8) Furnish the appropriate Freedom of Information Officer a copy of the determination. If the determination denied a request for one or more existing, located records, the responding office shall also furnish the Freedom of Information officer the name, address, and telephone number of the EPA employee(s) having custody of the records, and shall maintain the records in a manner permitting their prompt forwarding to the General Counsel upon request if an appeal from the initial denial is filed. See also § 2.204(f).

(b) If it appears that some or all of the requested records are not in the possession of the EPA office which has been assigned responsibility for responding to the request but may be in the possession of some other EPA office, the Freedom of Information officer who is monitoring the request shall be so informed immediately.

(c) In determining which records are responsive to a request, the EPA office responding shall ordinarily include those records within the Agency's possession as of the date of the Agency's receipt of the request.

(d) When a request for EPA records encompasses records of another Federal agency, the EPA office shall either: (1) Respond to the request after consulting with the originating agency when appropriate or; (2) promptly transfer responsibility for responding to the request to the originating agency provided that the other agency is subject to the FOIA. Whenever the EPA office refers a request to another agency, it shall notify the requestor of the referral.

[41 FR 36902, Sept. 1, 1976, as amended at 50 FR 51659, Dec. 18, 1985]

§ 2.112 Time allowed for issuance of initial determination.

(a) Except as otherwise provided in this section, not later than the tenth working day after the date of receipt by a Freedom of Information Office of a request for records, the EPA office responsible for responding to the request shall issue a written determination to the requestor stating which of the requested records will, and which will not, be released and the reason for any denial of a request. If the records are not known to exist or are not in EPA's possession, the EPA office shall so inform the requestor. To the extent requested records which are in EPA's possession are published by the Federal government, the response may inform the requestor that the records are available for inspection and where copies can be obtained.

(b) The period of 10 working days shall be measured from the date the request is first received and logged in by the Headquarters or regional Freedom of Information Office.

(c) There shall be excluded from the period of 10 working days (or any extension thereof) any time which elapses between the date that a requestor is notified by EPA under § 2.109 that his request does not reasonably identify the records sought, and the date that the requestor furnishes a reasonable identification.

(d) There shall be excluded from the period of 10 working days (or any extension thereof) any time which elapses between the date that a requestor is notified by EPA under § 2.120 that prepayment or assurance of payment of fees is required, and the date that the requestor pays (or makes suitable arrangements to pay) such charges.

(e) The EPA office taking action under § 2.111, after notifying the appropriate Freedom of Information Office, may extend the basic 10-day period established under subsection (a) of this section by a period not to exceed 10 additional working days, by furnishing written notice to the requestor within

the basic 10-day period stating the reasons for such extension and the date by which the office expects to be able to issue a determination. The period may be so extended only when absolutely necessary, only for the period required, and only when one or more of the following unusual circumstances require the extension:

(1) There is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request:

(2) There is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) There is a need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of EPA.

(f) Failure of EPA to issue a determination within the 10-day period or any authorized extension shall constitute final agency action which authorizes the requestor to commence an action in an appropriate Federal district court to obtain the records.

[41 FR 36902, Sept. 1, 1976, as amended at 50 FR 51659, Dec. 18, 1985]

§ 2.113 Initial denials of requests.

(a) An initial denial of a request may be issued only for the following reasons:

(1) A statutory provision, provision of this part, or court order requires that the information not be disclosed;

(2) The record is exempt from mandatory disclosure under 5 U.S.C. 552(b) and EPA has decided that the public interest would not be served by disclosure; or

(3) Section 2.204(d)(1) requires initial denial because a third person must be consulted in connection with a business confidentiality claim.

(b) The Deputy Administrator, Assistant Administrators, Regional Administrators, the General Counsel, the Inspector General, Associate Administrators, and heads of headquarters staff offices are delegated the authority to issue initial determinations This authority may be redelegated; *Provided*, That the authority to issue initial denials of requests for existing, located records (other than denials based solely on § 2.204(d)(1)) may be redelegated only to persons occupying positions not lower than division director or equivalent.

(c) [Reserved]

(d)(1) Each initial determination to deny a request shall be written, signed, and dated, and, except as provided in paragraph (d)(2), shall contain a reference to the Request Identification Number, shall identify the records that are being withheld (individually, or, if the denial covers a large number of similar records, by described category), and shall state the basis for denial for each record or category of records being withheld.

(2) No initial determination shall reveal the existence or nonexistence of records if identifying the mere fact of the existence or nonexistence of those records would reveal confidential business information, confidential personal information or classified national security information. Instead of identifying the existence or nonexistence of the records, the initial determination shall state that the request is denied because either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of 5 U.S.C. 552(b). No such determination shall be made without the concurrence of the General Counsel or his designee. The General Counsel has designated the Contracts and Information Law Branch to act on these requests for concurrence. See § 2.121 for guidance on initial determinations denying, in limited circumstances, the existence of certain law enforcement records or information.

(e) If the decision to deny a request is made by an authorized EPA employee other than the person signing the determination letter, that other person's identity and position shall be stated in the determination letter.

(f) Each initial determination which denies, in whole or in part, a request for one or more existing, located EPA records (including determinations described in § 2.113(d)(2) of this section) shall state that the requester may appeal the initial denial by sending a written appeal to the address shown in § 2.106(a) within 30 days after receipt of the determination. An initial determination which only denies the existence of records, however, will not include a notice of appeal rights.

(g) A determination shall be deemed issued on the date the determination letter is placed in EPA mailing channels for first class mailing to the requestor, delivered to the U.S. Postal Service for mailing, or personally delivered to the requestor, whichever date first occurs.

[41 FR 36902, Sept. 1, 1976, as amended at 50 FR 51659, Dec. 18, 1985; 53 FR 216, Jan. 5, 1988]

§ 2.114 Appeals from initial denials; manner of making.

(a) Any person whose request for one or more existing, located EPA records has been denied in whole or in part by an initial determination may appeal that denial by addressing a written appeal to the address shown in § 2.106(a).

(b) An appeal should be mailed no later than 30 calendar days after the date the requestor received

the initial determination on the request. An untimely appeal may be treated either as a timely appeal or as a new request, at the option of the Freedom of Information Officer.

(c) The appeal letter shall contain a reference to the Request Identification Number (RIN), the date of the initial determination, and the name and address of the person who issued the initial denial. The appeal letter shall also indicate which of the records to which access was denied are the subjects of the appeal.

[41 FR 36902, Sept. 1, 1976, as amended at 50 FR 51659, Dec. 18, 1985]

§ 2.115 Appeal determinations; by whom made.

(a) The General Counsel shall make one of the following legal determinations in connection with every appeal from the initial denial of a request for an existing, located record:

(1) The record must be disclosed;

(2) The record must not be disclosed, because a statute or a provision of this part so requires; or

(3) The record is exempt from mandatory disclosure but legally may be disclosed as a matter of Agency discretion.

(b) Whenever the General Counsel has determined under paragraph (a)(3) of this section that a record is exempt from mandatory disclosure but legally may be disclosed, and the record has not been disclosed by EPA under 5 U.S.C. 552, the matter shall be referred to the Assistant Administrator for External Affairs. If the Assistant Administant Administrator determines that the public interest would not be served by disclosure, a determination denying the appeal shall be issued by the General Counsel. If the Assistant Administrator determines that the public interest would be served by disclosure, the record shall be disclosed unless the Administrator (upon a review of the matter requested by the appropriate Assistant Administrator, Associate Administrator, Regional Administrator, the General Counsel, or the head of a headquarters staff office) determines that the public interest would not be served by disclosure, in which case the General Counsel shall issue a determination denying the appeal. This review by the Assistant Administrator for External Affairs shall not apply to appeals from initial determinations by the Office of Inspector General to deny requests.

(c) The General Counsel may delegate his authority under paragraph (a) of this section to a Regional Counsel, or to any other attorney employed on a full-time basis by EPA, in connection with any category of appeals or any individual appeal.

(d) The Assistant Administrator for External Affairs may delegate the authority under paragraph (b) of this section to the Deputy Assistant Administrator for External Affairs.

[41 FR 36902, Sept. 1, 1976, as amended at 50 FR 51659, Dec. 18, 1985]

§ 2.116 Contents of determination denying appeal.

(a) Except as provided in paragraph (b) of this section, each determination denying an appeal from an initial denial shall be in writing, shall state which of the exemptions in 5 U.S.C. 552(b) apply to each requested existing record, and shall state the reason(s) for denial of the appeal. A denial determination shall also state the name and position of each EPA officer or employee who directed that the appeal be denied. Such a determination shall further state that the person whose request was denied may obtain de novo judicial review of the denial by complaint filed with the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the Agency records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4).

(b) No determination denying an appeal shall reveal the existence or nonexistence of records if identifying the mere fact of the existence or nonexistence of those records would reveal confidential business information, confidential personal information or classified national security information. Instead of identifying the existence or nonexistence of the records, the determination shall state that the appeal is denied because either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of 5 U.S.C. 552(b).

[53 FR 217, Jan. 5, 1988]

§ 2.117 Time allowed for issuance of appeal determination.

(a) Except as otherwise provided in this section, not later than the twentieth working day after the date of receipt by the Freedom of Information Officer at EPA Headquarters of an appeal from an initial denial of a request for records, the General Counsel shall issue a written determination stating which of the requested records (as to which an appeal was made) shall be disclosed and which shall not be disclosed.

(b) The period of 20 working days shall be measured from the date an appeal is first received by the Freedom of Information Officer at EPA Headquarters, except as otherwise provided in § 2.205(a).

(c) The Office of General Counsel, after notifying the Freedom of Information Officer at EPA Headquarters, may extend the basic 20-day period established under subsection (a) of this section by

a period not to exceed 10 additional working days, by furnishing written notice to the requestor within the basic 20-day period stating the reasons for such extension and the date by which the office expects to be able to issue a determination. The period may be so extended only when absolutely necessary, only for the period required, and only when one or more of the following unusual circumstances require the extension:

(1) There is a need to search for and collect the records from field facilities or other establishments that are separate from the office processing the appeal;

(2) There is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) There is a need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of EPA.

(d) No extension of the 20-day period shall be issued under subsection (c) of this section which would cause the total of all such extensions and of any extensions issued under § 2.112(e) to exceed 10 working days.

§ 2.118 Exemption categories.

(a) 5 U.S.C. 552(b) establishes nine exclusive categories of matters which are exempt from the mandatory disclosure requirements of 5 U.S.C. 552(a). No request under 5 U.S.C. 552 for an existing, located record in EPA's possession shall be denied by any EPA office or employee unless the record contains (or its disclosure would reveal) matters that are—

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)): *Provided*, That such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential (see subpart B);

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7)(i) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(A) Could reasonably be expected to interfere with enforcement proceedings;

(B) Would deprive a person of a right to a fair trial or an impartial adjudication;

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(D) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(F) Could reasonably be expected to endanger the life or physical safety of any individual.

(ii) [Reserved]

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of finanical institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) The fact that the applicability of an exemption permits the withholding of a requested record (or portion thereof) does not necessarily mean that the record must or should be withheld. See § 2.119.

[41 FR 36902, Sept. 1, 1976, as amended at 43 FR 40000, Sept. 8, 1978; 53 FR 217, Jan. 5, 1988]

§ 2.119 Discretionary release of exempt documents.

(a) An EPA office may, in its discretion, release requested records despite the applicability of one or more of the exemptions listed in § 2.118 (a)(2), (a)(5), or (a)(7). Disclosure of such records is encouraged if no important purpose would be served by withholding the records.

(b) As a matter of policy, EPA will not release a requested record if EPA has determined that one

or more of the exemptions listed in § 2.118(a)(1), (3), (4), (6), (8), or (9), applies to the record, except when ordered to do so by a Federal court or in exceptional circumstances under appropriate restrictions with the approval of the Office of General Counsel or a Regional Counsel.

§ 2.120 Fees; payment; waiver.

(a) *Fee schedule.* Requesters shall be charged the full allowable direct costs incurred by the Agency in responding to a FOIA request. However, if EPA uses a contractor to search for, reproduce or disseminate records responsive to a request, the cost to the requester shall not exceed the cost of the Agency itself performing the service.

(1) There are four categories of requests. Fees for each of the categories will be charged as follows:

(i) Commercial use requests. If the request seeks disclosure of records for a commercial use, the requester shall be charged for the time spent searching for the requested record, reviewing the record to determine whether it should be disclosed and for the cost of each page of duplication. Commercial use requesters should note that EPA also may charge fees to them for time spent searching for and/or reviewing records, even if EPA fails to locate the records or if the records located are determined to be exempt from disclosure.

(ii) Requests from an educational or non-commercial scientific institution whose purpose is scholarly or scientific research, involving a request which is not for a commercial use and seeks disclosure of records. In the case of such a request, the requester shall be charged only for the duplication cost of the records, except that the first 100 pages of duplication shall be furnished without charge.

(iii) Requests from a representative of the news media, involving a request which is not for a commercial use and seeks disclosure of records. In the case of such a request, the requester shall be charged only for the duplication cost of the records, except that the first 100 pages of duplication shall be furnished without charge.

(iv) All other requests. If the request seeks disclosure of records other than as described in paragraphs (a)(1)(i), (ii), and (iii) of this section, the requester shall be charged the full cost of search and duplication. However, the first two hours of search time (or its cost equivalent) and the first 100 pages of duplication (or their cost equivalent) shall be furnished without charge. Requesters in the ''all other requests'' category should note that EPA also may charge fees to them for time spent searching for records, even if EPA fails to locate the records or if the records located are determined to be exempt from disclosure.

(2) The determination of a requester's fee category will be based on the following:

(i) Commercial use requesters: The use to which the requester will put the documents requested;

(ii) Educational and non-commercial scientific institution requestors: Identity of the requester and the use to which the requestor will put the documents requested;

(iii) Representatives of the news media requesters: The identity of the requester and the use to which the requestor will put the documents requested.

(3) Fees will be charged to requesters, as appropriate, for search, duplication and review of requested records in accordance with the following schedule:

(i) Manual search for records.

(A) EPA Employees: For each ½ hour or portion thereof:

(*1*) GS–8 and below: $4.00.

(*2*) GS–9 and above: $10.00.

(B) Contractor employees: The requestor will be charged for actual charges up to but not exceeding the rate which would have been charged had EPA employees conducted the search.

(ii) Computer search for records charges will consist of:

(A) EPA employee operators: For each ½ hour or portion thereof:

(*1*) GS–8 and below: $4.00.

(*2*) GS–9 and above: $10.00, plus.

(B) Contractor operators: Requestors will be charged for the actual charges up to but not exceeding the rate which would have been charged had EPA employees conducted the search (see paragraph (a)(3)(i)(A) of this section), plus.

(C) Actual computer resource usage charges for this search.

(iii) Review of records. For each ½ hour or portion thereof (EPA employees):

(A) GS–8 and below: $4.00.

(B) GS–9 and above: $10.00.

(iv) Duplication or reproduction of records.

(A) Duplication or reproduction of documents by EPA employees (paper copy of paper original): $.15 per page.

(B) Computer printouts (other than those calculated in a direct-cost billing—see paragraph (a)(3)(ii) of this section ''Computer search for records'') $.15 per page.

(C) Other methods of duplication or reproduction, including, but not limited to, duplication of photographs, microfilm and magnetic tape, will be charged at the actual direct cost to EPA.

(4) Other charges.

(i) Other charges incurred in responding to a request including but not limited to, special handling or transportation of records, will be charged at the actual direct cost to EPA.

(ii) Certification or authentication of records: $25.00 per certification or authentication.

(5) No charge shall be made—

(i) For the cost of preparing or reviewing letters of response to a request or appeal;

(ii) For time spent resolving legal or policy issues concerning the application of exemptions;

(iii) For search time and the first 100 pages of duplication for requests described in § 2.120(a)(1)(ii) and (iii) of this section;

(iv) For the first two hours of search time (or its cost equivalent) and for the first 100 pages of duplication for requests described in § 2.120(a)(1)(iv) of this section;

(v) If the total fee in connection with a request is less than $25.00, or if the costs of collecting the fee would otherwise exceed the amount of the fee. However, when EPA reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, EPA will aggregate such requests to determine the total fee, and will charge accordingly;

(vi) For responding to a request by an individual for one copy of a record retrievable by the requesting individual's name or personal identifier from a Privacy Act system of records;

(vii) For furnishing records requested by either House of Congress, or by a duly authorized committee or subcommittee of Congress, unless the records are requested for the benefit of an individual Member of Congress or for a constituent;

(viii) For furnishing records requested by and for the official use of other Federal agencies; or

(ix) For furnishing records needed by an EPA contractor, subcontractor, or grantee to perform the work required by the EPA contract or grant.

(b) *Method of payment.* All fee payments shall be in the form of a check or money order payable to the ''U.S. Environmental Protection Agency'' and shall be sent (accompanied by a reference to the pertinent Request Identification Number(s)) to the appropriate Headquarters or Regional Office lock box address:

(1) EPA—Washington Headquarters, P.O. Box 360277M, Pittsburgh, PA 15251;

(2) EPA—Region 1, P.O. Box 360197M, Pittsburgh, PA 15251;

(3) EPA—Region 2, P.O. Box 360188M, Pittsburgh, PA 15251;

(4) EPA—Region 3, P.O. Box 360515M, Pittsburgh, PA 15251;

(5) EPA—Region 4, P.O. Box 100142, Atlanta, GA. 30384;

(6) EPA—Region 5, P.O. Box 70753, Chicago, IL 60673;

(7) EPA—Region 6, P.O. Box 360582M, Pittsburgh, PA 15251;

(8) EPA—Region 7, P.O. Box 360748M, Pittsburgh, PA 15251;

(9) EPA—Region 8, P.O. Box 360859M, Pittsburgh, PA 15251;

(10) EPA—Region 9, P.O. Box 360863M, Pittsburgh, PA 15251;

(11) EPA—Region 10, P.O. Box 360903M, Pittsburgh, PA 15251;

Under the Debt Collection Act of 1982 (Pub. L. 97–365), payment (except for prepayment) shall be due within thirty (30) calendar days after the date of billing. If payment is not received at the end of thirty calendar days, interest and a late payment handling charge will be assessed. In addition, under this Act, a penalty charge will be applied on any principal amount not paid within ninety (90) calendar days after the due date for payment. By the authority of the Debt Collection Act of 1982, delinquent amounts due may be collected through administrative offset or referred to private collection agencies. Information related to delinquent accounts may also be reported to the appropriate credit agencies.

(c) *Assurance of payment.* (1) If an EPA office estimates that the fees for processing a request (or aggregated requests as described in § 2.120(a)(5)(vi) of this section) will exceed $25.00, that office need not search for, duplicate or disclose records in response to the request(s) until the requester assures payment of the total amount of fees estimated to become due under this section. In such cases, the EPA office will promptly inform the requester (by telephone it practicable) of the need to make assurance of payment.

(2) An EPA office may not require a requester to make an advance payment, i.e. payment before work is commenced or continued on a request, unless:

(i) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days after the date of the billing), or

(ii) The EPA office estimates or determines that the allowable charges that a requester may be required to pay are likely to exceed $250.00. Then the EPA office will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment. If such advance payment is not received within 30 days after EPA's billing, the request will not be processed and the request will be closed. See also § 2.112(d).

(d) *Reduction or waiver of fee.* (1) The fee chargeable under this section shall be reduced or waived by EPA if the Agency determines that disclosure of the information:

(i) Is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Is not primarily in the commercial interest of the requestor.

(2) Both of these requirements must be satisfied before fees properly assessable can be waived or reduced.

(3) The Agency will employ the following four factors in determining whether the first requirement has been met:

(i) The subject of the request: Whether the subject of the requested records concerns ''the operations or activities of the government'';

(ii) The informative value of the information to be disclosed: Whether the disclosure is ''likely to contribute to an understanding of government operations or activities'';

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to ''public understanding''; and

(iv) The significance of the contribution to public understanding: Whether disclosure is likely to contribute ''significantly'' to public understanding of government operations or activities.

(4) The Agency will employ the following factors in determining whether the second requirement has been met:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''

(5) In all cases, the burden shall be on the requester to present information in support of a request for a waiver of fees. A request for reduction or waiver of fees should include:

(i) A clear statement of the requester's interest in the requested documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from such use and from the release of the requested documents; and

(iv) If specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(6) A request for reduction or waiver of fees shall be addressed to the appropriate Freedom of Information Officer. The requester shall be informed in writing of the Agency's decision whether to grant or deny the fee waiver or fee reduction request. This decision may be appealed by letter addressed to the EPA Freedom of Information Officer. The General Counsel shall decide such appeals. The General Counsel may redelegate this authority only to the Deputy General Counsel or the Associate General Counsel for Grants, Contracts and General Law.

(e) The Financial Management Office shall maintain a record of all fees charged requesters for searching for, reviewing and reproducing requested records under this section. If after the end of 60 calendar days from the date on which request for payment was made the requester has not submitted payment to the appropriate EPA billing address (as listed in § 2.120(b)), the Financial Management Division shall place the requester's name on a delinquent list which is sent to the EPA Freedom of Information Officer. If a requester whose name appears on the delinquent list makes a request under this part, the EPA Freedom of Information Officer shall inform the requester that EPA will not process the request until the requester submits payment of the overdue fee from the earlier request. Any request made by an individual who specifies an affiliation with or representation of a corporation, association, law firm, or other organization shall be deemed to be a request by the corporation, association, law firm, or other organization. If an organization placed on the delinquent list can show that the person who made the request for which payment was overdue did not make the request on behalf of the organization the organization will be removed from the delinquent list but the name of the individual shall remain on the list. A requester shall not be placed on the delinquent list if a request for a reduction or for a waiver is pending under paragraph (d) of this section.

[53 FR 217, Jan. 5, 1988]

§ 2.121 Exclusions.

(a) Whenever a request is made which involves access to records described in § 2.118(a)(7)(i)(A), and

(1) The investigation or proceeding involves a possible violation of criminal law; and

(2) There is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of such records could reasonably be expected to interfere with enforcement proceedings, EPA shall, during only such time as the circumstances continue, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

(b) Whenever informant records maintained by the Agency under an informant's name or personal identifier are requested by a third party according

to the informant's name or personal identifier and the informant's status as an informant has not been officially confirmed, EPA shall treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

(c) No determination relying on this section shall be issued without the concurrence of the General Counsel or his designee. The General Counsel has designated the Contracts and Information Law Branch to act on these requests for concurrence.

(d) An initial determination which only relies on this section will not include notice of appeal rights.

[53 FR 219, Jan. 5, 1988]

Subpart B—Confidentiality of Business Information

§ 2.201 Definitions.

For the purposes of this subpart:

(a) *Person* means an individual, partnership, corporation, association, or other public or private organization or legal entity, including Federal, State or local governmental bodies and agencies and their employees.

(b) *Business* means any person engaged in a business, trade, employment, calling or profession, whether or not all or any part of the net earnings derived from such engagement by such person inure (or may lawfully inure) to the benefit of any private shareholder or individual.

(c) *Business information* (sometimes referred to simply as *information*) means any information which pertains to the interests of any business, which was developed or acquired by that business, and (except where the context otherwise requires) which is possessed by EPA in recorded form.

(d) *Affected business* means, with reference to an item of business information, a business which has asserted (and not waived or withdrawn) a business confidentiality claim covering the information, or a business which could be expected to make such a claim if it were aware that disclosure of the information to the public was proposed.

(e) *Reasons of business confidentiality* include the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information. The definition is meant to encompass any concept which authorizes a Federal agency to withhold business information under 5 U.S.C. 552(b)(4), as well as any concept which requires EPA to withhold information from the public for the benefit of a business under 18 U.S.C. 1905 or any of the various statutes cited in § 2.301 through § 2.309.

(f) [Reserved]

(g) Information which is *available to the public* is information in EPA's possession which EPA will furnish to any member of the public upon request and which EPA may make public, release or otherwise make available to any person whether or not its disclosure has been requested.

(h) *Business confidentiality claim* (or, simply, *claim*) means a claim or allegation that business information is entitled to confidential treatment for reasons of business confidentiality, or a request for a determination that such information is entitled to such treatment.

(i) *Voluntarily submitted information* means business information in EPA's possession—

(1) The submission of which EPA had no statutory or contractual authority to require; and

(2) The submission of which was not prescribed by statute or regulation as a condition of obtaining some benefit (or avoiding some disadvantage) under a regulatory program of general applicability, including such regulatory programs as permit, licensing, registration, or certification programs, but excluding programs concerned solely or primarily with the award or administration by EPA of contracts or grants.

(j) *Recorded* means written or otherwise registered in some form for preserving information, including such forms as drawings, photographs, videotape, sound recordings, punched cards, and computer tape or disk.

(k) [Reserved]

(l) *Administrator, Regional Administrator, General Counsel, Regional Counsel, and Freedom of Information Officer* mean the EPA officers or employees occupying the positions so titled.

(m) *EPA office* means any organizational element of EPA, at any level or location. (The terms *EPA office* and *EPA legal office* are used in this subpart for the sake of brevity and ease of reference. When this subpart requires that an action be taken by an *EPA office* or by an *EPA legal office,* it is the responsibility of the officer or employee in charge of that office to take the action or ensure that it is taken.)

(n) *EPA legal office* means the EPA General Counsel and any EPA office over which the General Counsel exercises supervisory authority, including the various Offices of Regional Counsel. (See paragraph (m) of this section.)

(o) A *working day* is any day on which Federal government offices are open for normal business. Saturdays, Sundays, and official Federal holidays are not working days; all other days are.

§ 2.202 Applicability of subpart; priority where provisions conflict; records containing more than one kind of information.

(a) Sections 2.201 through 2.215 establish basic rules governing business confidentiality claims, the handling by EPA of business information which is or may be entitled to confidential treatment, and determinations by EPA of whether information is entitled to confidential treatment for reasons of business confidentiality.

(b) Various statutes (other than 5 U.S.C. 552) under which EPA operates contain special provisions concerning the entitlement to confidential treatment of information gathered under such statutes. Sections 2.301 through 2.311 prescribe rules for treatment of certain categories of business information obtained under the various statutory provisions. Paragraph (b) of each of those sections should be consulted to determine whether any of those sections applies to the particular information in question.

(c) The basic rules of §§ 2.201 through 2.215 govern except to the extent that they are modified or supplanted by the special rules of §§ 2.301 through 2.311. In the event of a conflict between the provisions of the basic rules and those of a special rule which is applicable to the particular information in question, the provision of the special rule shall govern.

(d) If two or more of the sections containing special rules apply to the particular information in question, and the applicable sections prescribe conflicting special rules for the treatment of the information, the rule which provides greater or wider availability to the public of the information shall govern.

(e) For most purposes, a document or other record may usefully be treated as a single unit of *information*, even though in fact the document or record is comprised of a collection of individual items of information. However, in applying the provisions of this subpart, it will often be necessary to separate the individual items of information into two or more categories, and to afford different treatment to the information in each such category. The need for differentiation of this type may arise, e.g., because a business confidentiality claim covers only a portion of a record, or because only a portion of the record is eligible for confidential treatment. EPA offices taking action under this subpart must be alert to this problem.

(f) In taking actions under this subpart, EPA offices should consider whether it is possible to obtain the affected business's consent to disclosure of useful portions of records while protecting the information which is or may be entitled to confidentiality (e.g., by withholding such portions of a record as would identify a business, or by disclosing data in the form of industry-wide aggregates, multi-year averages or totals, or some similar form).

(g) This subpart does not apply to questions concerning entitlement to confidential treatment or information which concerns an individual solely in his personal, as opposed to business, capacity.

[41 FR 36902, Sept. 1, 1976, as amended at 43 FR 40000, Sept. 8, 1978; 50 FR 51661, Dec. 18, 1985]

§ 2.203 Notice to be included in EPA requests, demands, and forms; method of asserting business confidentiality claim; effect of failure to assert claim at time of submission.

(a) *Notice to be included in certain requests and demands for information, and in certain forms.* Whenever an EPA office makes a written request or demand that a business furnish information which, in the office's opinion, is likely to be regarded by the business as entitled to confidential treatment under this subpart, or whenever an EPA office prescribes a form for use by businesses in furnishing such information, the request, demand, or form shall include or enclose a notice which—

(1) States that the business may, if it desires, assert a business confidentiality claim covering part or all of the information, in the manner described by paragraph (b) of this section, and that information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in this subpart;

(2) States that if no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the business; and

(3) Furnishes a citation of the location of this subpart in the Code of Federal Regulations and the FEDERAL REGISTER.

(b) *Method and time of asserting business confidentiality claim.* A business which is submitting information to EPA may assert a business confidentiality claim covering the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as *trade secret, proprietary,* or *company confidential.* Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the business, and may be submitted separately to facilitate identification and handling by EPA. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state.

(c) *Effect of failure to assert claim at time of submission of information.* If information was submitted by a business to EPA on or after October

1, 1976, in response to an EPA request or demand (or on an EPA-prescribed form) which contained the substance of the notice required by paragraph (a) of this section, and if no business confidentiality claim accompanied the information when it was received by EPA, the inquiry to the business normally required by § 2.204(c)(2) need not be made. If a claim covering the information is received after the information itself is received, EPA will make such efforts as are administratively practicable to associate the late claim with copies of the previously-submitted information in EPA files (see § 2.204(c)(1)). However, EPA cannot assure that such efforts will be effective, in light of the possibility of prior disclosure or widespread prior dissemination of the information.

§ 2.204 Initial action by EPA office.

(a) *Situations requiring action.* This section prescribes procedures to be used by EPA offices in making initial determinations of whether business information is entitled to confidential treatment for reasons of business confidentiality. Action shall be taken under this section whenever an EPA office:

(1) Learns that it is responsible for responding to a request under 5 U.S.C. 552 for the release of business information; in such a case, the office shall issue an initial determination within the period specified in § 2.112;

(2) Desires to determine whether business information in its possession is entitled to confidential treatment, even though no request for release of the information has been received; or

(3) Determines that it is likely that EPA eventually will be requested to disclose the information at some future date and thus will have to determine whether the information is entitled to confidential treatment. In such a case this section's procedures should be initiated at the earliest practicable time, in order to increase the time available for preparation and submission of comments and for issuance of determinations, and to make easier the task of meeting response deadlines if a request for release of the information is later received under 5 U.S.C. 552.

(b) *Previous confidentiality determination.* The EPA office shall first ascertain whether there has been a previous determination, issued by a Federal court or by an EPA legal office acting under this subpart, holding that the information in question is entitled to confidential treatment for reasons of business confidentiality.

(1) If such a determination holds that the information is entitled to confidential treatment, the EPA Office shall furnish any person whose request for the information is pending under 5 U.S.C. 552 an initial determination (see § 2.111 and § 2.113) that the information has previously been determined to be entitled to confidential treatment, and that the request is therefore denied. The office shall furnish such person the appropriate case citation or EPA determination. If the EPA office believes that a previous determination which was issued by an EPA legal office may be improper or no longer valid, the office shall so inform the EPA legal office, which shall consider taking action under § 2.205(h).

(2) With respect to all information not known to be covered by such a previous determination, the EPA office shall take action under paragraph (c) of this section.

(c) *Determining existence of business confidentiality claims.* (1) Whenever action under this paragraph is required by paragraph (b)(2) of this section, the EPA office shall examine the information and the office's records to determine which businesses, if any, are affected businesses (see § 2.201(d)), and to determine which businesses if any, have asserted business confidentiality claims which remain applicable to the information. If any business is found to have asserted an applicable claim, the office shall take action under paragraph (d) of this section with respect to each such claim.

(2)(i) If the examination conducted under paragraph (c)(1) of this section discloses the existence of any business which, although it has not asserted a claim, might be expected to assert a claim if it knew EPA proposed to disclose the information, the EPA office shall contact a responsible official of each such business to learn whether the business asserts a claim covering the information. However, no such inquiry need be made to any business—

(A) Which failed to assert a claim covering the information when responding to an EPA request or demand, or supplying information on an EPA form, which contained the substance of the statements prescribed by § 2.203(a);

(B) Which otherwise failed to assert a claim covering the information after being informed by EPA that such failure could result in disclosure of the information to the public; or

(C) Which has otherwise waived or withdrawn a claim covering the information.

(ii) If a request for release of the information under 5 U.S.C. 552 is pending at the time inquiry is made under this paragraph (c)(2), the inquiry shall be made by telephone or equally prompt means, and the responsible official contacted shall be informed that any claim the business wishes to assert must be brought to the EPA office's attention no later than the close of business on the third working day after such inquiry.

(iii) A record shall be kept of the results of any inquiry under this paragraph (c)(2). If any business makes a claim covering the information, the EPA office shall take further action under paragraph (d) of this section.

(3) If, after the examination under paragraph (c)(1) of this section, and after any inquiry made under paragraph (c)(2) of this section, the EPA office knows of no claim covering the information and the time for response to any inquiry has passed, the information shall be treated for purposes of this subpart as not entitled to confidential treatment.

(d) *Preliminary determination.* Whenever action under this paragraph is required by paragraph (c)(1) or (2) of this section on any business's claim, the EPA Office shall make a determination with respect to each such claim. Each determination shall be made after consideration of the provisions of § 2.203, the applicable substantive criteria in § 2.208 or elsewhere in this subpart, and any previously-issued determinations under this subpart which are applicable.

(1) If, in connection with any business's claim, the office determines that the information may be entitled to confidential treatment, the office shall—

(i) Furnish the notice of opportunity to submit comments prescribed by paragraph (e) of this section to each business which is known to have asserted an applicable claim and which has not previously been furnished such notice with regard to the information in question;

(ii) Furnish, to any person whose request for release of the information is pending under 5 U.S.C. 552, a determination (in accordance with § 2.113) that the information may be entitled to confidential treatment under this subpart and 5 U.S.C. 552(b)(4), that further inquiry by EPA pursuant to this subpart is required before a final determination on the request can be issued, that the person's request is therefore initially denied, and that after further inquiry a final determination will be issued by an EPA legal office; and

(iii) Refer the matter to the appropriate EPA legal office, furnishing the information required by paragraph (f) of this section after the time has elapsed for receipt of comments from the affected business.

(2) If, in connection with all applicable claims, the office determines that the information clearly is not entitled to confidential treatment, the office shall take the actions required by § 2.205(f). However, if a business has previously been furnished notice under § 2.205(f) with respect to the same information, no further notice need be furnished to that business. A copy of each notice furnished to a business under this paragraph (d)(2) and § 2.205(f) shall be forwarded promptly to the appropriate EPA legal office.

(e) *Notice to affected businesses; opportunity to comment.* (1) Whenever required by paragraph (d)(1) of this section, the EPA office shall promptly furnish each business a written notice stating that EPA is determining under this subpart whether the information is entitled to confidential treatment, and affording the business an opportunity to comment. The notice shall be furnished by certified mail (return receipt requested), by personal delivery, or by other means which allows verification of the fact and date of receipt. The notice shall state the address of the office to which the business's comments shall be addressed (the EPA office furnishing the notice, unless the General Counsel has directed otherwise), the time allowed for comments, and the method for requesting a time extension under § 2.205(b)(2). The notice shall further state that EPA will construe a business's failure to furnish timely comments as a waiver of the business's claim.

(2) If action under this section is occasioned by a request for the information under 5 U.S.C. 552, the period for comments shall be 15 working days after the date of the business's receipt of the written notice. In other cases, the EPA office shall establish a reasonable period for comments (not less than 15 working days after the business's receipt of the written notice). The time period for comments shall be considered met if the business's comments are postmarked or hand delivered to the office designated in the notice by the date specified. In all cases, the notice shall call the business's attention to the provisions of § 2.205(b).

(3) At or about the time the written notice is furnished, the EPA office shall orally inform a responsible representative of the business (by telephone or otherwise) that the business should expect to receive the written notice, and shall request the business to contact the EPA office if the written notice has not been received within a few days, so that EPA may furnish a duplicate notice.

(4) The written notice required by paragraph (e)(1) of this section shall invite the business's comments on the following points (subject to paragraph (e)(5) of this section):

(i) The portions of the information which are alleged to be entitled to confidential treatment;

(ii) The period of time for which confidential treatment is desired by the business (e.g., until a certain date, until the occurrence of a specified event, or permanently);

(iii) The purpose for which the information was furnished to EPA and the approximate date of submission, if known;

(iv) Whether a business confidentiality claim accompanied the information when it was received by EPA;

(v) Measures taken by the business to guard against undesired disclosure of the information to others;

(vi) The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;

(vii) Pertinent confidentiality determinations, if any, by EPA or other Federal agencies, and a copy of any such determination, or reference to it, if available;

(viii) Whether the business asserts that disclosure of the information would be likely to result in substantial harmful effects on the business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects; and

(ix) Whether the business asserts that the information is voluntarily submitted information as defined in § 2.201(i), and if so, whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.

(5) To the extent that the EPA office already possesses the relevant facts, the notice need not solicit responses to the matters addressed in paragraphs (e)(4) (i) through (ix) of this section, although the notice shall request confirmation of EPA's understanding of such facts where appropriate.

(6) The notice shall refer to § 2.205(c) and shall include the statement prescribed by § 2.203(a).

(f) *Materials to be furnished to EPA legal office.* When a matter is referred to an EPA legal office under paragraph (d)(1) of this section, the EPA office taking action under this section shall forward promptly to the EPA legal office the following items:

(1) A copy of the information in question, or (where the quantity or form of the information makes forwarding a copy of the information impractical) representative samples, a description of the information, or both;

(2) A description of the circumstances and date of EPA's acquisition of the information;

(3) The name, address, and telephone number of the EPA employee(s) most familiar with the information;

(4) The name, address and telephone number of each business which asserts an applicable business confidentiality claim;

(5) A copy of each applicable claim (or the record of the assertion of the claim), and a description of when and how each claim was asserted;

(6) Comments concerning each business's compliance or noncompliance with applicable requirements of § 2.203;

(7) A copy of any request for release of the information pending under 5 U.S.C. 552;

(8) A copy of the business's comments on whether the information is entitled to confidential treatment;

(9) The office's comments concerning the appropriate substantive criteria under this subpart, and information the office possesses concerning the information's entitlement to confidential treatment; and

(10) Copies of other correspondence or memoranda which pertain to the matter.

[41 FR 36902, Sept. 1, 1976, as amended at 43 FR 40000, Sept. 8, 1978; 50 FR 51661, Dec. 18, 1985]

§ 2.205 Final confidentiality determination by EPA legal office.

(a) *Role of EPA legal office.* (1) The appropriate EPA legal office (see paragraph (i) of this section) is responsible for making the final administrative determination of whether or not business information covered by a business confidentiality claim is entitled to confidential treatment under this subpart.

(2) When a request for release of the information under 5 U.S.C. 552 is pending, the EPA legal office's determination shall serve as the final determination on appeal from an initial denial of the request.

(i) If the initial denial was issued under § 2.204(b)(1), a final determination by the EPA legal office is necessary only if the requestor has actually filed an appeal.

(ii) If the initial denial was issued under § 2.204(d)(1), however, the EPA legal office shall issue a final determination in every case, unless the request has been withdrawn. (Initial denials under § 2.204(d)(1) are of a procedural nature, to allow further inquiry into the merits of the matter, and a requestor is entitled to a decision on the merits.) If an appeal from such a denial has not been received by the EPA Freedom of Information Officer on the tenth working day after issuance of the denial, the matter shall be handled as if an appeal had been received on that day, for purposes of establishing a schedule for issuance of an appeal decision under § 2.117 of this part.

(b) *Comment period; extensions; untimeliness as waiver of claim.* (1) Each business which has been furnished the notice and opportunity to comment prescribed by § 2.204(d)(1) and § 2.204(e) shall furnish its comments to the office specified in the notice in time to be postmarked or hand delivered to that office not later than the date specified in the notice (or the date established in lieu thereof under this section).

(2) The period for submission of comments may be extended if, before the comments are due, a request for an extension of the comment period is made by the business and approved by the EPA legal office. Except in extraordinary circumstances, the EPA legal office will not approve

such an extension without the consent of any person whose request for release of the information under 5 U.S.C. 552 is pending.

(3) The period for submission of comments by a business may be shortened in the manner described in paragraph (g) of this section.

(4) If a business's comments have not been received by the specified EPA office by the date they are due (including any approved extension), that office shall promptly inquire whether the business has complied with paragraph (b)(1) of this section. If the business has complied with paragraph (b)(1) but the comments have been lost in transmission, duplicate comments shall be requested.

(c) *Confidential treatment of comments from business.* If information submitted to EPA by a business as part of its comments under this section pertains to the business's claim, is not otherwise possessed by EPA, and is marked when received in accordance with § 2.203(b), it will be regarded by EPA as entitled to confidential treatment and will not be disclosed by EPA without the business's consent, unless its disclosure is duly ordered by a Federal court, notwithstanding other provisions of this subpart to the contrary.

(d) *Types of final determinations; matters to be considered.* (1) If the EPA legal office finds that a business has failed to furnish comments under paragraph (b) of this section by the specified due date, it shall determine that the business has waived its claim. If, after application of the preceding sentence, no claim applies to the information, the office shall determine that the information is not entitled to confidential treatment under this subpart and, subject to § 2.210, is available to the public.

(2) In all other cases, the EPA legal office shall consider each business's claim and comments, the various provisions of this subpart, any previously-issued determinations under this subpart which are pertinent, the materials furnished it under § 2.204(f), and such other materials as it finds appropriate. With respect to each claim, the office shall determine whether or not the information is entitled to confidential treatment for the benefit of the business that asserted the claim, and the period of any such entitlement (e.g., until a certain date, until the occurrence of a specified event, or permanently), and shall take further action under paragraph (e) or (f) of this section, as appropriate.

(3) Whenever the claims of two or more businesses apply to the same information, the EPA legal office shall take action appropriate under the particular circumstances to protect the interests of all persons concerned (including any person whose request for the information is pending under 5 U.S.C. 552).

(e) *Determination that information is entitled to confidential treatment.* If the EPA legal office determines that the information is entitled to confidential treatment for the full period requested by the business which made the claim, EPA shall maintain the information in confidence for such period, subject to paragraph (h) of this section, § 2.209, and the other provisions of this subpart which authorize disclosure in specified circumstances, and the office shall so inform the business. If any person's request for the release of the information is then pending under 5 U.S.C. 552, the EPA legal office shall issue a final determination denying that request.

(f) *Determination that information is not entitled to confidential treatment; notice; waiting period; release of information.* (1) Notice of denial (or partial denial) of a business confidentiality claim, in the form prescribed by paragraph (f)(2) of this section, shall be furnished—

(i) By the EPA office taking action under § 2.204, to each business on behalf of which a claim has been made, whenever § 2.204(d)(2) requires such notice; and

(ii) By the EPA legal office taking action under this section, to each business which has asserted a claim applicable to the information and which has furnished timely comments under paragraph (b) of this section, whenever the EPA legal office determines that the information is not entitled to confidential treatment under this subpart for the benefit of the business, or determines that the period of any entitlement to confidential treatment is shorter than that requested by the business.

(2) The notice prescribed by paragraph (f)(1) of this section shall be written, and shall be furnished by certified mail (return receipt requested), by personal delivery, or by other means which allows verification of the fact of receipt and the date of receipt. The notice shall state the basis for the determination, that it constitutes final agency action concerning the business confidentiality claim, and that such final agency action may be subject to judicial review under Chapter 7 of Title 5, United States Code. With respect to EPA's implementation of the determination, the notice shall state that (subject to § 2.210) EPA will make the information available to the public on the tenth working day after the date of the business's receipt of the written notice (or on such later date as is established in lieu thereof by the EPA legal office under paragraph (f)(3) of this section), unless the EPA legal office has first been notified of the business's commencement of an action in a Federal court to obtain judicial review of the determination, and to obtain preliminary injunctive relief against disclosure. The notice shall further state that if such an action is timely commenced,

EPA may nonetheless make the information available to the public (in the absence of an order by the court to the contrary), once the court has denied a motion for a preliminary injunction in the action or has otherwise upheld the EPA determination, or whenever it appears to the EPA legal office, after reasonable notice to the business, that the business is not taking appropriate measures to obtain a speedy resolution of the action. If the information has been found to be temporarily entitled to confidential treatment, the notice shall further state that the information will not be disclosed prior to the end of the period of such temporary entitlement to confidential treatment.

(3) The period established in a notice under paragraph (f)(2) of this section for commencement of an action to obtain judicial review may be extended if, before the expiration of such period, a request for an extension is made by the business and approved by the EPA legal office. Except in extraordinary circumstances, the EPA legal office will not approve such an extension without the consent of any person whose request for release of the information under 5 U.S.C. 552 is pending.

(4) After the expiration of any period of temporary entitlement to confidential treatment, a determination under this paragraph (f) shall be implemented by the EPA legal office by making the information available to the public (in the absence of a court order prohibiting disclosure) whenever—

(i) The period provided for commencement by a business of an action to obtain judicial review of the determination has expired without notice to the EPA legal office of commencement of such an action;

(ii) The court, in a timely-commenced action, has denied the business' motion for a preliminary injunction, or has otherwise upheld the EPA determination; or

(iii) The EPA legal office, after reasonable notice has been provided to the business, finds that the business is not taking appropriate measures to obtain a speedy resolution of the timely-commenced action.

(5) Any person whose request for release of the information under 5 U.S.C. 552 is pending at the time notice is given under paragraph (f)(2) of this section shall be furnished a determination under 5 U.S.C. 552 stating the circumstances under which the information will be released.

(g) *Emergency situations.* If the General Counsel finds that disclosure of information covered by a claim would be helpful in alleviating a situation posing an imminent and substantial danger to public health or safety, he may prescribe and make known to interested persons such shorter comment period (paragraph (b) of this section), post-determination waiting period (paragraph (f) of this section), or both, as he finds necessary under the circumstances.

(h) *Modification of prior determinations.* A determination that information is entitled to confidential treatment for the benefit of a business, made under this subpart by an EPA legal office, shall continue in effect in accordance with its terms until an EPA legal office taking action under this section, or under § 2.206 or § 2.207, issues a final determination stating that the earlier determination no longer describes correctly the information's entitlement to confidential treatment because of change in the applicable law, newly-discovered or changed facts, or because the earlier determination was clearly erroneous. If an EPA legal office tentatively concludes that such an earlier determination is of questionable validity, it shall so inform the business, and shall afford the business an opportunity to furnish comments on pertinent issues in the manner described by § 2.204(e) and paragraph (b) of this section. If, after consideration of any timely comments submitted by the business, the EPA legal office makes a revised final determination that the information is not entitled to confidential treatment, or that the period of entitlement to such treatment will end sooner than it would have ended under the earlier determination, the office will follow the procedure described in paragraph (f) of this section. Determinations under this section may be made only by, or with the concurrence of, the General Counsel.

(i) *Delegation and redelegation of authority.* Unless the General Counsel otherwise directs, or this subpart otherwise specifically provides, determinations and actions required by this subpart to be made or taken by an EPA legal office shall be made or taken by the appropriate Regional counsel whenever the EPA office taking action under § 2.204 or § 2.206(b) is under the supervision of a Regional Administrator, and by the General Counsel in all other cases. The General Counsel may redelegate any or all of his authority under this subpart to any attorney employed by EPA on a full-time basis under the General Counsel's supervision. A Regional Counsel may redelegate any or all of his authority under this subpart to any attorney employed by EPA on a full-time basis under the Regional counsel's supervision.

[41 FR 36902, Sept. 1, 1976, as amended at 50 FR 51661, Dec. 18, 1985]

§ 2.206 Advance confidentiality determinations.

(a) An advance determination under this section may be issued by an EPA legal office if—

(1) EPA has requested or demanded that a business furnish business information to EPA;

(2) The business asserts that the information, if submitted, would constitute voluntarily submitted information under § 2.201(i);

(3) The business will voluntarily submit the information for use by EPA only if EPA first determines that the information is entitled to confidential treatment under this subpart; and

(4) The EPA office which desires submission of the information has requested that the EPA legal office issue a determination under this section.

(b) The EPA office requesting an advance determination under this section shall—

(1) Arrange to have the business furnish directly to the EPA legal office a copy of the information (or, where feasible, a description of the nature of the information sufficient to allow a determination to be made), as well as the business's comments concerning the matters addressed in § 2.204(e)(4), excluding, however, matters addressed in § 2.204 (e)(4)(iii) and (e)(4)(iv); and

(2) Furnish to the EPA legal office the materials referred to in § 2.204(f) (3), (7), (8), and (9).

(c) In making a determination under this section, the EPA legal office shall first determine whether or not the information would constitute voluntarily submitted information under § 2.201(i). If the information would constitute voluntarily submitted information, the legal office shall further determine whether the information is entitled to confidential treatment.

(d) If the EPA legal office determines that the information would not constitute voluntarily submitted information, or determines that it would constitute voluntarily submitted information but would not be entitled to confidential treatment, it shall so inform the business and the EPA office which requested the determination, stating the basis of the determination, and shall return to the business all copies of the information which it may have received from the business (except that if a request under 5 U.S.C. 552 for release of the information is received while the EPA legal office is in possession of the information, the legal office shall retain a copy of the information, but shall not disclose it unless ordered by a Federal court to do so). The legal office shall not disclose the information to any other EPA office or employee and shall not use the information for any purpose except the determination under this section, unless otherwise directed by a Federal court.

(e) If the EPA legal office determines that the information would constitute voluntarily submitted information and that it is entitled to confidential treatment, it shall so inform the EPA office which requested the determination and the business which submitted it, and shall forward the information to the EPA office which requested the determination.

§ 2.207 Class determinations.

(a) The General Counsel may make and issue a class determination under this section if he finds that—

(1) EPA possesses, or is obtaining, related items of business information;

(2) One or more characteristics common to all such items of information will necessarily result in identical treatment for each such item under one or more of the provisions in this subpart, and that it is therefore proper to treat all such items as a class for one or more purposes under this subpart; and

(3) A class determination would serve a useful purpose.

(b) A class determination shall clearly identify the class of information to which it pertains.

(c) A class determination may state that all of the information in the class—

(1) Is, or is not, voluntarily submitted information under § 2.201(i);

(2) Is, or is not, governed by a particular section of this subpart, or by a particular set of substantive criteria under this subpart;

(3) Fails to satisfy one or more of the applicable substantive criteria, and is therefore ineligible for confidential treatment;

(4) Satisfies one or more of the applicable substantive criteria; or

(5) Satisfies one or more of the applicable substantive criteria during a certain period, but will be ineligible for confidential treatment thereafter.

(d) The purpose of a class determination is simply to make known the Agency's position regarding the manner in which information within the class will be treated under one or more of the provisions of this subpart. Accordingly, the notice of opportunity to submit comments referred to in § 2.204(d)(1)(ii) and § 2.205(b), and the list of materials required to be furnished to the EPA legal office under § 2.204(d)(1)(iii), may be modified to reflect the fact that the class determination has made unnecessary the submission of materials pertinent to one or more issues. Moreover, in appropriate cases, action based on the class determination may be taken under § 2.204(b)(1), § 2.204(d), § 2.205(d), or § 2.206. However, the existence of a class determination shall not, of itself, affect any right a business may have to receive any notice under § 2.204(d)(2) or § 2.205(f).

§ 2.208 Substantive criteria for use in confidentiality determinations.

Determinations issued under §§ 2.204 through 2.207 shall hold that business information is entitled to confidential treatment for the benefit of a particular business if—

(a) The business has asserted a business confidentiality claim which has not expired by its terms, nor been waived nor withdrawn;

(b) The business has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures;

(c) The information is not, and has not been, reasonably obtainable without the business's consent by other persons (other than governmental bodies) by use of legitimate means (other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding);

(d) No statute specifically requires disclosure of the information; and

(e) Either—

(1) The business has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position; or

(2) The information is voluntarily submitted information (see § 2.201(i)), and its disclosure would be likely to impair the Government's ability to obtain necessary information in the future.

§ 2.209 Disclosure in special circumstances.

(a) *General.* Information which, under this subpart, is not available to the public may nonetheless be disclosed to the persons, and in the circumstances, described by paragraphs (b) through (g) of this section. (This section shall not be construed to restrict the disclosure of information which has been determined to be available to the public. However, business information for which a claim of confidentiality has been asserted shall be treated as being entitled to confidential treatment until there has been a determination in accordance with the procedures of this subpart that the information is not entitled to confidential treatment.)

(b) *Disclosure to Congress or the Comptroller General.* (1) Upon receipt of a written request by the Speaker of the House, President of the Senate, chairman of a committee or subcommittee, or the Comptroller General, as appropriate, EPA will disclose business information to either House of Congress, to a committee or subcommittee of Congress, or to the Comptroller General, unless a statute forbids such disclosure.

(2) If the request is for business information claimed as confidential or determined to be confidential, the EPA office processing the request shall provide notice to each affected business of the type of information disclosed and to whom it is disclosed. Notice shall be given at least ten days prior to disclosure, except where it is not possible to provide notice ten days in advance of any date established by the requesting body for responding to the request. Where ten days advance notice cannot be given, as much advance notice as possible shall be provided. Where notice cannot be given before the date established by the requesting body for responding to the request, notice shall be given as promptly after disclosure as possible. Such notice may be given by notice published in the FEDERAL REGISTER or by letter sent by certified mail, return receipt requested, or telegram. However, if the requesting body asks in writing that no notice under this subsection be given, EPA will give no notice.

(3) At the time EPA discloses the business information, EPA will inform the requesting body of any unresolved business confidentiality claim known to cover the information and of any determination under this subpart that the information is entitled to confidential treatment.

(c) *Disclosure to other Federal agencies.* EPA may disclose business information to another Federal agency if—

(1) EPA receives a written request for disclosures of the information from a duly authorized officer or employee of the other agency or on the initiative of EPA when such disclosure is necessary to enable the other agency to carry out a function on behalf of EPA;

(2) The request, if any, sets forth the official purpose for which the information is needed;

(3) When the information has been claimed as confidential or has been determined to be confidential, the responsible EPA office provides notice to each affected business of the type of information to be disclosed and to whom it is to be disclosed. At the discretion of the office, such notice may be given by notice published in the FEDERAL REGISTER at least 10 days prior to disclosure, or by letter sent by certified mail return receipt requested or telegram either of which must be received by the affected business at least 10 days prior to disclosure. However, no notice shall be required when EPA furnishes business information to another Federal agency to perform a function on behalf of EPA, including but not limited to—

(i) Disclosure to the Department of Justice for purposes of investigation or prosecution of civil or criminal violations of Federal law related to EPA activities;

(ii) Disclosure to the Department of Justice for purposes of representing EPA in any matter; or

(iii) Disclosure to any Federal agency for purposes of performing an EPA statutory function under an interagency agreement.

(4) EPA notifies the other agency of any unresolved business confidentiality claim covering the information and of any determination under this

subpart that the information is entitled to confidential treatment, and that further disclosure of the information may be a violation of 18 U.S.C. 1905; and

(5) The other agency agrees in writing not to disclose further any information designated as confidential unless—

(i) The other agency has statutory authority both to compel production of the information and to make the proposed disclosure, and the other agency has, prior to disclosure of the information to anyone other than its officers and employees, furnished to each affected business at least the same notice to which the affected business would be entitled under this subpart;

(ii) The other agency has obtained the consent of each affected business to the proposed disclosure; or

(iii) The other agency has obtained a written statement from the EPA General Counsel or an EPA Regional Counsel that disclosure of the information would be proper under this subpart.

(d) *Court-ordered disclosure.* EPA may disclose any business information in any manner and to the extent ordered by a Federal court. Where possible, and when not in violation of a specific directive from the court, the EPA office disclosing information claimed as confidential or determined to be confidential shall provide as much advance notice as possible to each affected business of the type of information to be disclosed and to whom it is to be disclosed, unless the affected business has actual notice of the court order. At the discretion of the office, subject to any restrictions by the court, such notice may be given by notice in the FEDERAL REGISTER, letter sent by certified mail return receipt requested, or telegram.

(e) *Disclosure within EPA.* An EPA office, officer, or employee may disclose any business information to another EPA office, officer, or employee with an official need for the information.

(f) *Disclosure with consent of business.* EPA may disclose any business information to any person if EPA has obtained the prior consent of each affected business to such disclosure.

(g) *Record of disclosures to be maintained.* Each EPA office which discloses information to Congress, a committee or subcommittee of Congress, the Comptroller General, or another Federal agency under the authority of paragraph (b) or (c) of this section, shall maintain a record of the fact of such disclosure for a period of not less than 36 months after such disclosure. Such a record, which may be in the form of a log, shall show the name of the affected businesses, the date of disclosure, the person or body to whom disclosure was made, and a description of the information disclosed.

[41 FR 36902, Sept. 1, 1976, as amended at 43 FR 40000, Sept. 8, 1978; 50 FR 51661, Dec. 18, 1985]

§ 2.210 Nondisclosure for reasons other than business confidentiality or where disclosure is prohibited by other statute.

(a) Information which is not entitled to confidential treatment under this subpart shall be made available to the public (using the procedures set forth in §§ 2.204 and 2.205) if its release is requested under 5 U.S.C. 552, unless EPA determines (under subpart A of this part) that, for reasons other than reasons of business confidentiality, the information is exempt from mandatory disclosure and cannot or should not be made available to the public. Any such determination under subpart A shall be coordinated with actions taken under this subpart for the purpose of avoiding delay in responding to requests under 5 U.S.C. 552.

(b) Notwithstanding any other provision of this subpart, if any statute not cited in this subpart appears to require EPA to give confidential treatment to any business information for reasons of business confidentiality, the matter shall be referred promptly to an EPA legal office for resolution. Pending resolution, such information shall be treated as if it were entitled to confidential treatment.

§ 2.211 Safeguarding of business information; penalty for wrongful disclosure.

(a) No EPA officer or employee may disclose, or use for his or her private gain or advantage, any business information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position or employment, except as authorized by this subpart.

(b) Each EPA officer or employee who has custody or possession of business information shall take appropriate measures to properly safeguard such information and to protect against its improper disclosure.

(c) Violation of paragraph (a) or (b) of this section shall constitute grounds for dismissal, suspension, fine, or other adverse personnel action. Willful violation of paragraph (a) of this section may result in criminal prosecution under 18 U.S.C. 1905 or other applicable statute.

(d) Each contractor or subcontractor with the United States Government, and each employee of such contractor or subcontractor, who is furnished business information by EPA under §§ 2.301(h), § 2.302(h), 2.304(h), 2.305(h), 2.306(j), 2.307(h), 2.308(i), or 2.310(h) shall use or disclose that information only as permitted by the contract or subcontract under which the information was furnished. Contractors or subcontractors shall take steps to properly safeguard business information including following any security procedures for handling and safeguarding business information

which are contained in any manuals, procedures, regulations, or guidelines provided by EPA. Any violation of this paragraph shall constitute grounds for suspension or debarment of the contractor or subcontractor in question. A willful violation of this paragraph may result in criminal prosecution.

[41 FR 36902, Sept. 1, 1976, as amended at 50 FR 51662, Dec. 18, 1985; 58 FR 461, Jan. 5, 1993]

§ 2.212 Establishment of control offices for categories of business information.

(a) The Administrator, by order, may establish one or more mutually exclusive categories of business information, and may designate for each such category an EPA office (hereinafter referred to as a *control office*) which shall have responsibility for taking actions (other than actions required to be taken by an EPA legal office) with respect to all information within such category.

(b) If a control office has been assigned responsibility for a category of business information, no other EPA office, officer, or employee may make available to the public (or otherwise disclose to persons other than EPA officers and employees) any information in that category without first obtaining the concurrence of the control office. Requests under 5 U.S.C. 552 for release of such information shall be referred to the control office.

(c) A control office shall take the actions and make the determinations required by § 2.204 with respect to all information in any category for which the control office has been assigned responsibility.

(d) A control office shall maintain a record of the following, with respect to items of business information in categories for which it has been assigned responsibility:

(1) Business confidentiality claims;

(2) Comments submitted in support of claims;

(3) Waivers and withdrawals of claims;

(4) Actions and determinations by EPA under this subpart;

(5) Actions by Federal courts; and

(6) Related information concerning business confidentiality.

§ 2.213 Designation by business of addressee for notices and inquiries.

(a) A business which wishes to designate a person or office as the proper addressee of communications from EPA to the business under this subpart may do so by furnishing in writing to the Freedom of Information Officer (A–101), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, the following information: The name and address of the business making the designation; the name, address, and telephone number of the designated person or office; and a request that EPA inquiries and communications (oral and written) under this subpart, including inquiries and notices which require reply within deadlines if the business is to avoid waiver of its rights under this subpart, be furnished to the designee pursuant to this section. Only one person or office may serve at any one time as a business's designee under this subpart.

(b) If a business has named a designee under this section, the following EPA inquiries and notices to the business shall be addressed to the designee:

(1) Inquiries concerning a business's desire to assert a business confidentiality claim, under § 2.204(c)(2)(i)(A);

(2) Notices affording opportunity to substantiate confidentiality claims, under § 2.204(d)(1) and § 2.204(e);

(3) Inquires concerning comments, under § 2.205(b)(4);

(4) Notices of denial of confidential treatment and proposed disclosure of information, under § 2.205(f);

(5) Notices concerning shortened comment and/or waiting periods under § 2.205(g);

(6) Notices concerning modifications or overrulings of prior determinations, under § 2.205(h);

(7) Notices to affected businesses under §§ 2.301(g) and 2.301(h) and analogous provisions in §§ 2.302, 2.303, 2.304, 2.305, 2.306, 2.307, and 2.308; and

(8) Notices to affected businesses under § 2.209.

(c) The Freedom of Information Officer shall, as quickly as possible, notify all EPA offices that may possess information submitted by the business to EPA, the Regional Freedom of Information Offices, the Office of General Counsel, and the offices of Regional Counsel of any designation received under this section. Businesses making designations under this section should bear in mind that several working days may be required for dissemination of this information within EPA and that some EPA offices may not receive notice of such designations.

[41 FR 36902, Sept. 1, 1976, as amended at 43 FR 40001, Sept. 8, 1978]

§ 2.214 Defense of Freedom of Information Act suits; participation by affected business.

(a) In making final confidentiality determinations under this subpart, the EPA legal office relies to a large extent upon the information furnished by the affected business to substantiate its claim of confidentiality. The EPA legal office may be unable to verify the accuracy of much of the information submitted by the affected business.

(b) If the EPA legal office makes a final confidentiality determination under this subpart that

certain business information is entitled to confidential treatment, and EPA is sued by a requester under the Freedom of Information Act for disclosure of that information, EPA will:

(1) Notify each affected business of the suit within 10 days after service of the complaint upon EPA;

(2) Where necessary to preparation of EPA's defense, call upon each affected business to furnish assistance; and

(3) Not oppose a motion by any affected business to intervene as a party to the suit under rule 24(b) of the Federal Rules of Civil Procedure.

(c) EPA will defend its final confidentiality determination, but EPA expects the affected business to cooperate to the fullest extent possible in this defense.

[43 FR 40001, Sept. 8, 1978]

§ 2.215 Confidentiality agreements.

(a) No EPA officer, employee, contractor, or subcontractor shall enter into any agreement with any affected business to keep business information confidential unless such agreement is consistent with this subpart. No EPA officer, employee, contractor, or subcontractor shall promise any affected business that business information will be kept confidential unless the promise is consistent with this subpart.

(b) If an EPA office has requested information from a State, local, or Federal agency and the agency refuses to furnish the information to EPA because the information is or may constitute confidential business information, the EPA office may enter into an agreement with the agency to keep the information confidential, notwithstanding the provisions of this subpart. However, no such agreement shall be made unless the General Counsel determines that the agreement is necessary and proper.

(c) To determine that an agreement proposed under paragraph (b) of this section is necessary, the General Counsel must find:

(1) The EPA office requesting the information needs the information to perform its functions;

(2) The agency will not furnish the information to EPA without an agreement by EPA to keep the information confidential; and

(3) Either:

(i) EPA has no statutory power to compel submission of the information directly from the affected business, or

(ii) While EPA has statutory power to compel submission of the information directly from the affected business, compelling submission of the information directly from the business would—

(A) Require time in excess of that available to the EPA office to perform its necessary work with the information,

(B) Duplicate information already collected by the other agency and overly burden the affected business, or

(C) Overly burden the resources of EPA.

(d) To determine that an agreement proposed under paragraph (b) of this section is proper, the General Counsel must find that the agreement states—

(1) The purpose for which the information is required by EPA;

(2) The conditions under which the agency will furnish the information to EPA;

(3) The information subject to the agreement;

(4) That the agreement does not cover information acquired by EPA from another source;

(5) The manner in which EPA will treat the information; and

(6) That EPA will treat the information in accordance with the agreement subject to an order of a Federal court to disclose the information.

(e) EPA will treat any information acquired pursuant to an agreement under paragraph (b) of this section in accordance with the procedures of this subpart except where the agreement specifies otherwise.

[43 FR 40001, Sept. 8, 1978]

§§ 2.216–2.300 [Reserved]

§ 2.301 Special rules governing certain information obtained under the Clean Air Act.

(a) *Definitions.* For the purpose of this section:

(1) *Act* means the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

(2)(i) *Emission data* means, with reference to any source of emission of any substance into the air—

(A) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;

(B) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and

(C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

(ii) Notwithstanding paragraph (a)(2)(i) of this section, the following information shall be considered to be *emission data* only to the extent necessary to allow EPA to disclose publicly that a source is (or is not) in compliance with an applicable standard or limitation, or to allow EPA to demonstrate the feasibility, practicability, or attainability (or lack thereof) of an existing or proposed standard or limitation:

(A) Information concerning research, or the results of research, on any project, method, device or installation (or any component thereof) which was produced, developed, installed, and used only for research purposes; and

(B) Information concerning any product, method, device, or installation (or any component thereof) designed and intended to be marketed or used commercially but not yet so marketed or used.

(3) *Standard or limitation* means any emission standard or limitation established or publicly proposed pursuant to the Act or pursuant to any regulation under the Act.

(4) *Proceeding* means any rulemaking, adjudication, or licensing conducted by EPA under the Act or under regulations which implement the Act, except for determinations under this subpart.

(5) *Manufacturer* has the meaning given it in section 216(1) of the Act, 42 U.S.C. 7550(1).

(b) *Applicability.* (1) This section applies to business information which was—

(i) Provided or obtained under section 114 of the Act, 42 U.S.C. 7414, by the owner or operator of any stationary source, for the purpose (A) of developing or assisting in the development of any implementation plan under section 110 or 111(d) of the Act, 42 U.S.C. 7410, 7411(d), any standard of performance under section 111 of the Act, 42 U.S.C. 7411, or any emission standard under section 112 of the Act, 42 U.S.C. 7412, (B) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (C) of carrying out any provision of the Act (except a provision of Part II of the Act with respect to a manufacturer of new motor vehicles or new motor vehicle engines);

(ii) Provided or obtained under section 208 of the Act, 42 U.S.C. 7542, for the purpose of enabling the Administrator to determine whether a manufacturer has acted or is acting in compliance with the Act and regulations under the Act, or provided or obtained under section 206(c) of the Act, 42 U.S.C. 7525(c); or

(iii) Provided in response to a subpoena for the production of papers, books, or documents issued under the authority of section 307(a) of the Act, 42 U.S.C. 7607(a).

(2) Information will be considered to have been provided or obtained under section 114 of the Act if it was provided in response to a request by EPA made for any of the purposes stated in section 114, or if its submission could have been required under section 114, regardless of whether section 114 was cited as the authority for any request for the information, whether an order to provide the information was issued under section 113(a) of the Act, 42 U.S.C. 7413(a), whether an action was brought under section 113(b) of the Act, 42 U.S.C. 7413(b), or whether the information was provided directly to EPA or through some third person.

(3) Information will be considered to have been provided or obtained under section 208 of the Act if it was provided in response to a request by EPA made for any of the purposes stated in section 208, or if its submission could have been required under section 208, regardless of whether section 208 was cited as the authority for any request for the information, whether an action was brought under section 204 of the Act, 42 U.S.C. 7523, or whether the information was provided directly to EPA or through some third person.

(4) Information will be considered to have been provided or obtained under section 206(c) of the Act if it was provided in response to a request by EPA made for any of the purposes stated in section 206(c), or if its submission could have been required under section 206(c) regardless of whether section 206(c) was cited as authority for any request for the information, whether an action was brought under section 204 of the Act, 42 U.S.C. 7523, or whether the information was provided directly to EPA or through some third person.

(5) Information will be considered to have been provided or obtained under section 307(a) of the Act if it was provided in response to a subpoena issued under section 307(a), or if its production could have been required by subpoena under section 307(a), regardless of whether section 307(a) was cited as the authority for any request for the information, whether a subpoena was issued by EPA, whether a court issued an order under section 307(a), or whether the information was provided directly to EPA or through some third person.

(c) *Basic rules which apply without change.* Sections 2.201 through 2.207, § 2.209 and §§ 2.211 through 2.215 apply without change to information to which this section applies.

(d) [Reserved]

(e) *Substantive criteria for use in confidentiality determinations.* Section 2.208 applies to information to which this section applies, except that information which is emission data, a standard or limitation, or is collected pursuant to section 211(b)(2)(A) of the Act is not eligible for confidential treatment. No information to which this section applies is voluntarily submitted information.

(f) *Availability of information not entitled to confidential treatment.* Section 2.210 does not apply to information to which this section applies. Emission data, standards or limitations, and any other information provided under section 114 or 208 of the Act which is determined under this subpart not to be entitled to confidential treatment, shall be available to the public notwithstanding any other provision of this part. Emission data and standards or limitations provided in response to a subpoena issued under section 307(a) of the Act shall be available to the public notwithstanding any other provision of this part. Information (other than emission data and standards or limitations) provided in response to a subpoena issued under section 307(a) of the Act, which is determined under this subpart not to be entitled to confidential treatment, shall be available to the public, unless EPA determines that the information is exempt from mandatory disclosure under 5 U.S.C. 552(b) for reasons other than reasons of business confidentiality and cannot or should not be made available to the public.

(g) *Disclosure of information relevant to a proceeding.* (1) Under sections 114, 208 and 307 of the Act, any information to which this section applies may be released by EPA because of the relevance of the information to a proceeding, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Release of information because of its relevance to a proceeding shall be made only in accordance with this paragraph (g).

(2) In connection with any proceeding other than a proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, information to which this section applies which may be entitled to confidential treatment may be made available to the public under this paragraph (g)(2). No information shall be made available to the public under this paragraph (g)(2) until any affected business has been informed that EPA is considering making the information available to the public under this paragraph (g)(2) in connection with an identified proceeding, and has afforded the business a reasonable period for comment (such notice and opportunity to comment may be afforded in connection with the notice prescribed by § 2.204(d)(1) and § 2.204(e)). Information may be made available to the public under this paragraph (g)(2) only if, after consideration of any timely comments submitted by the business, the General Counsel determines that the information is relevant to the subject of the proceeding and the EPA office conducting the proceeding determines that the public interest would be served by making the information available to the public. Any affected business shall be given at least 5 days' notice by the General Counsel prior to making the information available to the public.

(3) In connection with any proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, information to which this section applies which may be entitled to confidential treatment may be made available to the public, or to one or more parties of record to the proceeding, upon EPA's initiative, under this paragraph (g)(3). An EPA office proposing disclosure of information under this paragraph (g)(3), shall so notify the presiding officer in writing. Upon receipt of such a notification, the presiding officer shall notify each affected business that disclosure under this paragraph (g)(3) has been proposed, and shall afford each such business a period for comment found by the presiding officer to be reasonable under the circumstances. Information may be disclosed under this paragraph (g)(3) only if, after consideration of any timely comments submitted by the business, the EPA office determines in writing that, for reasons directly associated with the conduct of the proceeding, the contemplated disclosure would serve the public interest, and the presiding officer determines in writing that the information is relevant to a matter in controversy in the proceeding. The presiding officer may condition disclosure of the information to a party of record on the making of such protective arrangements and commitments as he finds to be warranted. Disclosure to one or more parties of record, under protective arrangements or commitments, shall not, of itself, affect the eligibility of information for confidential treatment under the other provisions of this subpart. Any affected business shall be given at least 5 days notice by the presiding officer prior to making the information available to the public or to one or more of the parties of record to the proceeding.

(4) In connection with any proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, information to which this section applies may be made available to one or more parties of record to the proceeding, upon request of a party, under this paragraph (g)(4). A party of record seeking disclosure of information shall direct his request to the presiding officer. Upon receipt of such a request, the presiding officer shall notify each affected business that disclosure under this paragraph (g)(4) has been requested, and shall afford each such business a period for comment found by the presiding officer to be reasonable under the circumstances. Information may be disclosed to a party of record under this paragraph (g)(4) only if, after consideration of any timely comments submitted by the business, the presiding officer determines in writing that (i) the party of record has satisfactorily shown that with respect to a significant matter which is in

controversy in the proceeding, the party's ability to participate effectively in the proceeding will be significantly impaired unless the information is disclosed to him, and (ii) any harm to an affected business that would result from the disclosure is likely to be outweighed by the benefit to the proceeding and to the public interest that would result from the disclosure. The presiding officer may condition disclosure of the information to a party of record on the making of such protective arrangements and commitments as he finds to be warranted. Disclosure to one or more parties of record, under protective arrangements or commitments, shall not, of itself, affect the eligibility of information to confidential treatment under the other provisions of this subpart. Any affected business shall be given at least 5 days notice by the presiding officer prior to making the information available to one or more of the parties of record to the proceeding.

(h) *Disclosure to authorized representatives.* (1) Under sections 114, 208 and 307(a) of the Act, EPA possesses authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to confidential treatment under this subpart. Such authority may be exercised only in accordance with paragraph (h) (2) or (3) of this section.

(2)(i) A person under contract or subcontract to the United States government to perform work in support of EPA in connection with the Act or regulations which implement the Act may be considered an authorized representative of the United States for purposes of this paragraph (h). For purposes of this section, the term ''contract'' includes grants and cooperative agreements under the Environmental Programs Assistance Act of 1984 (Pub. L. 98–313), and the term ''contractor'' includes grantees and cooperators under the Environmental Programs Assistance Act of 1984. Subject to the limitations in this paragraph (h)(2), information to which this section applies may be disclosed:

(A) To a contractor or subcontractor with EPA, if the EPA program office managing the contract first determines in writing that such disclosure is necessary in order that the contractor or subcontractor may carry out the work required by the contract or subcontract; or

(B) To a contractor or subcontractor with an agency other than EPA, if the EPA program office which provides the information to that agency, contractor, or subcontractor first determines in writing, in consultation with the General Counsel, that such disclosure is necessary in order that the contractor or subcontractor may carry out the work required by the contract or subcontract.

(ii) No information shall be disclosed under this paragraph (h)(2), unless this contract or subcontract in question provides:

(A) That the contractor or subcontractor and the contractor's or subcontractor's employees shall use the information only for the purpose of carrying out the work required by the contract or subcontract, shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office and shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request by the EPA program office, whenever the information is no longer required by the contractor or subcontractor for the performance of the work required under the contract or subcontract, or upon completion of the contract or subcontract (where the information was provided to the contractor or subcontractor by an agency other than EPA, the contractor may disclose or return the information to that agency);

(B) That the contractor or subcontractor shall obtain a written agreement to honor such terms of the contract or subcontract from each of the contractor's or subcontractor's employees who will have access to the information, before such employee is allowed such access; and

(C) That the contractor or subcontractor acknowledges and agrees that the contract or subcontract provisions concerning the use and disclosure of business information are included for the benefit of, and shall be enforceable by, both the United States government and any affected business having an interest in information concerning it supplied to the contractor or subcontractor by the United States government under the contract or subcontract.

(iii) No information shall be disclosed under this paragraph (h)(2) until each affected business has been furnished notice of the contemplated disclosure by the EPA program office and has been afforded a period found reasonable by that office (not less than 5 working days) to submit its comments. Such notice shall include a description of the information to be disclosed, the identity of the contractor or subcontractor, the contract or subcontract number, if any, and the purposes to be served by the disclosure.

(iv) The EPA program office shall prepare a record of each disclosure under this paragraph (h)(2), showing the contractor or subcontractor, the contract or subcontract number, the information disclosed, the date(s) of disclosure, and each affected business. The EPA program office shall maintain the record of disclosure and the determination of necessity prepared under paragraph (h)(2)(i) of this section for a period of not less than 36 months after the date of the disclosure.

(3) A state or local governmental agency which has duties or responsibilities under the Act, or under regulations which implement the Act, may be considered an authorized representative of the United States for purposes of this paragraph (h). Information to which this section applies may be furnished to such an agency at the agency's written request, but only if—

(i) The agency has first furnished to the EPA office having custody of the information a written opinion from the agency's chief legal officer or counsel stating that under applicable state or local law the agency has the authority to compel a business which possesses such information to disclose it to the agency, or

(ii) Each affected business is informed of those disclosures under this paragraph (h)(3) which pertain to it, and the agency has shown to the satisfaction of an EPA legal office that the agency's use and disclosure of such information will be governed by state or local law and procedures which will provide adequate protection to the interests of affected businesses.

[41 FR 36902, Sept. 1, 1976, as amended at 43 FR 40002, Sept. 8, 1978; 43 FR 42251, Sept. 20, 1978; 50 FR 51662, Dec. 18, 1985; 58 FR 461, Jan. 5, 1993; 58 FR 5061, Jan 19, 1993; 58 FR 7189, Feb. 5, 1993]

§ 2.302 Special rules governing certain information obtained under the Clean Water Act.

(a) *Definitions.* For the purposes of this section:

(1) *Act* means the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*

(2)(i) *Effluent data* means, with reference to any source of discharge of any pollutant (as that term is defined in section 502(6) of the Act, 33 U.S.C. 1362 (6))—

(A) Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of any pollutant which has been discharged by the source (or of any pollutant resulting from any discharge from the source), or any combination of the foregoing;

(B) Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of the pollutants which, under an applicable standard or limitation, the source was authorized to discharge (including, to the extent necessary for such purpose, a description of the manner or rate of operation of the source); and

(C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

(ii) Notwithstanding paragraph (a)(2)(i) of this section, the following information shall be considered to be *effluent data* only to the extent necessary to allow EPA to disclose publicly that a source is (or is not) in compliance with an applicable standard or limitation, or to allow EPA to demonstrate the feasibility, practicability, or attainability (or lack thereof) of an existing or proposed standard or limitation:

(A) Information concerning research, or the results of research, on any product, method, device, or installation (or any component thereof) which was produced, developed, installed, and used only for research purposes; and

(B) Information concerning any product, method, device, or installation (or any component thereof) designed and intended to be marketed or used commercially but not yet so marketed or used.

(3) *Standard or limitation* means any prohibition, any effluent limitation, or any toxic, pretreatment or new source performance standard established or publicly proposed pursuant to the Act or pursuant to regulations under the Act, including limitations or prohibitions in a permit issued or proposed by EPA or by a State under section 402 of the Act, 33 U.S.C. 1342.

(4) *Proceeding* means any rulemaking, adjudication, or licensing conducted by EPA under the Act or under regulations which implement the Act, except for determinations under this part.

(b) *Applicability.* (1) This section applies only to business information—

(i) Provided to or obtained by EPA under section 308 of the Act, 33 U.S.C. 1318, by or from the owner or operator of any point source, for the purpose of carrying out the objective of the Act (including but not limited to developing or assisting in the development of any standard or limitation under the Act, or determining whether any person is in violation of any such standard or limitation); or

(ii) Provided to or obtained by EPA under section 509(a) of the Act, 33 U.S.C. 1369(a).

(2) Information will be considered to have been provided or obtained under section 308 of the Act if it was provided in response to a request by EPA made for any of the purposes stated in section 308, or if its submission could have been required under section 308, regardless of whether section 308 was cited as the authority for any request for the information, whether an order to provide the information was issued under section 309(a)(3) of the Act, 33 U.S.C. 1319(a)(3), whether a civil action was brought under section 309(b) of the Act, 33 U.S.C. 1319(b), and whether the information

was provided directly to EPA or through some third person.

(3) Information will be considered to have been provided or obtained under section 509(a) of the Act if it was provided in response to a subpoena issued under section 509(a), or if its production could have been required by subpoena under section 509(a), regardless of whether section 509(a) was cited as the authority for any request for the information, whether a subpoena was issued by EPA, whether a court issued an order under section 307(a), or whether the information was provided directly to EPA or through some third person.

(4) This section specifically does not apply to information obtained under section 310(d) or 312(g)(3) of the Act, 33 U.S.C. 1320(d), 1322(g)(3).

(c) *Basic rules which apply without change.* Sections 2.201 through 2.207, 2.209, 2.211 through 2.215 apply without change to information to which this section applies.

(d) [Reserved]

(e) *Substantive criteria for use in confidentiality determinations.* Section 2.208 applies to information to which this section applies, except that information which is effluent data or a standard or limitation is not eligible for confidential treatment. No information to which this section applies is voluntarily submitted information.

(f) *Availability of information not entitled to confidential treatment.* Section 2.210 does not apply to information to which this section applies. Effluent data, standards or limitations, and any other information provided or obtained under section 308 of the Act which is determined under this subpart not to be entitled to confidential treatment, shall be available to the public notwithstanding any other provision of this part. Effluent data and standards or limitations provided in response to a subpoena issued under section 509(a) of the Act shall be available to the public notwithstanding any other provision of this part. Information (other than effluent data and standards or limitations) provided in response to a subpoena issued under section 509(a) of the Act, which is determined under this subpart not to be entitled to confidential treatment, shall be available to the public, unless EPA determines that the information is exempt from mandatory disclosure under 5 U.S.C. 552(b) for reasons other than reasons of business confidentiality and cannot or should not be made available to the public.

(g) *Disclosure of information relevant to a proceeding.* (1) Under sections 308 and 509(a) of the Act, any information to which this section applies may be released by EPA because of the relevance of the information to a proceeding, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Release of information to which this section applies because of its relevance to a proceeding shall be made only in accordance with this paragraph (g).

(2)–(4) The provisions of § 2.301(g) (2), (3), and (4) are incorporated by reference as paragraphs (g) (2), (3), and (4), respectively of this section.

(h) *Disclosure to authorized representatives.* (1) Under sections 308 and 509(a) of the Act, EPA possesses authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to confidential treatment under this subpart. Such authority may be exercised only in accordance with paragraph (h)(2) or (h)(3) of this section.

(2)–(3) The provisions of § 2.301(h) (2) and (3) are incorporated by reference as paragraphs (h) (2) and (3), respectively, of this section.

[41 FR 36902, Sept. 1, 1976, as amended at 43 FR 40003, Sept. 8, 1978]

§ 2.303 Special rules governing certain information obtained under the Noise Control Act of 1972.

(a) *Definitions.* For the purposes of this section:

(1) *Act* means the Noise Control Act of 1972, 42 U.S.C. 4901 *et seq.*

(2) *Manufacturer* has the meaning given it in 42 U.S.C. 4902(6).

(3) *Product* has the meaning given it in 42 U.S.C. 4902(3).

(4) *Proceeding* means any rulemaking, adjudication, or licensing conducted by EPA under the Act or under regulations which implement the Act, except for determinations under this subpart.

(b) *Applicability.* This section applies only to information provided to or obtained by EPA under section 13 of the Act, 42 U.S.C. 4912, by or from any manufacturer of any product to which regulations under section 6 or 8 of the Act (42 U.S.C. 4905, 4907) apply. Information will be deemed to have been provided or obtained under section 13 of the Act, if it was provided in response to a request by EPA made for the purpose of enabling EPA to determine whether the manufacturer has acted or is acting in compliance with the Act, or if its submission could have been required under section 13 of the Act, regardless of whether section 13 was cited as authority for the request, whether an order to provide such information was issued under section 11(d) of the Act, 42 U.S.C. 4910(d), and whether the information was provided directly to EPA by the manufacturer or through some third person.

(c) *Basic rules which apply without change.* Sections 2.201 through 2.207 and 2.209 through 2.215 apply without change to information to which this section applies.

(d) [Reserved]

(e) *Substantive criteria for use in confidentiality determinations.* Section 2.208 applies without change to information to which this section applies; however, no information to which this section applies is voluntarily submitted information.

(f) [Reserved]

(g) *Disclosure of information relevant to a proceeding.* (1) Under section 13 of the Act, any information to which this section applies may be released by EPA because of its relevance to a matter in controversy in a proceeding, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Release of information because of its relevance to a proceeding shall be made only in accordance with this paragraph (g).

(2)–(4) The provisions of § 2.301(g) (2), (3), and (4) are incorporated by reference as paragraphs (g) (2), (3), and (4), respectively, of this section.

[41 FR 36902, Sept. 1, 1976, as amended at 43 FR 40003, Sept. 8, 1978]

§ 2.304 Special rules governing certain information obtained under the Safe Drinking Water Act.

(a) *Definitions.* For the purposes of this section:

(1) *Act* means the Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*

(2) *Contaminant* means any physical, chemical, biological, or radiological substance or matter in water.

(3) *Proceeding* means any rulemaking, adjudication, or licensing process conducted by EPA under the Act or under regulations which implement the Act, except for any determination under this part.

(b) *Applicability.* (1) This section applies only to information—

(i) Which was provided to or obtained by EPA pursuant to a requirement of a regulation which was issued by EPA under the Act for the purpose of—

(A) Assisting the Administrator in establishing regulations under the Act;

(B) Determining whether the person providing the information has acted or is acting in compliance with the Act; or

(C) Administering any program of financial assistance under the Act; and

(ii) Which was provided by a person—

(A) Who is a supplier of water, as defined in section 1401(5) of the Act, 42 U.S.C. 300f(5);

(B) Who is or may be subject to a primary drinking water regulation under section 1412 of the Act, 42 U.S.C. 300g–1;

(C) Who is or may be subject to an applicable underground injection control program, as defined in section 1422(d) of the Act, 42 U.S.C.300h–1(d);

(D) Who is or may be subject to the permit requirements of section 1424(b) of the Act, 42 U.S.C. 300h–3(b);

(E) Who is or may be subject to an order issued under section 1441(c) of the Act, 42 U.S.C. 300j(c); or

(F) Who is a grantee, as defined in section 1445(e) of the Act, 42 U.S.C. 300j–4(e).

(2) This section applies to any information which is described by paragraph (b)(1) of this section if it was provided in response to a request by EPA or its authorized representative (or by a State agency administering any program under the Act) made for any purpose stated in paragraph (b)(1) of this section, or if its submission could have been required under section 1445 of the Act, 42 U.S.C. 300j–4, regardless of whether such section was cited in any request for the information, or whether the information was provided directly to EPA or through some third person.

(c) *Basic rules which apply without change.* Sections 2.201 through 2.207, 2.209, and 2.211 through 2.215 apply without change to information to which this section applies.

(d) [Reserved]

(e) *Substantive criteria for use in confidentiality determinations.* Section 2.208 applies to information to which this section applies, except that information which deals with the existence, absence, or level of contaminants in drinking water is not eligible for confidential treatment. No information to which this section applies is voluntarily submitted information.

(f) *Nondisclosure for reasons other than business confidentiality or where disclosure is prohibited by other statute.* Section 2.210 applies to information to which this section applies, except that information which deals with the existence, absence, or level of contaminants in drinking water shall be available to the public notwithstanding any other provision of this part.

(g) *Disclosure of information relevant to a proceeding.* (1) Under section 1445(d) of the Act, any information to which this section applies may be released by EPA because of the relevance of the information to a proceeding, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Release of information to which this section applies because of its relevance to a proceeding shall be made only in accordance with this paragraph (g).

(2)–(4) The provisions of § 2.301(g) (2), (3), (4) are incorporated by reference as paragraphs (g) (2), (3), and (4), respectively, of this section.

(h) *Disclosure to authorized representatives.* (1) Under section 1445(d) of the Act, EPA possesses authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Such authority may be exercised only in accordance with paragraph (h)(2) or (h)(3) of this section.

(2)–(3) The provisions of § 2.301(h) (2) and (3) are incorporated by reference as paragraphs (h) (2) and (3), respectively, of this section.

[41 FR 36902, Sept. 1, 1976, as amended at 43 FR 40003, Sept. 8, 1978]

§ 2.305 Special rules governing certain information obtained under the Solid Waste Disposal Act, as amended.

(a) *Definitions.* For purposes of this section:

(1) *Act* means the Solid Waste Disposal Act, as amended, including amendments made by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 *et seq.*

(2) *Person* has the meaning given it in section 1004(15) of the Act, 42 U.S.C. 6903(15).

(3) *Hazardous waste* has the meaning given it in section 1004(5) of the Act, 42 U.S.C. 6903(5).

(4) *Proceeding* means any rulemaking, adjudication, or licensing conducted by EPA under the Act or under regulations which implement the Act including the issuance of administrative orders and the approval or disapproval of plans (e.g. closure plans) submitted by persons subject to regulation under the Act, but not including determinations under this subpart.

(b) *Applicability.* This section applies to information provided to or obtained by EPA under section 3001(b)(3)(B), 3007, or 9005 of the Act, 42 U.S.C 6921(b)(3)(B), 6927, or 6995. Information will be considered to have been provided or obtained under sections 3001(b)(3)(B), 3007, or 9005 of the Act if it was provided in response to a request from EDA made for any of the purposes stated in the Act or if its submission could have been required under those provisions of the Act regardless of whether a specific section was cited as the authority for any request for the information or whether the information was provide directly to EPA or through some third person.

(c) *Basic rules which apply without change.* Sections 2.201 through 2.207 and 2.209 through 2.215 apply without change to information to which this section applies.

(d) [Reserved]

(e) *Substantive criteria for use in confidentiality determinations.* Section 2.208 applies without change to information to which this section applies; however, no information to which this section applies is voluntarily submitted information.

(f) [Reserved]

(g) *Disclosure of information relevant in a proceeding.* (1) Under sections 3007(b) and 9005(b) of the Act (42 U.S.C. 6927(b) and 6995(b)), any information to which this section applies may be disclosed by EPA because of the relevance of the information in a proceeding under the Act, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Disclosure of information to which this section applies because of its relevance in a proceeding shall be made only in accordance with this paragraph (g).

(2)–(4) The provisions of § 2.301(g) (2), (3), and (4) are incorporated by reference as paragraphs (g) (2), (3), and (4), respectively, of this section.

(h) *Disclosure to authorized representatives.* (1) Under sections 3001(b)(3)(B), 3007(b), and 9005(b) of the Act (42 U.S.C. 6921(b)(3)(B), 6927(b), and 6995(b)), EPA possesses authority to disclose to any authorized representative of the United States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to confidential treatment under this subpart. Such authority may be exercised only in accordance with paragraph (h)(2) or (h)(3) of this section.

(2)–(3) The provisions of § 2.301(h) (2) and (3) are incorporated by reference as paragraphs (h) (2) and (3), respectively, of this section.

(4) At the time any information is furnished to a contractor, subcontractor, or state or local government agency under this paragraph (h), the EPA office furnishing the information to the contractor, subcontractor, or state or local government agency shall notify the contractor, subcontractor, or state or local government agency that the information may be entitled to confidential treatment and that any knowing and willful disclosure of the information may subject the contractor, subcontractor, or state or local government agency and its employees to penalties in section 3001(b)(3)(B), 3007(b)(2), or 9005(b)(1) of the Act (42 U.S.C. 6921(b)(3)(B), 6927(b), or 6995(b)).

[43 FR 40003, Sept. 8, 1978, as amended at 50 FR 51662, Dec. 18, 1985]

§ 2.306 Special rules governing certain information obtained under the Toxic Substances Control Act.

(a) *Definitions.* For the purposes of this section:

(1) *Act* means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

(2) *Chemical substance* has the meaning given it in section 3(2) of the Act, 15 U.S.C. 2602(2).

(3)(i) *Health and safety data* means the information described in paragraphs (a)(3)(i) (A), (B), and (C) of this section with respect to any chemical substance or mixture offered for commercial distribution (including for test marketing purposes and for use in research and development), any chemical substance included on the inventory of chemical substances under section 8 of the Act (15 U.S.C. 2607), or any chemical substance or mixture for which testing is required under section 4 of the Act (15 U.S.C. 2603) or for which notification is required under section 5 of the Act (15 U.S.C. 2604).

(A) Any study of any effect of a chemical substance or mixture on health, on the environment, or on both, including underlying data and epidemiological studies; studies of occupational exposure to a chemical substance or mixture; and toxicological, clinical, and ecological studies of a chemical substance or mixture;

(B) Any test performed under the Act; and

(C) Any data reported to, or otherwise obtained by, EPA from a study described in paragraph (a)(3)(i)(A) of this section or a test described in paragraph (a)(3)(i)(B) of this section.

(ii) Notwithstanding paragraph (a)(3)(i) of this section, no information shall be considered to be *health and safety data* if disclosure of the information would—

(A) In the case of a chemical substance or mixture, disclose processes used in the manufacturing or processing the chemical substance or mixture or,

(B) In the case of a mixture, disclose the portion of the mixture comprised by any of the chemical substances in the mixture.

(4) [Reserved]

(5) *Mixture* has the meaning given it in section 3(8) of the Act, 15 U.S.C. 2602(8).

(6) *Proceeding* means any rulemaking, adjudication, or licensing conducted by EPA under the Act or under regulations which implement the Act, except for determinations under this subpart.

(b) *Applicability.* This section applies to all information submitted to EPA for the purpose of satisfying some requirement or condition of the Act or of regulations which implement the Act, including information originally submitted to EPA for some other purpose and either relied upon to avoid some requirement or condition of the Act or incorporated into a submission in order to satisfy some requirement or condition of the Act or of regulations which implement the Act. Information will be considered to have been provided under the Act if the information could have been obtained under authority of the Act, whether the Act was cited as authority or not, and whether the information was provided directly to EPA or through some third person.

(c) *Basic rules which apply without change.* Sections 2.201 through 2.203, 2.206, 2.207, and 2.210 through 2.215 apply without change to information to which this section applies.

(d) *Initial action by EPA office.* Section 2.204 applies to information to which this section applies, except that the provisions of paragraph (e)(3) of this section regarding the time allowed for seeking judicial review shall be reflected in any notice furnished to a business under § 2.204(d)(2).

(e) *Final confidentiality determination by EPA legal office.* Section 2.205 applies to information to which this section applies, except that—

(1) Notwithstanding § 2.205(i), the General Counsel (or his designee), rather than the regional counsel, shall make the determinations and take the actions required by § 2.205;

(2) In addition to the statement prescribed by the second sentence of § 2.205(f)(2), the notice of denial of a business confidentiality claim shall state that under section 20(a) of the Act, 15 U.S.C. 2619, the business may commence an action in an appropriate Federal district court to prevent disclosure.

(3) The following sentence is substituted for the third sentence of § 2.205(f)(2): ''With respect to EPA's implementation of the determination, the notice shall state that (subject to § 2.210) EPA will make the information available to the public on the thirty-first (31st) calendar day after the date of the business' receipt of the written notice (or on such later date as is established in lieu thereof under paragraph (f)(3) of this section), unless the EPA legal office has first been notified of the business' commencement of an action in a Federal court to obtain judicial review of the determination and to obtain preliminary injunctive relief against disclosure.''; and

(4) Notwithstanding § 2.205(g), the 31 calendar day period prescribed by § 2.205(f)(2), as modified by paragraph (e)(3) of this section, shall not be shortened without the consent of the business.

(f) [Reserved]

(g) *Substantive criteria for use in confidentiality determinations.* Section 2.208 applies without change to information to which this section applies, except that health and safety data are not eligible for confidential treatment. No information to which this section applies is voluntarily submitted information.

(h) *Disclosure in special circumstances.* Section 2.209 applies to information to which this section applies, except that the following two additional provisions apply to § 2.209(c):

(1) The official purpose for which the information is needed must be in connection with the

agency's duties under any law for protection of health or the environment or for specific law enforcement purposes; and

(2) EPA notifies the other agency that the information was acquired under authority of the Act and that any knowing disclosure of the information may subject the officers and employees of the other agency to the penalties in section 14(d) of the Act (15 U.S.C. 2613(d)).

(i) *Disclosure of information relevant in a proceeding.* (1) Under section 14(a)(4) of the Act (15 U.S.C. 2613(a)(4)), any information to which this section applies may be disclosed by EPA when the information is relevant in a proceeding under the Act, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. However, any such disclosure shall be made in a manner that preserves the confidentiality of the information to the extent practicable without impairing the proceeding. Disclosure of information to which this section applies because of its relevance in a proceeding shall be made only in accordance with this paragraph (i).

(2)–(4) The provisions of § 2.301(g) (2), (3), and (4) are incorporated by reference as paragraphs (i) (2), (3), and (4), respectively, of this section.

(j) *Disclosure of information to contractors and subcontractors.* (1) Under section 14(a)(2) of the Act (15 U.S.C. 2613(a)(2)), any information to which this section applies may be disclosed by EPA to a contractor or subcontractor of the United States performing work under the Act, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Subject to the limitations in this paragraph (j), information to which this section applies may be disclosed:

(i) To a contractor or subcontractor with EPA, if the EPA program office managing the contract first determines in writing that such disclosure is necessary for the satisfactory performance by the contractor or subcontractor of the contract or subcontract; or

(ii) To a contractor or subcontractor with an agency other than EPA, if the EPA program office which provides the information to that agency, contractor, or subcontractor first determines in writing, in consultation with the General Counsel, that such disclosure is necessary for the satisfactory performance by the contractor or subcontractor of the contract or subcontract.

(2)–(4) The provisions of § 2.301(h)(2) (ii), (iii), and (iv) are incorporated by reference as paragraphs (j) (2), (3), and (4), respectively, of this section.

(5) At the time any information is furnished to a contractor or subcontractor under this paragraph (j), the EPA office furnishing the information to the contractor or subcontractor shall notify the contractor or subcontractor that the information was acquired under authority of the Act and that any knowing disclosure of the information may subject the contractor or subcontractor and its employees to the penalties in section 14(d) of the Act (15 U.S.C. 2613(d)).

(k) *Disclosure of information when necessary to protect health or the environment against an unreasonable risk of injury.* (1) Under section 14(a)(3) of the Act (15 U.S.C 2613(a)(3)), any information to which this section applies may be disclosed by EPA when disclosure is necessary to protect health or the environment against an unreasonable risk of injury to health or the environment. However, any disclosure shall be made in a manner that preserves the confidentiality of the information to the extent not inconsistent with protecting health or the environment against the unreasonable risk of injury. Disclosure of information to which this section applies because of the need to protect health or the environment against an unreasonable risk of injury shall be made only in accordance with this paragraph (k).

(2) If any EPA office determines that there is an unreasonable risk of injury to health or the environment and that to protect health or the environment against the unreasonable risk of injury it is necessary to disclose information to which this section applies that otherwise might be entitled to confidential treatment under this subpart, the EPA office shall notify the General Counsel in writing of the nature of the unreasonable risk of injury, the extent of the disclosure proposed, how the proposed disclosure will serve to protect health or the environment against the unreasonable risk of injury, and the proposed date of disclosure. Such notification shall be made as soon as practicable after discovery of the unreasonable risk of injury. If the EPA office determines that the risk of injury is so imminent that it is impracticable to furnish written notification to the General Counsel, the EPA office shall notify the General Counsel orally.

(3) Upon receipt of notification under paragraph (k)(2) of this section, the General Counsel shall make a determination in writing whether disclosure of information to which this section applies that otherwise might be entitled to confidential treatment is necessary to protect health or the environment against an unreasonable risk of injury. The General Counsel shall also determine the extent of disclosure necessary to protect against the unreasonable risk of injury as well as when the disclosure must be made to protect against the unreasonable risk of injury.

(4) If the General Counsel determines that disclosure of information to which this section applies that otherwise might be entitled to confidential treatment is necessary to protect health or the environment against an unreasonable risk of injury, the General Counsel shall furnish notice to each affected business of the contemplated disclosure and of the General Counsel's determination. Such notice shall be made in writing by certified mail, return receipt requested, at least 15 days before the disclosure is to be made. The notice shall state the date upon which disclosure will be made. However, if the General Counsel determines that the risk of injury is so imminent that it is impracticable to furnish such notice 15 days before the proposed date of disclosure, the General Counsel may provide notice by means that will provide receipt of the notice by the affected business at least 24 hours before the disclosure is to be made. This may be done by telegram, telephone, or other reasonably rapid means.

[43 FR 40003, Sept. 8, 1978, as amended at 44 FR 17674, Mar. 23, 1979; 58 FR 462, Jan. 5, 1993]

§ 2.307 Special rules governing certain information obtained under the Federal Insecticide, Fungicide and Rodenticide Act.

(a) *Definitions.* For the purposes of this section;

(1) *Act* means the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. 136 *et seq., and its predecessor, 7 U.S.C. 135 et seq.*

(2) *Applicant* means any person who has submitted to EPA (or to a predecessor agency with responsibility for administering the Act) a registration statement or application for registration under the Act of a pesticide or of an establishment.

(3) *Registrant* means any person who has obtained registration under the Act of a pesticide or of an establishment.

(b) *Applicability.* This section applies to all information submitted to EPA by an applicant or registrant for the purpose of satisfying some requirement or condition of the Act or of regulations which implement the Act, including information originally submitted to EPA for some other purpose but incorporated by the applicant or registrant into a submission in order to satisfy some requirement or condition of the Act or of regulations which implement the Act. This section does not apply to information supplied to EPA by a petitioner in support of a petition for a tolerance under 21 U.S.C. 346a(d), unless the information is also described by the first sentence of this paragraph.

(c) *Basic rules which apply without change.* Sections 2.201 through 2.203, 2.206, 2.207, and 2.210 through 2.215 apply without change to information to which this section applies.

(d) *Initial action by EPA office.* Section 2.204 applies to information to which this section applies, except that the provisions of paragraph (e) of this section regarding the time allowed for seeking judicial review shall be reflected in any notice furnished to a business under § 2.204(d)(2).

(e) *Final confidentiality determination by EPA legal office.* Section 2.205 applies to information to which this section applies, except that—

(1) Notwithstanding § 2.205(i), the General Counsel (or his designee), rather than the Regional Counsel, shall make the determinations and take the actions required by § 2.205;

(2) In addition to the statement prescribed by the second sentence of § 2.205(f)(2), the notice of denial of a business confidentiality claim shall state that under section 10(c) of the Act, 7 U.S.C. 136h(c), the business may commence an action in an appropriate Federal district court for a declaratory judgment;

(3) The following sentence is substituted for the third sentence of § 2.205(f)(2): ''With respect to EPA's implementation of the determination, the notice shall state that (subject to § 2.210) EPA will make the information available to the public on the thirty-first (31st) calendar day after the date of the business's receipt of the written notice (or on such later date as is established in lieu thereof under paragraph (f)(3) of this section), unless the EPA legal office has first been notified of the business's commencement of an action in a Federal court to obtain judicial review of the determination or to obtain a declaratory judgment under section 10(c) of the Act and to obtain preliminary injunctive relief against disclosure.''; and

(4) Notwithstanding § 2.205(g), the 31 calendar day period prescribed by § 2.205(f)(2), as modified by paragraph (e)(3) of this section, shall not be shortened without the consent of the business.

(f) [Reserved]

(g) *Substantive criteria for use in confidentiality determinations.* Section 2.208 applies without change to information to which this section applies; however, no information to which this section applies is voluntarily submitted information.

(h) *Disclosure in special circumstances.* (1) Section 2.209 applies without change to information to which this section applies. In addition, under section 12(a)(2)(D) of the Act, 7 U.S.C. 136j(a)(2)(D), EPA possesses authority to disclose any information to which this section applies to physicians, pharmacists, and other qualified persons needing such information for the performance of their duties, notwithstanding the fact that the information might otherwise be entitled to confidential treatment under this subpart. Such authority under section 12(a)(2)(D) of the Act may be exercised only in accordance with paragraph (h)(2) or (h)(3) of this section.

(2) Information to which this section applies may be disclosed (notwithstanding the fact that it might otherwise be entitled to confidential treatment under this subpart) to physicians, pharmacists, hospitals, veterinarians, law enforcement personnel, or governmental agencies with responsibilities for protection of public health, and to employees of any such persons or agencies, or to other qualified persons, when and to the extent that disclosure is necessary in order to treat illness or injury or to prevent imminent harm to persons, property, or the environment, in the opinion of the Administrator or his designee.

(3) Information to which this section applies may be disclosed (notwithstanding the fact that it otherwise might be entitled to confidential treatment under this subpart) to a person under contract to EPA to perform work for EPA in connection with the Act or regulations which implement the Act, if the EPA program office managing the contract first determines in writing that such disclosure is necessary in order that the contractor may carry out the work required by the contract. Any such disclosure to a contractor shall be made only in accordance with the procedure and requirements of § 2.301(h)(2) (ii) through (iv).

(4) Information to which this section applies, and which relates to formulas of products, may be disclosed at any public hearing or in findings of fact issued by the Administrator, to the extent and in the manner authorized by the Administrator or his designee.

[41 FR 36902, Sept. 1, 1976, as amended at 43 FR 40005, Sept. 8, 1978]

§ 2.308 Special rules governing certain information obtained under the Federal Food, Drug and Cosmetic Act.

(a) *Definitions.* For the purposes of this section:

(1) *Act* means the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. 301 *et seq.*

(2) *Petition* means a petition for the issuance of a regulation establishing a tolerance for a pesticide chemical or exempting the pesticide chemical from the necessity of a tolerance, pursuant to section 408(d) of the Act, 21 U.S.C. 346a(d).

(3) *Petitioner* means a person who has submitted a petition to EPA (or to a predecessor agency).

(b) *Applicability.* (1) This section applies only to business information submitted to EPA (or to an advisory committee established under the Act) by a petitioner, solely in support of a petition which has not been acted on by the publication by EPA of a regulation establishing a tolerance for a pesticide chemical or exempting the pesticide chemical from the necessity of a tolerance, as provided in section 408(d) (2) or (3) of the Act, 21 U.S.C. 346a(d) (2) or (3).

(2) Section 2.307, rather than this section, applies to information described by the first sentence of § 2.307(b) (material incorporated into submissions in order to satisfy the requirements of the Federal Insecticide, Fungicide and Rodenticide Act, as amended), even though such information was originally submitted by a petitioner in support of a petition.

(3) This section does not apply to information gathered by EPA under a proceeding initiated by EPA to establish a tolerance under section 408(e) of the Act, 21 U.S.C. 346a(e).

(c) *Basic rules which apply without change.* Sections 2.201, 2.202, 2.206, 2.207, and 2.210 through 2.215 apply without change to information to which this section applies.

(d) *Effect of submission of information without claim.* Section 2.203 (a) and (b) apply without change to information to which this section applies. Section 2.203(c), however, does not apply to information to which this section applies. A petitioner's failure to assert a claim when initially submitting a petition shall not constitute a waiver of any claim the petitioner may have.

(e) *Initial action by EPA office.* Section 2.204 applies to information to which this section applies, except that—

(1) Unless the EPA office has on file a written waiver of a petitioner's claim, a petitioner shall be regarded as an affected business, a petition shall be treated as if it were covered by a business confidentiality claim, and an EPA office acting under § 2.204(d) shall determine that the information in the petition is or may be entitled to confidential treatment and shall take action in accordance with § 2.204(d)(1);

(2) In addition to other required provisions of any notice furnished to a petitioner under § 2.204(e), such notice shall state that—

(i) Section 408(f) of the Act, 21 U.S.C. 346a(f), affords absolute confidentiality to information to which this section applies, but after publication by EPA of a regulation establishing a tolerance (or exempting the pesticide chemical from the necessity of a tolerance) neither the Act nor this section affords any protection to the information;

(ii) Information submitted in support of a petition which is also incorporated into a submission in order to satisfy a requirement or condition of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, 7 U.S.C. 136 et seq., is regarded by EPA as being governed, with respect to business confidentiality, by § 2.307 rather than by this section;

(iii) Although it appears that this section may apply to the information at this time, EPA is presently engaged in determining whether for any reason the information is entitled to confidential treatment or will be entitled to such treatment if and

when this section no longer applies to the information; and

(iv) Information determined by EPA to be covered by this section will not be disclosed for as long as this section continues to apply, but will be made available to the public thereafter (subject to § 2.210) unless the business furnishes timely comments in response to the notice.

(f) *Final confidentiality determination by EPA legal office.* Section 2.205 applies to information to which this section applies, except that—

(1) Notwithstanding § 2.205(i), the General Counsel or his designee, rather than the Regional counsel, shall in all cases make the determinations and take the actions required by § 2.205;

(2) In addition to the circumstances mentioned in § 2.205(f)(1), notice in the form prescribed by § 2.205(f)(2) shall be furnished to each affected business whenever information is found to be entitled to confidential treatment under section 408(f) of the Act but not otherwise entitled to confidential treatment. With respect to such cases, the following sentences shall be substituted for the third sentence of § 2.205(f)(2): ''With respect to EPA's implementation of the determination, the notice shall state that (subject to § 2.210) EPA will make the information available to the public on the thirty-first (31st) calendar day after the business's receipt of the written notice (or on such later date as is established in lieu thereof under paragraph (f)(3) of this section), unless the EPA legal office has first been notified of the business's commencement of an action in a Federal court to obtain judicial review of the determination and to obtain preliminary injunctive relief against disclosure; provided, that the information will not be made available to the public for so long as it is entitled to confidential treatment under section 408(f) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(f).''; and

(3) Notwithstanding § 2.205(g), the 31 calendar day period prescribed by § 2.205(f)(2), as modified by paragraph (f)(2) of this section, shall not be shortened without the consent of the business.

(g) [Reserved]

(h) *Substantive criteria for use in confidentiality determinations.* Section 2.208 does not apply to information to which this section applies. Such information shall be determined to be entitled to confidential treatment for so long as this section continues to apply to it.

(i) *Disclosure in special circumstances.* (1) Section 2.209 applies to information to which this section applies. In addition, under Section 408(f) of the Act, 21 U.S.C. 346a(f), EPA is authorized to disclose the information to other persons. Such authority under section 408(f) of the Act may be exercised only in accordance with paragraph (i)(2) or (i)(3) of this section.

(2) Information to which this section applies may be disclosed (notwithstanding the fact that it otherwise might be entitled to confidential treatment under this subpart) to a person under contract to EPA to perform work for EPA in connection with the Act, with the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, or regulations which implement either such Act, if the EPA program office managing the contract first determines in writing that such disclosure is necessary in order that the contractor may carry out the work required by the contract. Any such disclosure to a contractor shall be made only in accordance with the procedures and requirements of § 2.301(h)(2) (ii) through (iv).

(3) Information to which this section applies may be disclosed by EPA to an advisory committee in accordance with section 408(d) of the Act, 21 U.S.C. 346a(d).

[41 FR 36902, Sept. 1, 1976, as amended at 43 FR 40005, Sept. 8, 1978]

§ 2.309 Special rules governing certain information obtained under the Marine Protection, Research and Sanctuaries Act of 1972.

(a) *Definitions.* For the purposes of this section:

(1) *Act* means the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. 1401 *et seq.*

(2) *Permit* means any permit applied for or granted under the Act.

(3) *Application* means an application for a permit.

(b) *Applicability.* This section applies to all information provided to or obtained by EPA as a part of any application or in connection with any permit.

(c) *Basic rules which apply without change.* Sections 2.201 through 2.207 and 2.209 through 2.215 apply without change to information to which this section applies.

(d) *Substantive criteria for use in confidentiality determinations.* Section 2.208 does not apply to information to which this section applies. Pursuant to section 104(f) of the Act, 33 U.S.C. 1414(f), no information to which this section applies is eligible for confidential treatment.

[41 FR 36902, Sept. 1, 1976, as amended at 43 FR 40005, Sept. 8, 1978]

§ 2.310 Special rules governing certain information obtained under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(a) *Definitions.* For purposes of this section:

(1) *Act* means the Comprehensive Environmental Response, Compensation, and Liability Act

of 1980, as amended, including amendments made by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601, et seq.

(2) *Person* has the meaning given it in section 101(21) of the Act, 42 U.S.C. 9601(21).

(3) *Facility* has the meaning given it in section 101(9) of the Act, 42 U.S.C. 9601(9).

(4) *Hazardous substance* has the meaning given it in section 101(14) of the Act, 42 U.S.C. 9601(14).

(5) *Release* has the meaning given it in section 101(22) of the Act, 42 U.S.C. 9601(22).

(6) *Proceeding* means any rulemaking or adjudication conducted by EPA under the Act or under regulations which implement the Act (including the issuance of administrative orders under section 106 of the Act and cost recovery pre-litigation settlement negotiations under sections 107 or 122 of the Act), any cost recovery litigation under section 107 of the Act, or any administrative determination made under section 104 of the Act, but not including determinations under this subpart.

(b) *Applicability.* This section applies only to information provided to or obtained by EPA under section 104 of the Act, 42 U.S.C. 9604, by or from any person who stores, treats, or disposes of hazardous wastes; or where necessary to ascertain facts not available at the facility where such hazardous substances are located, by or from any person who generates, transports, or otherwise handles or has handled hazardous substances, or by or from any person who performs or supports removal or remedial actions pursuant to section 104(a) of the Act. Information will be considered to have been provided or obtained under section 104 of the Act if it was provided in response to a request from EPA or a representative of EPA made for any of the purposes stated in section 104, if it was provided pursuant to the terms of a contract, grant or other agreement to perform work pursuant to section 104, or if its submission could have been required under section 104, regardless of whether section 104 was cited as authority for any request for the information or whether the information was provided directly to EPA or through some third person.

(c) *Basic rules which apply without change.* Sections 2.201 through 2.207 and §§ 2.209 through 2.215 apply without change to information to which this section applies.

(d) [Reserved]

(e) *Substantive criteria for use in confidentiality determinations.* Section 2.208 applies without change to information to which this section applies; however, no information to which this section applies is voluntarily submitted information.

(f) [Reserved]

(g)(1) Under section 104(e)(7)(A) of the Act (42 U.S.C. 9604(e)(7)(A)) any information to which this section applies may be disclosed by EPA because of the relevance of the information in a proceeding under the Act, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Disclosure of information to which this section applies because of its relevance in a proceeding shall be made only in accordance with this paragraph (g).

(2) The provisions of § 2.301(g)(2) are to be used as paragraph (g)(2) of this section.

(3) In connection with any proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, except with respect to litigation conducted by a Federal court, information to which this section applies which may be entitled to confidential treatment may be made available to the public, or to one or more parties of record to the proceeding, upon EPA's initiative, under this paragraph (g)(3). An EPA office proposing disclosure of information under this paragraph (g)(3) shall so notify the presiding officer in writing. Upon receipt of such a notification, the presiding officer shall notify each affected business that disclosure under this paragraph (g)(3) has been proposed, and shall afford each such business a period for comment found by the presiding officer to be reasonable under the circumstances. Information may be disclosed under this paragraph (g)(3) only if, after consideration of any timely comments submitted by the business, the EPA office determines in writing that, for reasons directly associated with the conduct of the proceeding, the contemplated disclosure would serve the public interest, and the presiding officer determines in writing that the information is relevant to a matter in controversy in the proceeding. The presiding officer may condition disclosure of the information to a party of record on the making of such protective arrangements and commitments as he finds to be warranted. Disclosure to one or more parties of record, under protective arrangements or commitments, shall not, of itself, affect the eligibility of information for confidential treatment under the other provisions of this subpart. Any affected business shall be given at least 5 days notice by the presiding officer prior to making the information available to the public or to one or more of the parties of record to the proceeding.

(4) In connection with any proceeding involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, except with respect to litigation conducted by a Federal court, information to which this section applies which may be entitled to confidential treatment may be made available to one or more parties of record to the proceeding, upon request of a party, under this paragraph (g)(4). A party of record seeking disclosure of information shall direct his request to the

presiding officer. Upon receipt of such a request, the presiding officer shall notify each affected business that disclosure under this paragraph (g)(4) has been requested, and shall afford each such business a period for comment found by the presiding officer to be reasonable under the circumstances. Information may be disclosed to a party of record under this paragraph (g)(4) only if, after consideration of any timely comments submitted by the business, the presiding officer determines in writing that:

(i) The party of record has satisfactorily shown that with respect to a significant matter which is in controversy in the proceeding, the party's ability to participate effectively in the proceeding will be significantly impaired unless the information is disclosed to him; and

(ii) Any harm to an affected business that would result from the disclosure is likely to be outweighed by the benefit to the proceeding and the public interest that would result from the disclosure.

The presiding officer may condition disclosure of the information to a party of record on the making of such protective arrangements and commitments as he finds to be warranted. Disclosure to one or more parties of record, under protective arrangements or commitments, shall not, of itself, affect the eligibility of information for confidential treatment under the other provisions of this subpart. Any affected business shall be given at least 5 days notice by the presiding officer prior to making the information available to one or more of the parties of record to the proceeding.

(5) In connection with cost recovery pre-litigation settlement negotiations under sections 107 or 122 of the Act (42 U.S.C. 9607, 9622), any information to which this section applies that may be entitled to confidential treatment may be made available to potentially responsible parties pursuant to a contractual agreement to protect the information.

(6) In connection with any cost recovery proceeding under section 107 of the Act involving a decision by a presiding officer after an evidentiary or adjudicatory hearing, any information to which this section applies that may be entitled to confidential treatment may be made available to one or more parties of record to the proceeding, upon EPA's initiative, under this paragraph (g)(6). Such disclosure must be made pursuant to a stipulation and protective order signed by all parties to whom disclosure is made and by the presiding officer.

(h) *Disclosure to authorized representatives.* (1) Under section 104(e)(7) of the Act (42 U.S.C. 9604(e)(7)), EPA possesses authority to disclose to any authorized representative of the Untied States any information to which this section applies, notwithstanding the fact that the information might otherwise be entitled to confidential treatment under this subpart. Such authority may be exercised only in accordance with paragraph (h)(2) or (h)(3) of this section.

(2) The provisions of § 2.301(h)(2) are to be used as paragraph (h)(2) of this section.

(3) The provisions of § 2.301(h)(3) are to be used as paragraph (h)(3) of this section.

(4) At the time any information is furnished to a contractor, subcontractor, or state or local government under this paragraph (h), the EPA office furnishing the information to the contractor, subcontractor, or state or local government agency shall notify the contractor, subcontractor, or state or local government agency that the information may be entitled to confidential treatment and that any knowing and willful disclosure of the information may subject the contractor, subcontractor, or state or local government agency and its employees to penalties in section 104(e)(7)(B) of the Act (42 U.S.C. 9604(e)(7)(B)).

[50 FR 51663, Dec. 18, 1985, as amended at 58 FR 462, Jan. 5, 1993]

§ 2.311 Special rules governing certain information obtained under the Motor Vehicle Information and Cost Savings Act.

(a) *Definitions.* For the purposes of this section:

(1) *Act* means the Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 1901 *et seq.*

(2) *Average fuel economy* has the meaning given it in section 501(4) of the Act, 15 U.S.C. 2001(4).

(3) *Fuel economy* has the meaning given it in section 501(6) of the Act, 15 U.S.C. 2001(6).

(4) *Fuel economy data* means any measurement or calculation of fuel economy for any model type and average fuel economy of a manufacturer under section 503(d) of the Act, 15 U.S.C. 2003(d).

(5) *Manufacturer* has the meaning given it in section 501(9) of the Act, 15 U.S.C. 2001(9).

(6) *Model type* has the meaning given it in section 501(11) of the Act, 15 U.S.C. 2001(11).

(b) *Applicability.* This section applies only to information provided to or obtained by EPA under Title V, Part A of the Act, 15 U.S.C. 2001 through 2012. Information will be considered to have been provided or obtained under Title V, Part A of the Act if it was provided in response to a request from EPA made for any purpose stated in Title V, Part A, or if its submission could have been required under Title V Part A, regardless of whether Title V Part A was cited as the authority for any request for information or whether the information was provided directly to EPA or through some third person.

(c) *Basic rules which apply without change.* Sections 2.201 through 2.207 and §§ 2.209 through 2.215 apply without change to information to which this section applies.

(d) [Reserved]

(e) *Substantive criteria for use in confidentiality determinations.* Section 2.208 applies without change to information to which this section applies, except that information this is fuel economy data is not eligible for confidential treatment. No information to which this section applies is voluntarily submitted information.

(f) [Reserved]

(g) *Disclosure of information relevant to a proceeding.* (1) Under section 505(d)(1) of the Act, any information to which this section applies may be released by EPA because of the relevance of the information to a proceeding under Title V, Part A of the Act, notwithstanding the fact that the information otherwise might be entitled to confidential treatment under this subpart. Release of information to which this section applies because of its relevance to a proceeding shall be made only in accordance with this paragraph (g).

(2) The provisions of § 2.301(g)(2) are to be used as paragraph (g)(2) of this section.

(3) The provisions of § 2.301(g)(3) are to be used as paragraph (g)(3) of this section.

(4) The provisions of § 2.301(g)(4) are to be used as paragraph (g)(3) of this section.

[50 FR 51663, Dec. 18, 1985]

Subpart C—Testimony by Employees and Production of Documents in Civil Legal Proceedings Where the United States Is Not a Party

AUTHORITY: 5 U.S.C. 301; Reorganization Plan No. 3 of 1970, 5 U.S.C. App.; 33 U.S.C. 361(a); 42 U.S.C. 300j–9; 42 U.S.C. 6911a, 42 U.S.C. 7601(a).

SOURCE: 50 FR 32387, Aug. 9, 1985, unless otherwise noted.

§ 2.401 Scope and purpose.

This subpart sets forth procedures to be followed when an EPA employee is requested or subpoenaed to provide testimony concerning information acquired in the course of performing official duties or because of the employee's official status. (In such cases, employees must state for the record that their testimony does not necessarily represent the official position of EPA. If they are called to state the official position of EPA, they should ascertain that position before appearing.) These procedures also apply to subpoenas *duces tecum* for any document in the possession of EPA and to requests for certification of copies of documents.

(a) These procedures apply to:

(1) State court proceedings (including grand jury proceedings);

(2) Federal civil proceedings, except where the United States, EPA or another Federal agency is a party; and

(3) State and local legislative and administrative proceedings.

(b) These procedures do not apply:

(1) To matters which are not related to EPA;

(2) To Congressional requests or subpoenas for testimony or documents;

(3) Where employees provide expert witness services as approved outside activities in accordance with 40 CFR part 3, subpart E (in such cases, employees must state for the record that the testimony represents their own views and does not necessarily represent the official position of EPA);

(4) Where employees voluntarily testify as private citizens with respect to environmental matters (in such cases, employees must state for the record that the testimony represents their own views and does not necessarily represent the official position of EPA).

(c) The purpose of this subpart is to ensure that employees' official time is used only for official purposes, to maintain the impartiality of EPA among private litigants, to ensure that public funds are not used for private purposes and to establish procedures for approving testimony or production of documents when clearly in the interests of EPA.

§ 2.402 Policy on presentation of testimony and production of documents.

(a) With the approval of the cognizant Assistant Administrator, Office Director, Staff Office Director or Regional Administrator or his designee, EPA employees (as defined in 40 CFR 3.102 (a) and (b)) may testify at the request of another Federal agency, or, where it is in the interests of EPA, at the request of a State or local government or State legislative committee.

(b) Except as permitted by paragraph (a) of this section, no EPA employee may provide testimony or produce documents in any proceeding to which this subpart applies concerning information acquired in the course of performing official duties or because of the employee's official relationship with EPA, unless authorized by the General Counsel or his designee under §§ 2.403 through 2.406.

§ 2.403 Procedures when voluntary testimony is requested.

A request for testimony by an EPA employee under § 2.402(b) must be in writing and must state the nature of the requested testimony and the reasons why the testimony would be in the interests

of EPA. Such requests are immediately sent to the General Counsel or his designee (or, in the case of employees in the Office of Inspector General, the Inspector General or his designee) with the recommendations of the employee's supervisors. The General Counsel or his designee, in consultation with the appropriate Assistant Administrator, Regional Administrator, or Staff Office Director (or, in the case of employees in the Office of Inspector General, the Inspector General or his designee), determines whether compliance with the request would clearly be in the interests of EPA and responds as soon as practicable.

§ 2.404 Procedures when an employee is subpoenaed.

(a) Copies of subpoenas must immediately be sent to the General Counsel or his designee with the recommendations of the employee's supervisors. The General Counsel or his designee, in consultation with the appropriate Assistant Administrator, Regional Administrator or Staff Office Director, determines whether compliance with the subpoena would clearly be in the interests of EPA and responds as soon as practicable.

(b) If the General Counsel or his designee denies approval to comply with the subpoena, or if he has not acted by the return date, the employee must appear at the stated time and place (unless advised by the General Counsel or his designee that the subpoena was not validly issued or served or that the subpoena has been withdrawn), produce a copy of these regulations and respectfully refuse to provide any testimony or produce any documents. *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

(c) Where employees in the Office of Inspector General are subpoenaed, the Inspector General or his designee makes the determination under paragraphs (a) and (b) of this section in consultation with the General Counsel.

(d) The General Counsel will request the assistance of the Department of Justice or a U.S. Attorney where necessary to represent the interests of the Agency and the employee.

§ 2.405 Subpoenas duces tecum.

Subpoenas *duces tecum* for documents or other materials are treated the same as subpoenas for testimony. Unless the General Counsel or his designee, in consultation with the appropriate Assistant Administrator, Regional Administrator or Staff Office Director (or, as to employees in the Office of Inspector General, the Inspector General) determines that compliance with the subpoena is clearly in the interests of EPA, the employee must appear at the stated time and place (unless advised by the General Counsel or his designee that the subpoena was not validly issued or served or that the subpoena has been withdrawn) and respectfully refuse to produce the subpoenaed materials. However, where a subpoena *duces tecum* is essentially a written request for documents, the requested documents will be provided or denied in accordance with subparts A and B of this part where approval to respond to the subpoena has not been granted.

§ 2.406 Requests for authenticated copies of EPA documents.

Requests for authenticated copies of EPA documents for purposes of admissibility under 28 U.S.C. 1733 and Rule 44 of the Federal Rules of Civil Procedure will be granted for documents which would otherwise be released pursuant to subpart A. For purposes of Rule 44 the *person having legal custody of the record* is the cognizant Assistant Administrator, Regional Administrator, Staff Office Director or Office Director or his designee. The advice of the Office of General Counsel should be obtained concerning the proper form of authentication.

PART 3—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Sec.

AUTHORITY: 5 U.S.C. 7301 and 18 U.S.C. 208(b)(2).

SOURCE: 61 FR 40503, Aug. 2, 1996, unless otherwise noted.

§ 3.100 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Environmental Protection Agency (EPA) should refer to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the EPA regulations at 5 CFR part 6401 that supplement those standards, and the Executive Branch financial disclosure regulations at 5 CFR part 2634.

§ 3.101 Waiver of certain financial interests.

(a) The prohibition of 18 U.S.C. 208(a) may be waived by general regulation. Financial interests derived from the following have been determined to be too remote or too inconsequential to affect the integrity of employee's services, and employees may participate in matters affecting them:

(1) Mutual funds (including tax-exempt bond funds), except those which concentrate their investments in particular industries;

(2) Life insurance, variable annuity, or guaranteed investment contracts issued by insurance companies;

(3) Deposits in a bank, savings and loan association, credit union, or similar financial institution;

(4) Real property used solely as the personal residence of an employee;

(5) Bonds or other securities issued by the U.S. Government or its agencies.

(b) This provision will be superseded when the Office of Government Ethics publishes its Executive Branch-wide exemptions and EPA will publish a document in the FEDERAL REGISTER revoking it at that time.

PART 4—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

AUTHORITY: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 4.1 Uniform relocation assistance and real property acquisition.

Effective April 2, 1989, regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17, 101 Stat. 246–255, 42 U.S.C. 4601 note) are set forth in 49 CFR part 24.

[52 FR 48023, Dec. 17, 1987 and 54 FR 8912, Mar. 2, 1989]

PART 5—TUITION FEES FOR DIRECT TRAINING

Sec.

AUTHORITY: Title V, 65 Stat. 290 (31 U.S.C. 483a).

SOURCE: 38 FR 32806, Nov. 28, 1973, unless otherwise noted.

§ 5.1 Establishment of fees.

The Environmental Protection Agency shall charge the revised schedule of tuition fees for all persons attending EPA direct training courses which commence on or after January 1, 1974.

§ 5.2 Definitions.

Direct Training means all technical and managerial training conducted directly by EPA for personnel of State and local governmental agencies, other Federal agencies, private industries, universities, and other non-EPA agencies and organizations.

Registration office means any of the several offices in EPA which have been designated to receive applications for attendance at direct training courses. (See § 5.4 for a listing of such courses.)

§ 5.3 Schedule of fees.

Tuition fees for direct training will be established within the range of $15 to $70 per training day depending upon whether the course is predominantly a laboratory, lecture, or survey course, or a course with other similar variables. Each cognitive program and regional office will announce the tuition fee at the time the date for offering the course is announced. As a transition easement, tuition fees for all State and local government employees are established at a maximum of $25 per training day regardless of type of course until July 1, 1974. After that date they are to pay the full fee. Charges for field courses taught by EPA instructors are for actual expenses on a per course basis. Complete tuition fee schedules may be obtained from the registration offices listed in § 5.4. Tuition fees will be subject to change either upward or downward, based on actual experience under the system.

§ 5.4 Registration offices.

Direct training programs are offered by both EPA national program offices and regional EPA offices. Listed in this section are the EPA national program offices and regional offices to which applications are to be sent. The proper registration office may be determined from the specific course announcement.

NATIONAL PROGRAM OFFICES

AIR PROGRAM

Direct Training Registration Office, Office of Air Programs, Research Triangle Park, NC 27717.

WASTE WATER TREATMENT PROGRAM

Direct Training Registration Office, National Training Center, Robert A. Taft Sanitary Engineering Center, Environmental Protection Agency, 4676 Columbia Parkway, Cincinnati, OH 45226.

WATER SUPPLY TREATMENT PROGRAM

Direct Training Registration Office, Environmental Protection Agency, 4676 Columbia Parkway, Cincinnati, OH 45226.

SOLID WASTES MANAGEMENT PROGRAM

U.S. Environmental Protection Agency, Office of Solid Waste Management Programs, Washington, DC 20460.

RADIATION PROGRAM

U.S. Environmental Protection Agency, Office of Radiation Programs, Washington, DC 20460.

PESTICIDES PROGRAM

U.S. Environmental Protection Agency, Office of Pesticides Programs, Washington, DC 20460.

REGIONAL EPA OFFICES

EPA, Regional Manpower Office, Region I, JFK Federal Building—Room 2303, Boston, MA 02203.

EPA, Regional Manpower Office, Region II, 26 Federal Plaza, Room 845D, New York, NY 10007.

EPA, Regional Manpower Office, Region III, Sixth and Walnut Streets, Philadelphia, PA 19106

EPA, Regional Manpower Office, Region IV, 1421 Peachtree Street, NE., 4th floor, Atlanta, GA 30309.

EPA, Regional Manpower Office, Region V, 1 North Wacker Drive, Chicago, IL 60606.

EPA, Regional Manpower Office, Region VI, 1600 Patterson, Suite 1100, Dallas, TX 75201.

EPA, Regional Manpower Office, Region VII, Room 249, 1735 Baltimore Avenue, Kansas City, MO 64108.

EPA, Regional Manpower Office, Region VIII, Suite 900, 1860 Lincoln Street, Denver, CO 80203.

EPA, Regional Manpower Office, Region IX, 100 California Street, San Francisco, CA 94111.

EPA, Regional Manpower Office, Region X, 1200 Sixth Avenue, Seattle, WA 98101.

§ 5.5 Procedure for payment.

Applications for direct training courses shall be completed and submitted in accordance with the instructions issued by the respective national program and/or regional offices. Fee payment in the amount indicated by the course announcement shall accompany completed applications (except in the case of waiver requests as described in § 5.75).

§ 5.6

All applications for field courses will be submitted in a timely manner by the sponsoring agency. Expenses will be noted and charges assessed the sponsoring agency after the course is conducted. The charge will be payable upon submission. All applicants shall make payment by check, payable to the U.S. Environmental Protection Agency, except applicants from Federal, State, and local agencies may send a purchase order of other acceptable financial commitment. Such financial commitment statements shall include information as to the agency and account number to be charged and other necessary information for billing purposes.

§ 5.6 Refunds.

An applicant may withdraw his application and receive full reimbursement of his fee provided that he notifies the appropriate registration office in writing no later than 10 days before commencement of the course for which he has registered.

§ 5.7 Waiver of fee.

Waivers of the full tuition fee may be granted on a limited basis. Each waiver request must be justified and considered by cognitive EPA units on: (a) Severity of the pollution problem in the area in which the applicant employee is working; (b) bona-fide administrative or legal constraints of the applicant agency to pay the reduced fee; (c) service, resulting from the training that will be provided as a benefit to the Federal Government. No waivers will be granted for field courses. Waivers are provided as a transitional easement for exceptional cases and will not be granted after July 1, 1975.

§ 5.8 Appeal of waiver denial.

Waiver denials may be appealed to the Office of Education and Manpower Planning, Washington, DC 20460, to adjudicate and expedite agency review. Appeal submissions should include copies of original application and justification for waiver, EPA registration office denial correspondence, and other pertinent information supporting the request for waiver.

PART 6—PROCEDURES FOR IMPLEMENTING THE REQUIREMENTS OF THE COUNCIL ON ENVIRONMENTAL QUALITY ON THE NATIONAL ENVIRONMENTAL POLICY ACT

Subpart A—General

Subpart B—Content of EISs

Subpart C—Coordination With Other Environmental Review and Consultation Requirements

Subpart D—Public and Other Federal Agency Involvement

Subpart E—Environmental Review Procedures for Wastewater Treatment Construction Grants Program

Subpart F—Environmental Review Procedures for the New Source NPDES Program

Subpart G—Environmental Review Procedures for Office of Research and Development Projects

Subpart H—Environmental Review Procedures for Solid Waste Demonstration Projects

Subpart I—Environmental Review Procedures for EPA Facility Support Activities

Subpart J—Assessing the Environmental Effects Abroad of EPA Actions

AUTHORITY: 42 U.S.C. 4321 *et seq.*, 7401-7671q; 40 CFR part 1500.

SOURCE: 44 FR 64177, Nov. 6, 1979, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes affecting part 6 appear at 50 FR 26315, June 25, 1985.

Subpart A—General

§ 6.100 Purpose and policy.

(a) The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, as implemented by Executive Orders 11514 and 11991 and the Council on Environmental Quality (CEQ) Regulations of November 29, 1978 (43 FR 55978) requires that Federal agencies include in their decision-making processes appropriate and careful consideration of all environmental effects of proposed actions, analyze potential environmental effects of proposed actions and their alternatives for public understanding and scrutiny, avoid or minimize adverse effects of proposed actions, and restore and enhance environmental quality as much as possible. The Environmental Protection Agency (EPA) shall integrate these NEPA factors as early in the Agency planning processes as possible. The environmental review process shall be the focal point to assure NEPA considerations are taken into account. To the extent applicable, EPA shall prepare environmental impact statements (EISs) on those major actions determined to have significant impact on the quality of the human environment. This part takes into account the EIS exemptions set forth under section 511(c)(1) of the Clean Water Act (Pub. L. 92–500) and section 7(c)(1) of the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. 93–319).

(b) This part establishes EPA policy and procedures for the identification and analysis of the environmental impacts of EPA-related activities and the preparation and processing of EISs.

§ 6.101 Definitions.

(a) *Terminology.* All terminology used in this part will be consistent with the terms as defined in 40 CFR part 1508 (the CEQ Regulations). Any qualifications will be provided in the definitions set forth in each subpart of this regulation.

(b) The term *CEQ Regulations* means the regulations issued by the Council on Environmental Quality on November 29, 1978 (see 43 FR 55978), which implement Executive Order 11991. The CEQ Regulations will often be referred to throughout this regulation by reference to 40 CFR part 1500 *et al.*

(c) The term *environmental review* means the process whereby an evaluation is undertaken by EPA to determine whether a proposed Agency action may have a significant impact on the environment and therefore require the preparation of the EIS.

(d) The term *environmental information document* means any written analysis prepared by an applicant, grantee or contractor describing the environmental impacts of a proposed action. This document will be of sufficient scope to enable the responsible official to prepare an environmental assessment as described in the remaining subparts of this regulation.

(e) The term *grant* as used in this part means an award of funds or other assistance by a written grant agreement or cooperative agreement under 40 CFR chapter I, subpart B.

§ 6.102 Applicability.

(a) *Administrative actions covered.* This part applies to the activities of EPA in accordance with the outline of the subparts set forth below. Each subpart describes the detailed environmental review procedures required for each action.

(1) Subpart A sets forth an overview of the regulation. Section 6.102(b) describes the requirements for EPA legislative proposals.

(2) Subpart B describes the requirements for the content of an EIS prepared pursuant to subparts E, F, G, H, and I.

(3) Subpart C describes the requirements for coordination of all environmental laws during the environmental review undertaken pursuant to subparts E, F, G, H, and I.

(4) Subpart D describes the public information requirements which must be undertaken in conjunction with the environmental review requirements under subparts E, F, G, H, and I.

(5) Subpart E describes the environmental review requirements for the wastewater treatment construction grants program under Title II of the Clean Water Act.

(6) Subpart F describes the environmental review requirements for new source National Pollutant Discharge Elimination System (NPDES) permits under section 402 of the Clean Water Act.

(7) Subpart G describes the environmental review requirements for research and development programs undertaken by the Agency.

(8) Subpart H describes the environmental review requirements for solid waste demonstration projects undertaken by the Agency.

(9) Subpart I describes the environmental review requirements for construction of special purpose facilities and facility renovations by the Agency.

(b) *Legislative proposals.* As required by the CEQ Regulations, legislative EISs are required for any legislative proposal developed by EPA which significantly affects the quality of the human environment. A preliminary draft EIS shall be prepared by the responsible EPA office concurrently with the development of the legislative proposal and contain information required under subpart B. The EIS shall be processed in accordance with the requirements set forth under 40 CFR 1506.8.

(c) *Application to ongoing activities*—(1) *General.* The effective date for these regulations is December 5, 1979. These regulations do not apply to an EIS or supplement to that EIS if the draft EIS was filed with the Office of External Affairs, (OEA) before July 30, 1979. No completed environmental documents need be redone by reason of these regulations.

(2) With regard to activities under subpart E, these regulations shall apply to all EPA environmental review procedures effective December 15, 1979. However, for facility plans begun before December 15, 1979, the responsible official shall impose no new requirements on the grantee. Such grantees shall comply with requirements applicable before the effective date of this regulation. Notwithstanding the above, this regulation shall apply to any facility plan submitted to EPA after September 30, 1980.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9829, Mar. 8, 1982]

§ 6.103 Responsibilities.

(a) *General responsibilities.* (1) The responsible official's duties include:

(i) Requiring applicants, contractors, and grantees to submit environmental information documents and related documents and assuring that environmental reviews are conducted on proposed EPA projects at the earliest possible point in EPA's decision-making process. In this regard, the responsible official shall assure the early involvement and availability of information for private applicants and other non-Federal entities requiring EPA approvals.

(ii) When required, assuring that adequate draft EISs are prepared and distributed at the earliest possible point in EPA's decision-making process, their internal and external review is coordinated, and final EISs are prepared and distributed.

(iii) When an EIS is not prepared, assuring documentation of the decision to grant a categorical exclusion, or assuring that findings of no significant impact (FNSIs) and environmental assessments are prepared and distributed for those actions requiring them.

(iv) Consulting with appropriate officials responsible for other environmental laws set forth in subpart C.

(v) Consulting with the Office of External Affairs (OEA) on actions involving unresolved conflicts concerning this part or other Federal agencies.

(vi) When required, assuring that public participation requirements are met.

(2) *Office of External Affairs duties include:* (i) Supporting the Administrator in providing EPA policy guidance and assuring that EPA offices establish and maintain adequate administrative procedures to comply with this part.

(ii) Monitoring the overall timeliness and quality of the EPA effort to comply with this part.

(iii) Providing assistance to responsible officials as required, i.e., preparing guidelines describing the scope of environmental information required by private applicants relating to their proposed actions.

(iv) Coordinating the training of personnel involved in the review and preparation of EISs and other associated documents.

(v) Acting as EPA liaison with the Council on Environmental Quality and other Federal and State entities on matters of EPA policy and administrative mechanisms to facilitate external review of EISs, to determine lead agency and to improve the uniformity of the NEPA procedures of Federal agencies.

(vi) Advising the Administrator and Deputy Administrator on projects which involve more than one EPA office, are highly controversial, are nationally significant, or *pioneer* EPA policy, when these projects have had or should have an EIS prepared on them.

(vii) Carrying out administrative duties relating to maintaining status of EISs within EPA, i.e., publication of notices of intent in the FEDERAL REGISTER and making available to the public status reports on EISs and other elements of the environmental review process.

(3) *Office of an Assistant Administrator duties include:* (i) Providing specific policy guidance to their respective offices and assuring that those offices establish and maintain adequate administrative procedures to comply with this part.

(ii) Monitoring the overall timeliness and quality of their respective office's efforts to comply with this part.

(iii) Acting as liaison between their offices and the OEA and between their offices and other Assistant Administrators or Regional Administrators on matters of agencywide policy and procedures.

(iv) Advising the Administrator and Deputy Administrator through the OEA on projects or activities within their respective areas of responsibilities which involve more than one EPA office, are highly controversial, are nationally significant, or *pioneer* EPA policy, when these projects will have or should have an EIS prepared on them.

(v) Pursuant to § 6.102(b) of this subpart, preparing legislative EISs as appropriate on EPA legislative initiatives.

(4) The Office of Policy, Planning, and Evaluation duties include: responsibilities for coordinating the preparation of EISs required on EPA legislative proposals in accordance with § 6.102(b).

(b) *Responsibilities for subpart E*—(1) *Responsible official.* The responsible official for EPA actions covered by this subpart is the Regional Administrator.

(2) *Assistant Administrator.* The responsibilities of the Assistant Administrator, as described in § 6.103(a)(3), shall be assumed by the Assistant Administrator for Water for EPA actions covered by this subpart.

(c) *Responsibilities for subpart F*—(1) *Responsible official.* The responsible official for activities covered by this subpart is the Regional Administrator.

(2) *Assistant Administrator.* The responsibilities of the Assistant Administrator, as described in § 6.103(a)(3), shall be assumed by the Assistant Administrator for Enforcement and Compliance Monitoring for EPA actions covered by this subpart.

(d) *Responsibilities for subpart G.* The Assistant Administrator for Research and Development will be the responsible official for activities covered by this subpart.

(e) *Responsibilities for subpart H.* The Assistant Administrator for Solid Waste and Emergency Response will be the responsible official for activities covered by this subpart.

(f) *Responsibilities for subpart I.* The responsible official for new construction and modification of special purpose facilities is as follows:

(1) The Chief, Facilities Engineering and Real Estate Branch, Facilities and Support Services Division, Office of the Assistant Administrator for Administration and Resource Management (OARM) shall be the responsible official on all new construction of special purpose facilities and on all new modification projects for which the Facilities Engineering and Real Estate Branch has received a funding allowance and for all other field components not covered elsewhere in paragraph (f) of this section.

(2) The Regional Administrator shall be the responsible official on all improvement and modification projects for which the regional office has received the funding allowance.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9829, Mar. 8, 1982; 50 FR 26315, June 25, 1985; 51 FR 32609, Sept. 12, 1986]

§ 6.104 Early involvement of private parties.

As required by 40 CFR 1501.2(d) and § 6.103(a)(3)(v) of this regulation, responsible officials must ensure early involvement of private applicants or other non-Federal entities in the environmental review process related to EPA grant and permit actions set forth under subparts E, F, G, and H. The responsible official in conjunction with OEA shall:

(a) Prepare where practicable, generic guidelines describing the scope and level of environmental information required from applicants as a basis for evaluating their proposed actions, and make these guidelines available upon request.

(b) Provide such guidance on a project-by-project basis to any applicant seeking assistance.

(c) Upon receipt of an application for agency approval, or notification that an application will be filed, consult as required with other appropriate parties to initiate and coordinate the necessary environmental analyses.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9829, Mar. 8, 1982]

§ 6.105 Synopsis of environmental review procedures.

(a) *Responsible official.* The responsible official shall utilize a systematic, interdisciplinary approach to integrate natural and social sciences as well as environmental design arts in planning programs and making decisions which are subject to environmental review. The respective staffs may be supplemented by professionals from other agencies (see 40 CFR 1501.6) or consultants whenever in-house capabilities are insufficiently interdisciplinary.

(b) *Environmental information documents (EID).* Environmental information documents (EIDs) must be prepared by applicants, grantees, or permittees and submitted to EPA as required in subparts E, F, G, H, and I. EIDs will be of sufficient scope to enable the responsible official to prepare an environmental assessment as described under § 6.105(d) of this part and subparts E through I. EIDs will not have to be prepared for actions where a categorical exclusion has been granted.

(c) *Environmental reviews.* Environmental reviews shall be conducted on the EPA activities outlined in § 6.102 of this part and set forth under subparts E, F, G, H and I. This process shall consist of a study of the action to identify and evaluate the related environmental impacts. The process shall include a review of any related environmental information document to determine whether any significant impacts are anticipated and whether any changes can be made in the proposed

action to eliminate significant adverse impacts; when an EIS is required, EPA has overall responsibility for this review, although grantees, applicants, permittees or contractors will contribute to the review through submission of environmental information documents.

(d) *Environmental assessments.* Environmental assessments (i.e., concise public documents for which EPA is responsible) are prepared to provide sufficient data and analysis to determine whether an EIS or finding of no significant impact is required. Where EPA determines that a categorical exclusion is appropriate or an EIS will be prepared, there is no need to prepare a formal environmental assessment.

(e) *Notice of intent and EISs.* When the environmental review indicates that a significant environmental impact may occur and significant adverse impacts can not be eliminated by making changes in the project, a notice of intent to prepare an EIS shall be published in the FEDERAL REGISTER, scoping shall be undertaken in accordance with 40 CFR 1501.7, and a draft EIS shall be prepared and distributed. After external coordination and evaluation of the comments received, a final EIS shall be prepared and disseminated. The final EIS shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(f) *Finding of no significant impact* (FNSI). When the environmental review indicates no significant impacts are anticipated or when the project is altered to eliminate any significant adverse impacts, a FNSI shall be issued and made available to the public. The environmental assessment shall be included as a part of the FNSI. The FNSI shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(g) *Record of decision.* At the time of its decision on any action for which a final EIS has been prepared, the responsible official shall prepare a concise public record of the decision. The record of decision shall describe those mitigation measures to be undertaken which will make the selected alternative environmentally acceptable. Where the final EIS recommends the alternative which is ultimately chosen by the responsible official, the record of decision may be extracted from the executive summary to the final EIS.

(h) *Monitoring.* The responsible official shall provide for monitoring to assure that decisions on any action where a final EIS has been prepared are properly implemented. Appropriate mitigation measures shall be included in actions undertaken by EPA.

[44 FR 64177, Nov. 6, 1979, as amended at 50 FR 26315, June 25, 1985; 51 FR 32610, Sept. 12, 1986]

§ 6.106 Deviations.

(a) *General.* The Assistant Administrator, OEA, is authorized to approve deviations from these regulations. Deviation approvals shall be made in writing by the Assistant Administrator, OEA.

(b) *Requirements.* (1) Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the substantive provisions of these regulations or the CEQ Regulations, the responsible official shall notify the Assistant Administrator, OEA, before taking such action. The responsible official shall consider to the extent possible alternative arrangements; such arrangements will be limited to actions necessary to control the immediate impacts of the emergency; other actions remain subject to the environmental review process. The Assistant Administrator, OEA, after consulting CEQ, will inform the responsible official, as expeditiously as possible of the disposition of his request.

(2) Where circumstances make it necessary to take action without observing procedural provisions of these regulations, the responsible official shall notify the Assistant Administrator, OEA, before taking such action. If the Assistant Administrator, OEA, determines such a deviation would be in the best interest of the Government, he shall inform the responsible official, as soon as possible, of his approval.

(3) The Assistant Administrator, OEA, shall coordinate his action on a deviation under § 6.106(b)(1) or (2) of this part with the Director, Grants Administration Division, Office of Planning and Management, for any required grant-related deviation under 40 CFR 30.1000, as well as the appropriate Assistant Administrator.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9829, Mar. 8, 1982]

§ 6.107 Categorical exclusions.

(a) *General.* Categories of actions which do not individually, cumulatively over time, or in conjunction with other Federal, State, local, or private actions have a significant effect on the quality of the human environment and which have been identified as having no such effect based on the requirements in § 6.505, may be exempted from the substantive environmental review requirements of this part. Environmental information documents and environmental assessments or environmental impact statements will not be required for excluded actions.

(b) *Determination.* The responsible official shall determine whether an action is eligible for a categorical exclusion as established by general criteria in § 6.107 (d) and (e) and any applicable criteria in program specific subparts of part 6 of this title. A determination shall be made as early as

possible following the receipt of an application. The responsible official shall document the decision to issue or deny an exclusion as soon as practicable following review in accordance with § 6.400(f). For qualified actions, the documentation shall include the application, a brief description of the proposed action, and a brief statement of how the action meets the criteria for a categorical exclusion without violating criteria for not granting an exclusion.

(c) *Revocation.* The responsible official shall revoke a categorical exclusion and shall require a full environmental review if, subsequent to the granting of an exclusion, the responsible official determines that: (1) The proposed action no longer meets the requirements for a categorical exclusion due to changes in the proposed action; or (2) determines from new evidence that serious local or environmental issues exist; or (3) that Federal, State, local, or tribal laws are being or may be violated.

(d) *General categories of actions eligible for exclusion.* Actions consistent with any of the following categories are eligible for a categorical exclusion:

(1) Actions which are solely directed toward minor rehabilitation of existing facilities, functional replacement of equipment, or towards the construction of new ancillary facilities adjacent or appurtenant to existing facilities;

(2) Other actions specifically allowed in program specific subparts of this regulation; or

(3) Other actions developed in accordance with paragraph (f) of this section.

(e) *General criteria for not granting a categorical exclusion.* (1) The full environmental review procedures of this part must be followed if undertaking an action consistent with allowable categories in paragraph (d) of this section may involve serious local or environmental issues, or meets any of the criteria listed below:

(i) The action is known or expected to have a significant effect on the quality of the human environment, either individually, cumulatively over time, or in conjunction with other federal, State, local, tribal or private actions;

(ii) The action is known or expected to directly or indirectly affect:

(A) Cultural resource areas such as archaeological and historic sites in accordance with § 6.301,

(B) Endangered or threatened species and their critical habitats in accordance with § 6.302 or State lists,

(C) Environmentally important natural resource areas such as floodplains, wetlands, important farmlands, aquifer recharge zones in accordance with § 6.302, or

(D) Other resource areas identified in supplemental guidance issued by the OEA;

(iii) The action is known or expected not to be cost-effective or to cause significant public controversy; or

(iv) Appropriate specialized program specific criteria for not granting an exclusion found in other subparts of this regulation are applicable to the action.

(2) Notwithstanding the provisions of paragraph (d) of this section, if any of the conditions cited in paragraph (e)(1) of this section exist, the responsible official shall ensure:

(i) That a categorical exclusion is not granted or, if previously granted, that it is revoked according to paragraph (c) of this section;

(ii) That an adequate EID is prepared; and

(iii) That either an environmental assessment and FNSI or a notice of intent for an EIS and ROD is prepared and issued.

(f) *Developing new categories of excluded actions.* The responsible official, or other interested parties, may request that a new general or specialized program specific category of excluded actions be created, or that an existing category be amended or deleted. The request shall be in writing to the Assistant Administrator, OEA, and shall contain adequate information to support the request. Proposed new categories shall be developed by OEA and published in the FEDERAL REGISTER as a proposed rule, amending paragraph (d) of this section when the proposed new category applies to all eligible programs or, amending appropriate paragraphs in other subparts of this part when the proposed new category applies to one specific program. The publication shall include a thirty (30) day public comment period. In addition to criteria for specific programs listed in other subparts of this part, the following general criteria shall be considered in evaluating proposals for new categories:

(1) Any action taken seldom results in the effects identified in general or specialized program specific criteria identified through the application of criteria for not granting a categorical exclusion;

(2) Based upon previous environmental reviews, actions consistent with the proposed category have not required the preparation of an EIS; and

(3) Whether information adequate to determine if a potential action is consistent with the proposed category will normally be available when needed.

[50 FR 26315, June 25, 1985, as amended at 51 FR 32610, Sept. 12, 1986]

§ 6.108 Criteria for initiating an EIS.

The responsible official shall assure that an EIS will be prepared and issued for actions under subparts E, G, H, and I when it is determined that any of the following conditions exist:

(a) The Federal action may significantly affect the pattern and type of land use (industrial, com-

mercial, agricultural, recreational, residential) or growth and distribution of population;

(b) The effects resulting from any structure or facility constructed or operated under the proposed action may conflict with local, regional or State land use plans or policies;

(c) The proposed action may have significant adverse effects on wetlands, including indirect and cumulative effects, or any major part of a structure or facility constructed or operated under the proposed action may be located in wetlands;

(d) The proposed action may significantly affect threatened and endangered species or their habitats identified in the Department of the Interior's list, in accordance with § 6.302, or a State's list, or a structure or a facility constructed or operated under the proposed action may be located in the habitat;

(e) Implementation of the proposed action or plan may directly cause or induce changes that significantly:

(1) Displace population;

(2) Alter the character of existing residential areas;

(3) Adversely affect a floodplain; or

(4) Adversely affect significant amounts of important farmlands as defined in requirements in § 6.302(c), or agricultural operations on this land.

(f) The proposed action may, directly, indirectly or cumulatively have significant adverse effect on parklands, preserves, other public lands or areas of recognized scenic, recreational, archaeological, or historic value; or

(g) The Federal action may directly or through induced development have a significant adverse effect upon local ambient air quality, local ambient noise levels, surface water or groundwater quality or quantity, water supply, fish, shellfish, wildlife, and their natural habitats.

[50 FR 26315, June 25, 1985, as amended at 51 FR 32611, Sept. 12, 1986]

Subpart B—Content of EISs

§ 6.200 The environmental impact statement.

Preparers of EISs must conform with the requirements of 40 CFR part 1502 in writing EISs.

§ 6.201 Format.

The format used for EISs shall encourage good analysis and clear presentation of alternatives, including the proposed action, and their environmental, economic and social impacts. The following standard format for EISs should be used unless the responsible official determines that there is a compelling reason to do otherwise:

(a) Cover sheet;

(b) Executive Summary;

(c) Table of contents;

(d) Purpose of and need for action;

(e) Alternatives including proposed action;

(f) Affected environment;

(g) Environmental consequences of the alternatives;

(h) Coordination (includes list of agencies, organizations, and persons to whom copies of the EIS are sent);

(i) List of preparers;

(j) Index (commensurate with complexity of EIS);

(k) Appendices.

§ 6.202 Executive summary.

The executive summary shall describe in sufficient detail (10–15 pages) the critical facets of the EIS so that the reader can become familiar with the proposed project or action and its net effects. The executive summary shall focus on:

(a) The existing problem;

(b) A brief description of each alternative evaluated (including the preferred and no action alternatives) along with a listing of the environmental impacts, possible mitigation measures relating to each alternative, and any areas of controversy (including issues raised by governmental agencies and the public); and

(c) Any major conclusions.

A comprehensive summary may be prepared in instances where the EIS is unusually long in nature. In accordance with 40 CFR 1502.19, the comprehensive summary may be circulated in lieu of the EIS; however, both documents shall be distributed to any Federal, State and local agencies who have EIS review responsibilities and also shall be made available to other interested parties upon request.

§ 6.203 Body of EISs.

(a) *Purpose and need.* The EIS shall clearly specify the underlying purpose and need to which EPA is responding. If the action is a request for a permit or a grant, the EIS shall clearly specify the goals and objectives of the applicant.

(b) *Alternatives including the proposed action.* In addition to 40 CFR 1502.14, the EIS shall discuss:

(1) *Alternatives considered by the applicant.* This section shall include a *balanced* description of each alternative considered by the applicant. These discussions shall include size and location of facilities, land requirements, operation and maintenance requirements, auxiliary structures such as pipelines or transmission lines, and construction schedules. The alternative of no action shall be discussed and the applicant's preferred alternative(s) shall be identified. For alternatives which were eliminated from detailed study, a brief

discussion of the reasons for their having been eliminated shall be included.

(2) *Alternatives available to EPA.* EPA alternatives to be discussed shall include: (i) Taking an action; or (ii) taking an action on a modified or alternative project, including an action not considered by the applicant; and (iii) denying the action.

(3) *Alternatives available to other permitting agencies.* When preparing a joint EIS, and if applicable, the alternatives available to other Federal and/or State agencies shall be discussed.

(4) *Identifying preferred alternative.* In the final EIS, the responsible official shall signify the preferred alternative.

(c) *Affected environment and environmental consequences of the alternatives.* The affected environment on which the evaluation of each alternative shall be based includes, for example, hydrology, geology, air quality, noise, biology, socioeconomics, energy, land use, and archeology and historic subjects. The discussion shall be structured so as to present the total impacts of each alternative for easy comparison among all alternatives by the reader. The effects of a ''no action'' alternative should be included to facilitate reader comparison of the beneficial and adverse impacts of other alternatives to the applicant doing nothing. A description of the environmental setting shall be included in the ''no action'' alternative for the purpose of providing needed background information. The amount of detail in describing the affected environment shall be commensurate with the complexity of the situation and the importance of the anticipated impacts.

(d) *Coordination.* The EIS shall include:

(1) The objections and suggestions made by local, State, and Federal agencies before and during the EIS review process must be given full consideration, along with the issues of public concern expressed by individual citizens and interested environmental groups. The EIS must include discussions of any such comments concerning our actions, and the author of each comment should be identified. If a comment has resulted in a change in the project or the EIS, the impact statement should explain the reason.

(2) Public participation through public hearings or scoping meetings shall also be included. If a public hearing has been held prior to the publication of the EIS, a summary of the transcript should be included in this section. For the public hearing which shall be held after the publication of the draft EIS, the date, time, place, and purpose shall be included here.

(3) In the final EIS, a summary of the coordination process and EPA responses to comments on the draft EIS shall be included.

[44 FR 64177, Nov. 6, 1979, as amended at 50 FR 26316, June 25, 1985]

§ 6.204 Incorporation by reference.

In addition to 40 CFR 1502.21, material incorporated into an EIS by reference shall be organized to the extent possible into a Supplemental Information Document and be made available for review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the period allowed for comment.

§ 6.205 List of preparers.

When the EIS is prepared by contract, either under direct contract to EPA or through an applicant's or grantee's contractor, the responsible official must independently evaluate the EIS prior to its approval and take responsibility for its scope and contents. The EPA officials who undertake this evaluation shall also be described under the list of preparers.

Subpart C—Coordination With Other Environmental Review and Consultation Requirements

§ 6.300 General.

Various Federal laws and executive orders address specific environmental concerns. The responsible official shall integrate to the greatest practicable extent the applicable procedures in this subpart during the implementation of the environmental review process under Subparts E through I. This subpart presents the central requirements of these laws and executive orders. It refers to the pertinent authority and regulations or guidance that contain the procedures. These laws and executive orders establish review procedures independent of NEPA requirements. The responsible official shall be familiar with any other EPA or appropriate agency procedures implementing these laws and executive orders.

[44 FR 64177, Nov. 6, 1979, as amended at 50 FR 26316, June 25, 1985]

§ 6.301 Landmarks, historical, and archeological sites.

EPA is subject to the requirements of the Historic Sites Act of 1935, 16 U.S.C. 461 *et seq.*, the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*, the Archaeological and Historic Preservation Act of 1974, 16 U.S.C. 469 *et seq.*, and Executive Order 11593, entitled ''Protection and Enhancement of the Cultural Environment.'' These statutes, regulations and executive orders establish review procedures independent of NEPA requirements.

(a) *National natural landmarks.* Under the Historic Sites Act of 1935, the Secretary of the Inte-

rior is authorized to designate areas as national natural landmarks for listing on the National Registry of Natural Landmarks. In conducting an environmental review of a proposed EPA action, the responsible official shall consider the existence and location of natural landmarks using information provided by the National Park Service pursuant to 36 CFR 62.6(d) to avoid undesirable impacts upon such landmarks.

(b) *Historic, architectural, archeological, and cultural sites.* Under section 106 of the National Historic Preservation Act and Executive Order 11593, if an EPA undertaking affects any property with historic, architectural, archeological or cultural value that is listed on or eligible for listing on the National Register of Historic Places, the responsible official shall comply with the procedures for consultation and comment promulgated by the Advisory Council on Historic Preservation in 36 CFR part 800. The responsible official must identify properties affected by the undertaking that are potentially eligible for listing on the National Register and shall request a determination of eligibility from the Keeper of the National Register, Department of the Interior, under the procedures in 36 CFR part 63.

(c) *Historic, prehistoric and archeological data.* Under the Archeological and Historic Preservation Act, if an EPA activity may cause irreparable loss or destruction of significant scientific, prehistoric, historic or archeological data, the responsible official or the Secretary of the Interior is authorized to undertake data recovery and preservation activities. Data recovery and preservation activities shall be conducted in accordance with implementing procedures promulgated by the Secretary of the Interior. The National Park Service has published technical standards and guidelines regarding archeological preservation activities and methods at 48 FR 44716 (September 29, 1983).

[44 FR 64177, Nov. 6, 1979, as amended at 50 FR 26316, June 25, 1985]

§ 6.302 Wetlands, floodplains, important farmlands, coastal zones, wild and scenic rivers, fish and wildlife, and endangered species.

The following procedures shall apply to EPA administrative actions in programs to which the pertinent statute or executive order applies.

(a) *Wetlands protection.* Executive Order 11990, Protection of Wetlands, requires Federal agencies conducting certain activities to avoid, to the extent possible, the adverse impacts associated with the destruction or loss of wetlands and to avoid support of new construction in wetlands if a practicable alternative exists. EPA's Statement of Procedures on Floodplain Management and Wetlands Protection (dated January 5, 1979, incorporated as appendix A hereto) requires EPA programs to determine if proposed actions will be in or will affect wetlands. If so, the responsible official shall prepare a floodplains/wetlands assessment, which will be part of the environmental assessment or environmental impact statement. The responsible official shall either avoid adverse impacts or minimize them if no practicable alternative to the action exists.

(b) *Floodplain management.* Executive Order 11988, Floodplain Management, requires Federal agencies to evaluate the potential effects of actions they may take in a floodplain to avoid, to the extent possible, adverse effects associated with direct and indirect development of a floodplain. EPA's Statement of Procedures on Floodplain Management and Wetlands Protection (dated January 5, 1979, incorporated as appendix A hereto), requires EPA programs to determine whether an action will be located in or will affect a floodplain. If so, the responsible official shall prepare a floodplain/wetlands assessment. The assessment will become part of the environmental assessment or environmental impact statement. The responsible official shall either avoid adverse impacts or minimize them if no practicable alternative exists.

(c) *Important farmlands.* It is EPA's policy as stated in the EPA Policy To Protect Environmentally Significant Agricultural Lands, dated September 8, 1978, to consider the protection of the Nation's significant/important agricultural lands from irreversible conversion to uses which result in its loss as an environmental or essential food production resource. In addition the Farmland Protection Policy Act, (FPPA) 7 U.S.C. 4201 *et seq.*, requires federal agencies to use criteria developed by the Soil Conservation Service, U.S. Department of Agriculture, to:

(1) Identify and take into account the adverse effects of their programs on the preservation of farmlands from conversion to other uses; (2) consider alternative actions, as appropriate, that could lessen such adverse impacts; and (3) assure that their programs, to the extent possible, are compatible with State and local government and private programs and policies to protect farmlands. If an EPA action may adversely impact farmlands which are classified prime, unique or of State and local importance as defined in the Act, the responsible official shall in all cases apply the evaluative criteria promulgated by the U.S. Department of Agriculture at 7 CFR part 658. If categories of important farmlands, which include those defined in both the FPPA and the EPA policy, are identified in the project study area, both direct and indirect effects of the undertaking on the remaining farms and farm support services within the project area and immediate environs shall be evaluated. Ad-

verse effects shall be avoided or mitigated to the extent possible.

(d) *Coastal zone management.* The Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.,* requires that all Federal activities in coastal areas be consistent with approved State Coastal Zone Management Programs, to the maximum extent possible. If an EPA action may affect a coastal zone area, the responsible official shall assess the impact of the action on the coastal zone. If the action significantly affects the coastal zone area and the State has an approved coastal zone management program, a consistency determination shall be sought in accordance with procedures promulgated by the Office of Coastal Zone Management in 15 CFR part 930.

(e) *Wild and scenic rivers.* (1) The Wild and Scenic Rivers Act, 16 U.S.C. 1274 *et seq.,* establishes requirements applicable to water resource projects affecting wild, scenic or recreational rivers within the National Wild and Scenic Rivers system as well as rivers designated on the National Rivers Inventory to be studied for inclusion in the national system. Under the Act, a federal agency may not assist, through grant, loan, license or otherwise, the construction of a water resources project that would have a direct and adverse effect on the values for which a river in the National System or study river on the National Rivers Inventory was established, as determined by the Secretary of the Interior for rivers under the jurisdiction of the Department of the Interior and by the Secretary of Agriculture for rivers under the jurisdiction of the Department of Agriculture. Nothing contained in the foregoing sentence, however, shall:

(i) Preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on October 2, 1968; or

(ii) Preclude licensing of, or assistance to, developments below or above a study river or any stream tributary thereto which will not invade the area or diminish the scenic, recreational and fish and wildlife values present in the area on October 2, 1968.

(2) The responsible official shall:

(i) Determine whether there are any wild, scenic or study rivers on the National Rivers Inventory or in the planning area, and

(ii) Not recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the administering Secretary in request of appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the administering Secretary, in writing of this intention at least sixty days in advance, and without specifically reporting to the Congress in writing at the time the recommendation or request is made in what respect construction of such project would be in conflict with the purposes of the Wild and Scenic Rivers Act and would affect the component and the values to be protected by the Responsible Official under the Act.

(3) Applicable consultation requirements are found in section 7 of the Act. The Department of Agriculture has promulgated implementing procedures, under section 7 at 36 CFR part 297, which apply to water resource projects located within, above, below or outside a wild and scenic river or study river under the Department's jurisdiction.

(f) *Barrier islands.* The Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.,* generally prohibits new federal expenditures or financial assistance for any purpose within the Coastal Barrier Resources System on or after October 18, 1982. Specified exceptions to this prohibition are allowed only after consultation with the Secretary of the Interior. The responsible official shall ensure that consultation is carried out with the Secretary of the Interior before making available new expenditures or financial assistance for activities within areas covered by the Coastal Barriers Resources Act in accord with the U.S. Fish and Wildlife Service published guidelines defining new expenditures and financial assistance, and describing procedures for consultation at 48 FR 45664 (October 6, 1983).

(g) *Fish and wildlife protection.* The Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.,* requires Federal agencies involved in actions that will result in the control or structural modification of any natural stream or body of water for any purpose, to take action to protect the fish and wildlife resources which may be affected by the action. The responsible official shall consult with the Fish and Wildlife Service and the appropriate State agency to ascertain the means and measures necessary to mitigate, prevent and compensate for project-related losses of wildlife resources and to enhance the resources. Reports and recommendations of wildlife agencies should be incorporated into the environmental assessment or environmental impact statement. Consultation procedures are detailed in 16 U.S.C. 662.

(h) *Endangered species protection.* Under the Endangered Species Act, 16 U.S.C. 1531 *et seq.,* Federal agencies are prohibited from jeopardizing threatened or endangered species or adversely modifying habitats essential to their survival. The responsible official shall identify all designated endangered or threatened species or their habitat that may be affected by an EPA action. If listed spe-

cies or their habitat may be affected, formal consultation must be undertaken with the Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate. If the consultation reveals that the EPA activity may jeopardize a listed species or habitat, mitigation measures should be considered. Applicable consultation procedures are found in 50 CFR part 402.

[44 FR 64177, Nov. 6, 1979, as amended at 50 FR 26316, June 25, 1985]

§ 6.303 Air quality.

(a) The Clean Air Act, as amended in 1990, 42 U.S.C. 7476(c), requires Federal actions to conform to any State implementation plan approved or promulgated under section 110 of the Act. For EPA actions, the applicable conformity requirements specified in 40 CFR part 51, subpart W, 40 CFR part 93, subpart B, and the applicable State implementation plan must be met.

(b) In addition, with regard to wastewater treatment works subject to review under Subpart E of this part, the responsible official shall consider the air pollution control requirements specified in section 316(b) of the Clean Air Act, 42 U.S.C. 7616, and Agency implementation procedures.

(c)–(g) [Reserved]

[58 FR 63247, Nov. 30, 1993]

Subpart D—Public and Other Federal Agency Involvement

§ 6.400 Public involvement.

(a) *General.* EPA shall make diligent efforts to involve the public in the environmental review process consistent with program regulations and EPA policies on public participation. The responsibile official shall ensure that public notice is provided for in accordance with 40 CFR 1506.6(b) and shall ensure that public involvement is carried

out in accordance with EPA Public Participation Regulations, 40 CFR part 25, and other applicable EPA public participation procedures.

(b) *Publication of notices of intent.* As soon as practicable after his decision to prepare an EIS and before the scoping process, the responsible official shall send the notice of intent to interested and affected members of the public and shall request the OEA to publish the notice of intent in the FEDERAL REGISTER. The responsible official shall send to OEA the signed original notice of intent for FEDERAL REGISTER publication purposes. The scoping process should be initiated as soon as practicable in accordance with the requirements of 40 CFR 1501.7. Participants in the scoping process shall be kept informed of substantial changes which evolve during the EIS drafting process.

(c) *Public meetings or hearings.* Public meetings or hearings shall be conducted consistent with Agency program requirements. There shall be a presumption that a scoping meeting will be conducted whenever a notice of intent has been published. The responsible official shall conduct a public hearing on a draft EIS. The responsible official shall ensure that the draft EIS is made available to the public at least 30 days in advance of the hearing.

(d) *Findings of no significant impact (FNSI).* The responsible official shall allow for sufficient public review of a FNSI before it becomes effective. The FNSI and attendant publication must state that interested persons disagreeing with the decision may submit comments to EPA. The responsible official shall not take administrative action on the project for at least thirty (30) calendar days after release of the FNSI and may allow more time for response. The responsible official shall consider, fully, comments submitted on the FNSI before taking administrative action. The FNSI shall be made available to the public in accordance with the requirements and all appropriate recommendations contained in § 1506.6 of this title.

(e) *Record of Decision (ROD).* The responsible official shall disseminate the ROD to those parties which commented on the draft or final EIS.

(f) *Categorical exclusions.* (1) For categorical exclusion determinations under subpart E (Wastewater Treatment Construction Grants Program), an applicant who files for and receives a determination of categorical exclusion under § 6.107(a), or has one rescinded under § 6.107(c), shall publish a notice indicating the determination of eligibility or rescission in a local newspaper of community-wide circulation and indicate the availability of the supporting documentation for public inspection. The responsible official shall, concurrent with the publication of the notice, make the documentation as outlined in § 6.107(b) available to the public and distribute the notice of the determination to all known interested parties.

(2) For categorical exclusion determinations under other subparts of this regulation, no public notice need be issued; however, information regarding these determinations may be obtained by contacting the U.S. Environmental Protection Agency's Office of Research Program Management for ORD actions, or the Office of Federal Activities for other program actions.

[44 FR 64177, Nov. 6, 1979, as amended at 51 FR 32611, Sept. 12, 1986; 56 FR 20543, May 6, 1991]

§ 6.401 Official filing requirements.

(a) *General.* OEA is responsible for the conduct of the official filing system for EISs. This system was established as a central repository for all EISs which serves not only as means of advising the public of the availability of each EIS but provides a uniform method for the computation of minimum time periods for the review of EISs. OEA publishes a weekly notice in the FEDERAL REGISTER listing all EISs received during a given week. The 45-day and 30-day review periods for draft and final EISs, respectively, are computed from the Friday following a given reporting week. Pursuant to 40 CFR 1506.9, responsible officials shall comply with the guidelines established by OEA on the conduct of the filing system.

(b) *Minimum time periods.* No decision on EPA actions shall be made until the later of the following dates:

(1) Ninety (90) days after the date established in § 6.401(a) of this part from which the draft EIS review time period is computed.

(2) Thirty (30) days after the date established in § 6.401(a) of this part from which the final EIS review time period is computed.

(c) *Filing of EISs.* All EISs, including supplements, must be officially filed with OEA. Responsible officials shall transmit each EIS in five (5) copies to the Director, Office of Environmental Review, EIS Filing Section (A–104). OEA will provide CEQ with one copy of each EIS filed. No EIS will be officially filed by OER unless the EIS has been made available to the public. OEA will not accept unbound copies of EISs for filing.

(d) *Extensions or waivers.* The responsible official may independently extend review periods. In such cases, the responsible official shall notify OEA as soon as possible so that adequate notice may be published in the weekly FEDERAL REGISTER report. OEA upon a showing of compelling reasons of national policy may reduce the prescribed review periods. Also, OEA upon a showing by any other Federal agency of compelling reasons of national policy may extend prescribed review periods, but only after consultation with the responsible official. If the responsible official does

not concur with the extension of time, OEA may not extend a prescribed review period more than 30 days beyond the minimum prescribed review period.

(e) *Rescission of filed EISs.* The responsible official shall file EISs with OEA at the same time they are transmitted to commenting agencies and made available to the public. The responsible official is required to reproduce an adequate supply of EISs to satisfy these distribution requirements prior to filing an EIS. If the EIS is not made available, OEA will consider retraction of the EIS or revision of the prescribed review periods based on the circumstances.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9829, Mar. 8, 1982]

§ 6.402 Availability of documents.

(a) *General.* The responsible official will ensure sufficient copies of the EIS are distributed to interested and affected members of the public and are made available for further public distribution. EISs, comments received, and any underlying documents should be available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552(b)), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed actions. To the extent practicable, materials made available to the public shall be provided without charge; otherwise, a fee may be imposed which is not more than the actual cost of reproducing copies required to be sent to another Federal agency.

(b) *Public information.* Lists of all notices, determinations and other reports/documentation, related to these notices and determinations, involving CEs, EAs, FNSIs, notices of intent, EISs, and RODs prepared by EPA shall be available for public inspection and maintained by the responsible official as a monthly status report. OEA shall maintain a comprehensive list of notices of intent and draft and final EISs provided by all responsible officials for public inspection including publication in the FEDERAL REGISTER. In addition, OEA will make copies of all EPA-prepared EISs available for public inspection; the responsible official shall do the same for any EIS he/she undertakes.

[44 FR 64177, Nov. 6, 1979, as amended at 51 FR 32611, Sept. 12, 1986]

§ 6.403 The commenting process.

(a) *Inviting comments.* After preparing a draft EIS and before preparing a final EIS, the responsible official shall obtain the comments of Federal agencies, other governmental entities and the public in accordance with 40 CFR 1503.1.

(b) *Response to comments.* The responsible official shall respond to comments in the final EIS in accordance with 40 CFR 1503.4.

§ 6.404 Supplements.

(a) *General.* The responsible official shall consider preparing supplements to draft and final EISs in accordance with 40 CFR 1502.9(c). A supplement shall be prepared, circulated and filed in the same fashion (exclusive of scoping) as draft and final EISs.

(b) *Alternative procedures.* In the case where the responsible official wants to deviate from existing procedures, OEA shall be consulted. OEA shall consult with CEQ on any alternative arrangements.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9829, Mar. 8, 1982]

Subpart E—Environmental Review Procedures for Wastewater Treatment Construction Grants Program

SOURCE: 50 FR 26317, June 25, 1985, unless otherwise noted.

§ 6.500 Purpose.

This subpart amplifies the procedures described in subparts A through D with detailed environmental review procedures for the Municipal Wastewater Treatment Works Construction Grants Program under Title II of the Clean Water Act.

§ 6.501 Definitions.

(a) *Step 1 facilities planning* means preparation of a plan for facilities as described in 40 CFR part 35, subpart E or I.

(b) *Step 2* means a project to prepare design drawings and specifications as described in 40 CFR part 35, subpart E or I.

(c) *Step 3* means a project to build a publicly owned treatment works as described in 40 CFR part 35, subpart E or I.

(d) *Step 2+3* means a project which combines preparation of design drawings and specifications as described in § 6.501(b) and building as described in § 6.501(c).

(e) *Applicant* means any individual, agency, or entity which has filed an application for grant assistance under 40 CFR part 35, subpart E or I.

(f) *Grantee* means any individual, agency, or entity which has been awarded wastewater treatment construction grant assistance under 40 CFR part 35, subpart E or I.

(g) *Responsible Official* means a Federal or State official authorized to fulfill the requirements of this subpart. The responsible federal official is

the EPA Regional Administrator and the responsible State official is as defined in a delegation agreement under 205(g) of the Clean Water Act. The responsibilities of the State official are subject to the limitations in § 6.514 of this subpart.

(h) *Approval of the facilities plan* means approval of the facilities plan for a proposed wastewater treatment works pursuant to 40 CFR part 35, subpart E or I.

§ 6.502 Applicability and limitations.

(a) *Applicability.* This subpart applies to the following actions:

(1) Approval of a facilities plan or an amendment to the plan;

(2) Award of grant assistance for a project where signficant change has occurred in the project or its impact since prior compliance with this part; and

(3) Approval of preliminary Step 3 work prior to the award of grant assistance pursuant to 40 CFR part 35, subpart E or I.

(b) *Limitations.* (1) Except as provided in § 6.504(c), all recipients of Step 1 grant assistance must comply with the requirements, steps, and procedures described in this subpart.

(2) As specified in 40 CFR 35.2113, projects that have not received Step 1 grant assistance must comply with the requirements of this subpart prior to submission of an application for Step 3 or Step 2+3 grant assistance.

(3) Except as otherwise provided in § 6.507, no step 3 or 2+3 grant assistance may be awarded for the construction of any component/portion of a proposed wastewater treatment system(s) until the responsible official has:

(i) Completed the environmental review for all complete wastewater treatment system alternatives under consideration for the facilities planning area, or any larger study area identified for the purposes of conducting an adequate environmental review as required under this subpart; and

(ii) Recorded the selection of the preferred alternative(s) in the appropriate decision document (ROD for EISs, FNSI for environmental assessments, or written determination for categorical exclusions).

(4) In accord with § 6.302(f), on or after October 18, 1982, no new expenditures or financial assistance involving the construction grants program can be made within the Coastal Barrier Resource System, or for projects outside the system which would have the effect of encouraging development in the system, other than specified exceptions made by the EPA after consultation with the Secretary of the Interior.

[50 FR 26317, June 25, 1985, as amended at 51 FR 32611, Sept. 12, 1986]

§ 6.503 Overview of the environmental review process.

The process for conducting an environmental review of wastewater treatment construction grant projects includes the following steps:

(a) *Consultation.* The Step 1 grantee or the potential Step 3 or Step 2+3 applicant is encouraged to consult with the State and EPA early in project formulation or the facilities planning stage to determine whether a project is eligible for a categorical exclusion from the remaining substantive environmental review requirements of this part (§ 6.505), to determine alternatives to the proposed project for evaluation, to identify potential environmental issues and opportunities for public recreation and open space, and to determine the potential need for partitioning the environmental review process and/or the need for an Environmental Impact Statement (EIS).

(b) *Determining categorical exclusion eligibility.* At the request of a potential Step 3 or Step 2+3 grant applicant, or a Step 1 facilities planning grantee, the responsible official will determine if a project is eligible for a categorical exclusion in accordance with § 6.505. A Step 1 facilities planning grantee awarded a Step 1 grant on or before December 29, 1981 may request a categorical exclusion at any time during Step 1 facilities planning. A potential Step 3 or Step 2+3 grant applicant may request a categorical exclusion at any time before the submission of a Step 3 or Step 2+3 grant application.

(c) *Documenting environmental information.* If the project is determined to be ineligible for a categorical exclusion, or if no request for a categorical exclusion is made, the potential Step 3 or Step 2+3 applicant or the Step 1 grantee subsequently prepares an Environmental Information Document (EID) (§ 6.506) for the project.

(d) *Preparing environmental assessments.* Except as provided in § 6.506(c)(4) and following a review of the EID by EPA or by a State with delegated authority, EPA prepares an environmental assessment (§ 6.506), or a State with delegated authority (§ 6.514) prepares a preliminary environmental assessment. EPA reviews and finalizes any preliminary assessments. EPA subsequently:

(1) Prepares and issues a Finding of No Significant Impact (FNSI) (§ 6.508); or

(2) Prepares and issues a Notice of Intent to prepare an original or supplemental EIS (§ 6.510) and Record of Decision (ROD) (§ 6.511).

(e) *Monitoring.* The construction and post-construction operation and maintenance of the facilities are monitored (§6.512) to ensure implementation of mitigation measures (§ 6.511) identified in the FNSI or ROD.

[50 FR 26317, June 25, 1985, as amended at 51 FR 32611, Sept. 12, 1986]

§ 6.504 Consultation during the facilities planning process.

(a) *General.* Consistent with 40 CFR 1501.2 and 35.2030(c), the responsible official shall initiate the environmental review process early to identify environmental effects, avoid delays, and resolve conflicts. The environmental review process should be integrated throughout the facilities planning process. Two processes for consultation are described in this section to meet this objective. The first addresses projects awarded Step 1 grant assistance on or before December 29, 1981. The second applies to projects not receiving grant assistance for facilities planning on or before December 29, 1981 and, therefore, subject to the regulations implementing the Municipal Wastewater Treatment Construction Grant Amendments of 1981 (40 CFR part 35, subpart I).

(b) *Projects receiving Step 1 grant assistance on or before December 29, 1981.* (1) During facilities planning, the grantee shall evaluate project alternatives and the existence of environmentally important resource areas including those identified in § 6.108 and § 6.509 of this subpart, and potential for open space and recreation opportunities in the facilities planning area. This evaluation is intended to be brief and concise and should draw on existing information from EPA, State agencies, regional planning agencies, areawide water quality management agencies, and the Step 1 grantee. The Step 1 grantee should submit this information to EPA or a delegated State at the earliest possible time during facilities planning to allow EPA to determine if the action is eligible for a categorical exclusion. The evaluation and any additional analysis deemed necessary by the responsible official may be used by EPA to determine whether the action is eligible for a categorical exclusion from the substantive environmental review requirements of this part. If a categorical exclusion is granted, the grantee will not be required to prepare a formal EID nor will the responsible official be required to prepare an environmental assessment under NEPA. If an action is not granted a categorical exclusion, this evaluation may be used to determine the scope of the EID required of the grantee. This information can also be used to make an early determination of the need for partitioning the environmental review or for an EIS. Whenever possible, the Step 1 grantee should discuss this initial evaluation with both the delegated State and EPA.

(2) A review of environmental information developed by the grantee should be conducted by the responsible official whenever meetings are held to assess the progress of facilities plan development. These meetings should be held after completion of the majority of the EID document and before a preferred alternative is selected. Since any required EIS must be completed before the approval of a facilities plan, a decision whether to prepare an EIS is encouraged early during the facilities planning process. These meetings may assist in this early determination. EPA should inform interested parties of the following:

(i) The preliminary nature of the Agency's position on preparing an EIS;

(ii) The relationship between the facilities planning and environmental review processes;

(iii) The desirability of public input; and

(iv) A contact person for further information.

(c) *Projects not receiving grant assistance for Step 1 facilities planning on or before December 29, 1981.* Potential Step 3 or Step 2+3 grant applicants should, in accordance with § 35.2030(c), consult with EPA and the State early in the facilities planning process to determine the appropriateness of a categorical exclusion, the scope of an EID, or the appropriateness of the early preparation of an environmental assessment or an EIS. The consultation would be most useful during the evaluation of project alternatives prior to the selection of a preferred alternative to assist in resolving any identified environmental problems.

§ 6.505 Categorical exclusions.

(a) *General.* At the request of an existing Step 1 facilities planning grantee or of a potential Step 3 or Step 2+3 grant applicant, the responsible official, as provided for in §§ 6.107(b), 6.400(f) and 6.504(a), shall determine from existing information and document whether an action is consistent with the categories eligible for exclusion from NEPA review identified in § 6.107(d) or § 6.505(b) and not inconsistent with the criteria in § 6.107(e) or § 6.505(c).

(b) *Specialized categories of actions eligible for exclusion.* For this subpart, eligible actions consist of any of the categories in § 6.107(d), or:

(1) Actions for which the facilities planning is consistent with the category listed in § 6.107(d)(1) which do not affect the degree of treatment or capacity of the existing facility including, but not limited to, infiltration and inflow corrections, grant-eligible replacement of existing mechanical equipment or structures, and the construction of small structures on existing sites;

(2) Actions in sewered communities of less than 10,000 persons which are for minor upgrading and minor expansion of existing treatment works. This category does not include actions that directly or indirectly involve the extension of new collection systems funded with federal or other sources of funds;

(3) Actions in unsewered communities of less than 10,000 persons where on-site technologies are proposed; or

(4) Other actions are developed in accordance with § 6.107(f).

(c) *Specialized Criteria for not granting a categorical exclusion.* (1) The full environmental review procedures of this part must be followed if undertaking an action consistent with the categories described in paragraph (b) of this section meets any of the criteria listed in § 6.107(e) or when:

(i) The facilities to be provided will (A) create a new, or (B) relocate an existing, discharge to surface or ground waters;

(ii) The facilities will result in substantial increases in the volume of discharge or the loading of pollutants from an existing source or from new facilities to receiving waters; or

(iii) The facilities would provide capacity to serve a population 30% greater than the existing population.

(d) *Proceeding with grant awards.* (1) After a categorical exclusion on a proposed treatment works has been granted, and notices published in accordance with § 6.400(f), grant awards may proceed without being subject to any further environmental review requirements under this part, unless the responsible official later determines that the project, or the conditions at the time the categorical determination was made, have changed significantly since the independent EPA review of information submitted by the grantee in support of the exclusion.

(2) For all categorical exclusion determinations:

(i) That are five or more years old on projects awaiting Step 2+3 or Step 3 grant funding, the responsible official shall re-evaluate the project, environmental conditions and public views and, prior to grant award, either:

(A) *Reaffirm*—issue a public notice reaffirming EPA's decision to proceed with the project without need for any further environmental review;

(B) *Supplement*—update the information in the decision document on the categorically excluded project and prepare, issue, and distribute a revised notice in accordance with § 6.107(f); or

(C) *Reassess*—revoke the categorical exclusion in accordance with § 6.107(c) and require a complete environmental review to determine the need for an EIS in accordance with § 6.506, followed by preparation, issuance and distribution of an EA/FNSI or EIS/ROD.

(ii) That are made on projects that have been awarded a Step 2+3 grant, the responsible official shall, at the time of plans and specifications review under § 35.2202(b) of this title, assess whether the environmental conditions or the project's anticipated impact on the environment have changed and, prior to plans and specifications approval, advise the Regional Administrator if additional environmental review is necessary.

[50 FR 26317, June 25, 1985, as amended at 51 FR 32611, Sept. 12, 1986]

§ 6.506 Environmental review process.

(a) *Review of completed facilities plans.* The responsible official shall ensure a review of the completed facilities plan with particular attention to the EID and its utilization in the development of alternatives and the selection of a preferred alternative. An adequate EID shall be an integral part of any facilities plan submitted to EPA or to a State. The EID shall be of sufficient scope to enable the responsible official to make determinations on requests for partitioning the environmental review process in accordance with § 6.507 and for preparing environmental assessments in accordance with § 6.506(b).

(b) *Environmental assessment.* The environmental assessment process shall cover all potentially significant environmental impacts. The responsible official shall prepare a preliminary environmental assessment on which to base a recommendation to finalize and issue the environmental assessment/FNSI. For those States delegated environmental review responsibilities under § 6.514, the State responsible official shall prepare the preliminary environmental assessment in sufficient detail to serve as an adequate basis for EPA's independent NEPA review and decision to finalize and issue an environmental assessment/FNSI or to prepare and issue a notice of intent for an EIS/ROD. The EPA also may require submission of supplementary information before the facilities plan is approved if needed for its independent review of the State's preliminary assessment for compliance with environmental review requirements. Substantial requests for supplementary information by EPA, including the review of the facilities plan, shall be made in writing. Each of the following subjects outlined below, and requirements of subpart C of this part, shall be reviewed by the responsible official to identify potentially significant environmental concerns and their associated potential impacts, and the responsible official shall furthermore address these concerns and impacts in the environmental assessment:

(1) *Description of the existing environment.* For the delineated facilities planning area, the existing environmental conditions relevant to the analysis of alternatives, or to determining the environmental impacts of the proposed action, shall be considered.

(2) *Description of the future environment without the project.* The relevant future environmental conditions shall be described. The no action alternative should be discussed.

(3) *Purpose and need.* This should include a summary discussion and demonstration of the need, or absence of need, for wastewater treatment in the facilities planning area, with particular emphasis on existing public health or water quality problems and their severity and extent.

(4) *Documentation.* Citations to information used to describe the existing environment and to assess future environmental impacts should be clearly referenced and documented. These sources should include, as appropriate but not limited to, local, tribal, regional, State, and federal agencies as well as public and private organizations and institutions with responsibility or interest in the types of conditions listed in § 6.509 and in subpart C of this part.

(5) *Analysis of alternatives.* This discussion shall include a comparative analysis of feasible alternatives, including the no action alternative, throughout the study area. The alternatives shall be screened with respect to capital and operating costs; direct, indirect, and cumulative environmental effects; physical, legal, or institutional constraints; and compliance with regulatory requirements. Special attention should given to: the environmental consequences of long-term, irreversible, and induced impacts; and for projects initiated after September 30, 1978, that grant applicants have satisfactorily demonstrated analysis of potential recreation and open-space opportunities in the planning of the proposed treatment works. The reasons for rejecting any alternatives shall be presented in addition to any significant environmental benefits precluded by rejection of an alternative. The analysis should consider when relevant to the project:

(i) Flow and waste reduction measures, including infiltration/inflow reduction and pretreatment requirements;

(ii) Appropriate water conservation measures;

(iii) Alternative locations, capacities, and construction phasing of facilities;

(iv) Alternative waste management techniques, including pretreatment, treatment and discharge, wasterwater reuse, land application, and individual systems;

(v) Alternative methods for management of sludge, other residual materials, including utilization options such as land application, composting, and conversion of sludge for marketing as a soil conditioner or fertilizer;

(vi) Improving effluent quality through more efficient operation and maintenance;

(vii) Appropriate energy reduction measures; and

(viii) Multiple use including recreation, other open space, and environmental education.

(6) *Evaluating environmental consequences of proposed action.* A full range of relevant impacts of the proposed action shall be discussed, including measures to mitigate adverse impacts, any irreversible or irretrievable commitments of resources to the project and the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity. Any specific requirements, including grant conditions and areawide waste treatment management plan requirements, should be identified and referenced. In addition to these items, the responsible official may require that other analyses and data in accordance with subpart C which are needed to satisfy environmental review requirements be included with the facilities plan. Such requirements should be discussed whenever meetings are held with Step 1 grantees or potential Step 3 or Step 2 + 3 applicants.

(7) *Minimizing adverse effects of the proposed action.* (i) Structural and nonstructural measures, directly or indirectly related to the facilities plan, to mitigate or eliminate adverse effects on the human and natural environments, shall be identified during the environmental review. Among other measures, structual provisions include changes in facility design, size, and location; nonstructural provisions include staging facilities, monitoring and enforcement of environmental regulations, and local commitments to develop and enforce land use regulations.

(ii) The EPA shall not accept a facilities plan, nor award grant assistance for its implementation, if the applicant/grantee has not made, or agreed to make, changes in the project, in accordance with determinations made in a FNSI based on its supporting environmental assessment or the ROD for a EIS. The EPA shall condition a grant, or seek other ways, to ensure that the grantee will comply with such environmental review determinations.

(c) *FNSI/EIS determination.* The responsible official shall apply the criteria under § 6.509 to the following:

(1) A complete facilities plan;

(2) The EID;

(3) The preliminary environmental assessment; and

(4) Other documentation, deemed necessary by the responsible official adequate to make an EIS determination by EPA. Where EPA determines that an EIS is to be prepared, there is no need to prepare a formal environmental assessment. If EPA or the State identifies deficiencies in the EID, preliminary environmental assessment, or other supporting documentation, necessary corrections shall be made to this documentation before the conditions of the Step 1 grant are considered satisfied or before the Step 3 or Step 2+3 application is considered complete. The responsible official's determination to issue a FNSI or to prepare an EIS shall constitute final Agency action, and shall not be subject to administrative review under 40 CFR part 30, subpart L.

[50 FR 26317, June 25, 1985, as amended at 51 FR 32612, Sept. 12, 1986]

§ 6.507 Partitioning the environmental review process.

(a) *Purpose.* Under certain circumstances the building of a component/portion of a wastewater treatment system may be justified in advance of completing all NEPA requirements for the remainder of the system(s). When there are overriding considerations of cost or impaired program effectiveness, the responsible official may award a construction grant, or approve procurement by other than EPA funds, for a discrete component of a complete wastewater treatment system(s). The process of partitioning the environmental review for the discrete component shall comply with the criteria and procedures described in paragraph (b) of this section. In addition, all reasonable alternatives for the overall wastewater treatment works system(s) of which the component is a part shall have been previously identified, and each part of the environmental review for the remainder of the overall facilities system(s) in the planning area in accordance with § 6.502(b)(3) shall comply with all requirements under § 6.506.

(b) *Criteria for partitioning.* (1) Projects may be partitioned under the following circumstances:

(i) To overcome impaired program effectiveness, the project component, in addition to meeting the criteria listed in paragraph (b)(2) of this section, must immediately remedy a severe public health, water quality or other environmental problem; or

(ii) To significantly reduce direct costs on EPA projects, or other related public works projects, the project component (such as major pieces of equipment, portions of conveyances or small structures) in addition to meeting the criteria listed in paragraph (b)(2) of this section, must achieve a cost savings to the federal government and/or to the grantee's or potential grantee's overall costs incurred in procuring the wastewater treatment component(s) and/or the installation of other related public works projects funded in coordination with other federal, State, tribal or local agencies.

(2) The project component also must:

(i) Not foreclose any reasonable alternatives identified for the overall wastewater treatment works system(s);

(ii) Not cause significant adverse direct or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire wastewater treatment system of which the component is a part; and

(iii) Not be highly controversial.

(c) *Requests for partitioning.* The applicant's or State's request for partitioning must contain the following:

(1) A description of the discrete component proposed for construction before completing the environmental review of the entire facilities plan;

(2) How the component meets the above criteria;

(3) The environmental information required by § 6.506 of this subpart for the component; and

(4) Any preliminary information that may be important to EPA in an EIS determination for the entire facilities plan (§ 6.509).

(d) *Approval of requests for partitioning.* The responsible official shall:

(1) Review the request for partitioning against all requirements of this subpart;

(2) If approvable, prepare and issue a FNSI in accordance with § 6.508;

(3) Include a grant condition prohibiting the building of additional or different components of the entire facilities system(s) in the planning area as described in § 6.502(b)(3)(i).

[50 FR 26317, June 25, 1985, as amended at 51 FR 32612, Sept. 12, 1986]

§ 6.508 Finding of No Significant Impact (FNSI) determination.

(a) *Criteria for producing and distributing FNSIs.* If, after completion of the environmental review, EPA determines that an EIS will not be required, the responsible official shall issue a FNSI in accordance with §§ 6.105(f) and 6.400(d). The FNSI will be based on EPA's independent review of the preliminary environmental assessment and any other environmental information deemed necessary by the responsible official consistent with the requirements of § 6.506(c). Following the Agency's independent review, the environmental assessment will be finalized and either be incorporated into, or attached to, the FNSI. The FNSI shall list all mitigation measures as defined in § 1508.20 of this title, and specifically identify those mitigation measures necessary to make the recommended alternative environmentally acceptable.

(b) *Proceeding with grant awards.* (1) Once an environmental assessment has been prepared and the issued FNSI becomes effective for the treatment works within the study area, grant awards may proceed without preparation of additional FNSIs, unless the responsible official later determines that the project or environmental conditions have changed significantly from that which underwent environmental review.

(2) For all environmental assessment/FNSI determinations:

(i) That are five or more years old on projects awaiting Step 2+3 or Step 3 grant funding, the responsible official shall re-evaluate the project, environmental conditions and public views and, prior to grant award, either:

(A) *Reaffirm*—issue a public notice reaffirming EPA's decision to proceed with the project without revising the environmental assessment;

(B) *Supplement*—update information and prepare, issue and distribute a revised EA/FNSI in accordance with §§ 6.105(f) and 6.400(d); or

(C) *Reassess*—withdraw the FNSI and publish a notice of intent to produce an EIS followed by the preparation, issuance and distribution of the EIS/ROD.

(ii) That are made on projects that have been awarded a Step 2+3 grant, the responsible official shall, at the time of plans and specifications review under § 35.2202(b) of this title, assess whether the environmental conditions or the project's anticipated impact on the environment have changed and, prior to plans and specifications approval, advise the Regional Administrator if additional environmental review is necessary.

[51 FR 32612, Sept. 12, 1986]

§ 6.509 Criteria for initiating Environmental Impact Statements (EIS).

(a) *Conditions requiring EISs.* (1) The responsible official shall assure that an EIS will be prepared and issued when it is determined that the treatment works or collector system will cause any of the conditions under § 6.108 to exist, or when

(2) The treated effluent is being discharged into a body of water where the present classification is too lenient or is being challenged as too low to protect present or recent uses, and the effluent will not be of sufficient quality or quantity to meet the requirements of these uses.

(b) *Other conditions.* The responsible official shall also consider preparing an EIS if: The project is highly controversial; the project in conjunction with related Federal, State, local or tribal resource projects produces significant cumulative impacts; or if it is determined that the treatment works may violate federal, State, local or tribal laws or requirements imposed for the protection of the environment.

§ 6.510 Environmental Impact Statement (EIS) preparation.

(a) *Steps in preparing EISs.* In addition to the requirements specified in subparts A, B, C, and D of this part, the responsible official will conduct the following activities:

(1) *Notice of intent.* If a determination is made that an EIS will be required, the responsible official shall prepare and distribute a notice of intent as required in § 6.105(e) of this part.

(2) *Scoping.* As soon as possible, after the publication of the notice of intent, the responsible official will convene a meeting of affected federal, State and local agencies, or affected Indian tribes, the grantee and other interested parties to determine the scope of the EIS. A notice of this scoping meeting must be made in accordance with § 6.400(a) and 40 CFR 1506.6(b). As part of the scoping meeting EPA, in cooperation with any delegated State, will as a minimum:

(i) Determine the significance of issues for and the scope of those significant issues to be analyzed in depth, in the EIS;

(ii) Identify the preliminary range of alternatives to be considered;

(iii) Identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;

(iv) Discuss the method for EIS preparation and the public participation strategy;

(v) Identify consultation requirements of other environmental laws, in accordance with subpart C; and

(vi) Determine the relationship between the EIS and the completion of the facilities plan and any necessary coordination arrangements between the preparers of both documents.

(3) *Identifying and evaluating alternatives.* Immediately following the scoping process, the responsible official shall commence the identification and evaluation of all potentially viable alternatives to adequately address the range of issues identified in the scoping process. Additional issues may be addressed, or others eliminated, during this process and the reasons documented as part of the EIS.

(b) *Methods for preparing EISs.* After EPA determines the need for an EIS, it shall select one of the following methods for its preparation:

(1) Directly by EPA's own staff;

(2) By EPA contracting directly with a qualified consulting firm;

(3) By utilizing a third party method, whereby the responsible official enters into ''third party agreements'' for the applicant to engage and pay for the services of a third party contractor to prepare the EIS. Such agreement shall not be initiated unless both the applicant and the responsible official agree to its creation. A third party agreement will be established prior to the applicant's EID and eliminate the need for that document. In proceeding under the third party agreement, the responsible official shall carry out the following practices:

(i) In consultation with the applicant, choose the third party contractor and manage that contract;

(ii) Select the consultant based on ability and an absence of conflict of interest. Third party contractors will be required to execute a disclosure statement prepared by the responsible official signifying they have no financial or other conflicting interest in the outcome of the project; and

(iii) Specify the information to be developed and supervise the gathering, analysis and presentation of the information. The responsible official shall have sole authority for approval and modi-

fication of the statements, analyses, and conclusions included in the third party EIS; or

(4) By utilizing a joint EPA/State process on projects within States which have requirements and procedures comparable to NEPA, whereby the EPA and the State agree to prepare a single EIS document to fulfill both federal and State requirements. Both EPA and the State shall sign a Memorandum of Agreement which includes the responsibilities and procedures to be used by both parties for the preparation of the EIS as provided for in 40 CFR 1506.2(c).

§ 6.511 Record of Decision (ROD) for EISs and identification of mitigation measures.

(a) *Record of Decision.* After a final EIS has been issued, the responsible official shall prepare and issue a ROD in accordance with 40 CFR 1505.2 prior to, or in conjunction with, the approval of the facilities plan. The ROD shall include identification of mitigation measures derived from the EIS process including grant conditions which are necessary to minimize the adverse impacts of the selected alternative.

(b) *Specific mitigation measures.* Prior to the approval of a facilities plan, the responsible official must ensure that effective mitigation measures identified in the ROD will be implemented by the grantee. This should be done by revising the facilities plan, initiating other steps to mitigate adverse effects, or including conditions in grants requiring actions to minimize effects. Care should be exercised if a condition is to be imposed in a grant document to assure that the applicant possesses the authority to fulfill the conditions.

(c) *Proceeding with grant awards.* (1) Once the ROD has been prepared on the selected, or preferred, alternative(s) for the treatment works described within the EIS, grant awards may proceed without the preparation of supplemental EISs unless the responsible official later determines that the project or the environmental conditions described within the current EIS have changed significantly from the previous environmental review in accordance with § 1502.9(c) of this title.

(2) For all EIS/ROD determinations:

(i) That are five or more years old on projects awaiting Step 2+3 or Step 3 grant funding, the responsible official shall re-evaluate the project, environmental conditions and public views and, prior to grant award, either:

(A) *Reaffirm*—issue a public notice reaffirming EPA's decision to proceed with the project, and documenting that no additional significant impacts were identified during the re-evaluation which would require supplementing the EIS; or

(B) *Supplement*—conduct additional studies and prepare, issue and distribute a supplemental EIS in accordance with § 6.404 and document the original, or any revised, decision in an addendum to the ROD.

(ii) That are made on projects that have been awarded a Step 2+3 grant, the responsible official shall, at the time of plans and specifications review under § 35.2202(b) of this title, assess whether the environmental conditions or the project's anticipated impact on the environment have changed, and prior to plans and specifications approval, advise the Regional Administrator if additional environmental review is necessary.

[50 FR 26317, June 25, 1985, as amended at 51 FR 32613, Sept. 12, 1986]

§ 6.512 Monitoring for compliance.

(a) *General.* The responsible official shall ensure adequate monitoring of mitigation measures and other grant conditions identified in the FNSI, or ROD.

(b) *Enforcement.* If the grantee fails to comply with grant conditions, the responsible official may consider applying any of the sanctions specified in 40 CFR 30.900.

§ 6.513 Public participation.

(a) *General.* Consistent with public participation regulations in part 25 of this title, and subpart D of this part, it is EPA policy that certain public participation steps be achieved before the State and EPA complete the environmental review process. As a minimum, all potential applicants that do not qualify for a categorical exclusion shall conduct the following steps in accordance with procedures specified in part 25 of this title:

(1) One public meeting when alternatives have been developed, but before an alternative has been selected, to discuss all alternatives under consideration and the reasons for rejection of others; and

(2) One public hearing prior to formal adoption of a facilities plan to discuss the proposed facilities plan and any needed mitigation measures.

(b) *Coordination.* Public participation activities undertaken in connection with the environmental review process should be coordinated with any other applicable public participation program wherever possible.

(c) *Scope.* The requirements of 40 CFR 6.400 shall be fulfilled, and consistent with 40 CFR 1506.6, the responsible official may institute such additional NEPA-related public participation procedures as are deemed necessary during the environmental review process.

[50 FR 26317, June 25, 1985, as amended at 51 FR 32613, Sept. 12, 1986]

§ 6.514 Delegation to States.

(a) *General.* Authority delegated to the State under section 205(g) of the Clean Water Act to review a facilities plan may include all EPA activities under this part except for the following:

(1) Determinations of whether or not a project qualifies for a categorical exclusion;

(2) Determinations to partition the environmental review process;

(3) Finalizing the scope of an EID when required to adequately conclude an independent review of a preliminary environmental assessment;

(4) Finalizing the scope of an environmental assessment, and finalization, approval and issuance of a final environmental assessment;

(5) Determination to issue, and issuance of, a FNSI based on a completed (§ 6.508) or partitioned (§ 6.507(d)(2)) environmental review;

(6) Determination to issue, and issuance of, a notice of intent for preparing an EIS;

(7) Preparation of EISs under § 6.510(b) (1) and (2), final decisions required for preparing an EIS under § 6.510(b)(3), finalizing the agreement to prepare an EIS under § 6.510(b)(4), finalizing the scope of an EIS, and issuance of draft, final and supplemental EISs;

(8) Preparation and issuance of the ROD based on an EIS;

(9) Final decisions under other applicable laws described in subpart C of this part;

(10) Determination following re-evaluations of projects awaiting grant funding in the case of Step 3 projects whose existing evaluations and/or decision documents are five or more years old, or determinations following re-evaluations on projects submitted for plans and specifications review and approval in the case of awarded Step 2+3 projects where the EPA Regional Administrator has been advised that additional environmental review is necessary, in accordance with § 6.505(d)(2), § 6.508(b)(2) or § 6.511(c)(2); and

(11) Maintenance of official EPA monthly status reports as required under § 6.402(b).

(b) *Elimination of duplication.* The responsible official shall assure that maximum efforts are undertaken to minimize duplication within the limits described under paragraph (a) of this section. In carrying out requirements under this subpart, maximum consideration shall be given to eliminating duplication in accordance with § 1506.2 of this title. Where there are State or local procedures comparable to NEPA, EPA should enter into memoranda of understanding with these States concerning workload distribution and responsibilities not specifically reserved to EPA in paragraph (a) of this section for implementing the environmental review and facilities planning process.

[50 FR 26317, June 25, 1985, as amended at 51 FR 32613, Sept. 12, 1986]

Subpart F—Environmental Review Procedures for the New Source NPDES Program

§ 6.600 Purpose.

(a) *General.* This subpart provides procedures for carrying out the environmental review process for the issuance of new source National Pollutant Discharge Elimination System (NPDES) discharge permits authorized under section 306, section 402, and section 511(c)(1) of the Clean Water Act.

(b) *Permit regulations.* All references in this subpart to the *permit regulations* shall mean parts 122 and 124 of title 40 of the CFR relating to the NPDES program.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9831, Mar. 8, 1982]

§ 6.601 Definitions.

(a) The term *administrative action* for the sake of this subpart means the issuance by EPA of an NPDES permit to discharge as a new source, pursuant to 40 CFR 124.15.

(b) The term *applicant* for the sake of this subpart means any person who applies to EPA for the issuance of an NPDES permit to discharge as a new source.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9831, Mar. 8, 1982]

§ 6.602 Applicability.

(a) *General.* The procedures set forth under subparts A, B, C and D, and this subpart shall apply to the issuance of new source NPDES permits, except for the issuance of a new source NPDES permit from any State which has an approved NPDES program in accordance with section 402(b) of the Clean Water Act.

(b) *New Source Determination.* An NPDES permittee must be determined a *new source* before these procedures apply. New source determinations will be undertaken pursuant to the provisions of the permit regulations under § 122.29(a) and (b) of this chapter and § 122.53(h).

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9831, Mar. 8, 1982; 51 FR 32613, Sept. 12, 1986]

§ 6.603 Limitations on actions during environmental review process.

The processing and review of an applicant's NPDES permit application shall proceed concurrently with the procedures within this subpart. Actions undertaken by the applicant or EPA shall be performed consistent with the requirements of § 122.29(c) of this chapter.

[47 FR 9831, Mar. 8, 1982, as amended at 51 FR 32613, Sept. 12, 1986]

§ 6.604 Environmental review process.

(a) *New source.* If EPA's initial determination under § 6.602(b) is that the facility is a new source, the responsible official shall evaluate any environmental information to determine if any significant impacts are anticipated and an EIS is necessary. If the permit applicant requests, the responsible official shall establish time limits for the completion of the environmental review process consistent with 40 CFR 1501.8.

(b) *Information needs.* Information necessary for a proper environmental review shall be provided by the permit applicant in an environmental information document. The responsible official shall consult with the applicant to determine the scope of an environmental information document. In doing this the responsible official shall consider the size of the new source and the extent to which the applicant is capable of providing the required information. The responsible official shall not require the applicant to gather data or perform analyses which unnecessarily duplicate either existing data or the results of existing analyses available to EPA. The responsible official shall keep requests for data to the minimum consistent with his responsibilities under NEPA.

(c) *Environmental assessment.* The responsible official shall prepare a written environmental assessment based on an environmental review of either the environmental information document and/or any other available environmental information.

(d) *EIS determination.* (1) When the environmental review indicates that a significant environmental impact may occur and that the significant adverse impacts cannot be eliminated by making changes in the proposed new source project, a notice of intent shall be issued, and a draft EIS prepared and distributed. When the environmental review indicates no significant impacts are anticipated or when the proposed project is changed to eliminate the significant adverse impacts, a FNSI shall be issued which lists any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(2) The FNSI together with the environmental assessment that supports the finding shall be distributed in accordance with § 6.400(d) of this regulation.

(e) *Lead agency.* (1) If the environmental review reveals that the preparation of an EIS is required, the responsible official shall determine if other Federal agencies are involved with the project. The responsible official shall contact all other involved agencies and together the agencies shall decide the lead agency based on the criteria set forth in 40 CFR 1501.5.

(2) If, after the meeting of involved agencies, EPA has been determined to be the lead agency, the responsible official may request that other involved agencies be cooperating agencies. Cooperating agencies shall be chosen and shall be involved in the EIS preparation process in the manner prescribed in the 40 CFR 1501.6(a). If EPA has been determined to be a cooperating agency, the responsible official shall be involved in assisting in the preparation of the EIS in the manner prescribed in 40 CFR 1501.6(b).

(f) *Notice of intent.* (1) If EPA is the lead agency for the preparation of an EIS, the responsible official shall arrange through OER for the publication of the notice of intent in the FEDERAL REGISTER, distribute the notice of intent and arrange and conduct a scoping meeting as outlined in 40 CFR 1501.7.

(2) If the responsible official and the permit applicant agree to a third party method of EIS preparation, pursuant to § 6.604(g)(3) of this part, the responsible official shall insure that a notice of intent is published and that a scoping meeting is held before the third party contractor begins work which may influence the scope of the EIS.

(g) *EIS method.* EPA shall prepare EISs by one of the following means:

(1) Directly by its own staff;

(2) By contracting directly with a qualified consulting firm; or

(3) By utilizing a third party method, whereby the responsible official enters into a *third party agreement* for the applicant to engage and pay for the services of a third party contractor to prepare the EIS. Such an agreement shall not be initiated unless both the applicant and the responsible official agree to its creation. A third party agreement will be established prior to the applicant's environmental information document and eliminate the need for that document. In proceeding under the third party agreement, the responsible official shall carry out the following practices:

(i) In consultation with the applicant, choose the third party contractor and manage that contract.

(ii) Select the consultant based on his ability and an absence of conflict of interest. Third party contractors will be required to execute a disclosure statement prepared by the responsible official signifying they have no financial or other conflicting interest in the outcome of the project.

(iii) Specify the information to be developed and supervise the gathering, analysis and presentation of the information. The responsible official shall have sole authority for approval and modification of the statements, analyses, and conclusions included in the third party EIS.

(h) *Documents for the administrative record.* Pursuant to 40 CFR 124.9(b)(6) and 124.18(b)(5) any environmental assessment, FNSI EIS, or supplement to an EIS shall be made a part of the administrative record related to permit issuance.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9831, Mar. 8, 1982]

§ 6.605 Criteria for preparing EISs.

(a) *General guidelines.* (1) When determining the significance of a proposed new source's impact, the responsible official shall consider both its short term and long term effects as well as its direct and indirect effects and beneficial and adverse environmental impacts as defined in 40 CFR 1508.8.

(2) If EPA is proposing to issue a number of new source NPDES permits during a limited time span and in the same general geographic area, the responsible official shall examine the possibility of tiering EISs. If the permits are minor and environmentally insignificant when considered separately, the responsible official may determine that the cumulative impact of the issuance of all these permits may have a significant environmental effect and require an EIS for the area. Each separate decision to issue an NPDES permit shall then be based on the information in this areawide EIS. Site specific EISs may be required in certain circumstances in addition to the areawide EIS.

(b) *Specific criteria.* An EIS will be prepared when:

(1) The new source will induce or accelerate significant changes in industrial, commercial, agricultural, or residential land use concentrations or distributions which have the potential for significant environmental effects. Factors that should be considered in determining if these changes are environmentally significant include but are not limited to: The nature and extent of the vacant land subject to increased development pressure as a result of the new source; the increases in population or population density which may be induced and the ramifications of such changes; the nature of land use regulations in the affected area and their potential effects on development and the environment; and the changes in the availability or demand for energy and the resulting environmental consequences.

(2) The new source will directly, or through induced development, have significant adverse effect upon local ambient air quality, local ambient noise levels, floodplains, surface or groundwater quality or quantity, fish, wildlife, and their natural habitats.

(3) Any major part of the new source will have significant adverse effect on the habitat of threatened or endangered species on the Department of the Interior's or a State's lists of threatened and endangered species.

(4) The environmental impact of the issuance of a new source NPDES permit will have significant direct and adverse effect on a property listed in or eligible for listing in the National Register of Historic Places.

(5) Any major part of the source will have significant adverse effects on parklands, wetlands, wild and scenic rivers, reservoirs or other important bodies of water, navigation projects, or agricultural lands.

§ 6.606 Record of decision.

(a) *General.* At the time of permit award, the responsible official shall prepare a record of decision in those cases where a final EIS was issued in accordance with 40 CFR 1505.2 and pursuant to the provisions of the permit regulations under 40 CFR 124.15 and 124.18(b)(5). The record of decision shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(b) *Mitigation measures.* The mitigation measures derived from the EIS process shall be incorporated as conditions of the permit; ancillary agreements shall not be used to require mitigation.

[44 FR 64177, Nov. 6, 1979, as amended at 47 FR 9831, Mar. 8, 1982]

§ 6.607 Monitoring.

In accordance with 40 CFR 1505.3 and pursuant to 40 CFR 122.66(c) and 122.10 the responsible official shall ensure that there is adequate monitoring of compliance with all NEPA related requirements contained in the permit.

[47 FR 9831, Mar. 8, 1982]

Subpart G—Environmental Review Procedures for Office of Research and Development Projects

SOURCE: 56 FR 20543, May 6, 1991, unless otherwise noted.

§ 6.700 Purpose.

(a) This subpart amplifies the requirements described in subparts A through D by providing specific environmental review procedures for activities undertaken or funded by the Office of Research and Development (ORD).

(b) The ORD Program provides scientific support for setting environmental standards as well as the technology needed to prevent, monitor and control pollution. Intramural research is conducted at EPA laboratories and field stations throughout the United States. Extramural research is implemented through grants, cooperative agreements, and contracts. The majority of ORD's research is conducted within the confines of laboratories. Outdoor research includes monitoring, sampling, and environmental stress and ecological effects studies.

§ 6.701

§ 6.701 Definition.

The term *appropriate program* official means the official at each decision level within ORD to whom the Assistant Administrator has delegated responsibility for carrying out the environmental review process.

§ 6.702 Applicability.

The requirements of this subpart apply to administrative actions undertaken to approve intramural and extramural projects under the purview of ORD.

§ 6.703 General.

(a) *Environmental information.* (1) For intramural research projects, information necessary to perform the environmental review shall be obtained by the appropriate program official.

(2) For extramural research projects, environmental information documents shall be submitted to EPA by applicants to facilitate the Agency's environmental review process. Guidance on environmental information documents shall be included in all assistance application kits and in contract proposal instructions. If there is a question concerning the preparation of an environmental information document, the applicant should consult with the project officer or contract officer for guidance.

(b) *Environmental review.* The diagram in figure 1 represents the various stages of the environmental review process to be undertaken for ORD projects.

(1) For intramural research projects, an environmental review will be performed for each laboratory's projects at the start of the planning year. The review will be conducted before projects are incorporated into the ORD program planning system. Projects added at a later date and, therefore, not identified at the start of the planning year, or any redirection of a project that could have significant environmental effects, also will be subjected to an environmental review. This review will be performed in accordance with the process set forth in this subpart and depicted in figure 1.

(2) For extramural research projects, the environmental review shall be conducted before an initial or continuing award is made. The appropriate program official will perform the environmental review in accordance with the process set forth in this subpart and depicted in figure 1. EPA form 5300–23 will be used to document categorical exclusion determinations or, with appropriate supporting analysis, as the environmental assessment (EA). The completed form 5300–23 and any finding of no significant impact (FNSI) or environmental impact statement (EIS) will be submitted with the proposal package to the appropriate EPA assistance or contract office.

(c) *Agency coordination.* In order to avoid duplication of effort and ensure consistency throughout the Agency, environmental reviews of ORD projects will be coordinated, as appropriate and feasible, with reviews performed by other program offices. Technical support documents prepared for reviews in other EPA programs may be adopted for use in ORD's environmental reviews and supplemented, as appropriate.

§ 6.704 Categorical exclusions.

(a) At the beginning of the environmental review process (see Figure 1), the appropriate program official shall determine whether an ORD project can be categorically excluded from the substantive requirements of a NEPA review. This determination shall be based on general criteria in § 6.107(d) and specialized categories of ORD actions eligible for exclusion in § 6.704(b). If the appropriate program official determines that an ORD project is consistent with the general criteria and any of the specialized categories of eligible activities, and does not satisfy the criteria in § 6.107(e) for not granting a categorical exclusion, then this finding shall be documented and no further action shall be required. A categorical exclusion shall be revoked by the appropriate program official if it is determined that the project meets the criteria for revocation in § 6.107(c). Projects that fail to qualify for categorical exclusion or for which categorical exclusion has been revoked must undergo full environmental review in accordance with § 6.705 and § 6.706.

(b) The following specialized categories of ORD actions are eligible for categorical exclusion from a detailed NEPA review:

(1) Library or literature searches and studies;

(2) Computer studies and activities;

(3) Monitoring and sample collection wherein no significant alteration of existing ambient conditions occurs;

(4) Projects conducted completely within a contained facility, such as a laboratory or other enclosed building, where methods are employed for appropriate disposal of laboratory wastes and safeguards exist against hazardous, toxic, and radioactive materials entering the environment. Laboratory directors or other appropriate officials must certify and provide documentation that the laboratory follows good laboratory practices and adheres to applicable federal statutes, regulations and guidelines.

§ 6.705 Environmental assessment and finding of no significant impact.

(a) When a project does not meet any of the criteria for categorical exclusion, the appropriate program official shall undertake an environmental assessment in accordance with 40 CFR 1508.9 in

order to determine whether an EIS is required or if a FNSI can be made. ORD projects which normally result in the preparation of an EA include the following:

(1) Initial field demonstration of a new technology;

(2) Field trials of a new product or new uses of an existing technology;

(3) Alteration of a local habitat by physical or chemical means.

(b) If the environmental assessment reveals that the research is not anticipated to have a significant impact on the environment, the appropriate program official shall prepare a FNSI in accordance with § 6.105(f). Pursuant to § 6.400(d), no administrative action will be taken on a project until the prescribed 30-day comment period for a FNSI has elapsed and the Agency has fully considered all comments.

(c) On actions involving potentially significant impacts on the environment, a FNSI may be prepared if changes have been made in the proposed action to eliminate any significant impacts. These changes must be documented in the proposal and in the FNSI.

(d) If the environmental assessment reveals that the research may have a significant impact on the environment, an EIS must be prepared. The appropriate program official may make a determination that an EIS is necessary without preparing a formal environmental assessment. This determination may be made by applying the criteria for preparation of an EIS in § 6.706.

§ 6.706 Environmental impact statement.

(a) *Criteria for preparation.* In performing the environmental review, the appropriate program official shall assure that an EIS is prepared when any of the conditions under § 6.108 (a) through (g) exist or when:

(1) The proposed action may significantly affect the environment through the release of radioactive, hazardous or toxic substances;

(2) The proposed action, through the release of an organism or organisms, may involve environmental effects which are significant;

(3) The proposed action involves effects upon the environment which are likely to be highly controversial;

(4) The proposed action involves environmental effects which may accumulate over time or combine with effects of other actions to create impacts which are significant;

(5) The proposed action involves uncertain environmental effects or highly unique environmental risks which may be significant.

(b) *ORD actions which may require preparation of an EIS.* There are no ORD actions which normally require the preparation of an EIS. However, each ORD project will be evaluated using the EIS criteria as stated in § 6.706(a) to determine whether an EIS must be prepared.

(c) *Notice of intent.* (1) If the environmental review reveals that a proposed action may have a significant effect on the environment and this effect cannot be eliminated by redirection of the research or other means, the appropriate program official shall issue a notice of intent to prepare an EIS pursuant to § 6.400(b).

(2) As soon as possible after release of the notice of intent, the appropriate program official shall ensure that a draft EIS is prepared in accordance with subpart B and that the public is involved in accordance with subpart D.

(3) Draft and final EISs shall be sent to the Assistant Administrator for ORD for approval.

(4) Pursuant to § 6.401(b), a decision on whether to undertake or fund a project must be made in conformance with the time frames indicated.

(d) *Record of decision.* Before the project is undertaken or funded, the appropriate program official shall prepare, in accordance with § 6.105 (g) and (h), a record of decision in any case where a final EIS has been issued.

§ 6.706

Insert/illustration(s) 0 908

Subpart H—Environmental Review Procedures for Solid Waste Demonstration Projects

§ 6.800 Purpose.

This subpart amplifies the procedures described in subparts A through D by providing more specific environmental review procedures for demonstration projects undertaken by the Office of Solid Waste and Emergency Response.

[44 FR 64177, Nov. 6, 1979, as amended at 51 FR 32613, Sept. 12, 1986]

§ 6.801 Applicability.

The requirements of this subpart apply to solid waste demonstration projects for resource recovery systems and improved solid waste disposal facilities undertaken pursuant to section 8006 of the Resource Conservation and Recovery Act of 1976.

§ 6.802 Criteria for preparing EISs.

The responsible official shall assure that an EIS will be prepared when it is determined that any of the conditions in § 6.108 exist.

[44 FR 64177, Nov. 6, 1979, as amended at 50 FR 26323, June 25, 1985]

§ 6.803 Environmental review process.

(a) *Environmental information.* (1) Environmental information documents shall be submitted to EPA by grant applicants or contractors. If there is a question concerning the need for a document, the potential contractor or grantee should consult with the appropriate project officer for the grant or contract.

(2) The environmental information document shall contain the same sections specified for EIS's in subpart B. Guidance alerting potential grantees and contractors of the environmental information documents shall be included in all grant application kits, attached to letters concerning the submission of unsolicited proposals, and included with all requests for proposal.

(b) *Environmental review.* An environmental review will be conducted before a grant or contract award is made. This review will include the preparation of an environmental assessment by the responsible official; the appropriate Regional Administrator's input will include his recommendations on the need for an EIS.

(c) *Notice of intent and EIS.* Based on the environmental review if the criteria in § 6.802 of this part apply, the responsible official will assure that a notice of intent and a draft EIS are prepared. The responsible official may request the appropriate Regional Administrator to assist him in the preparation and distribution of the environmental documents.

(d) *Finding of no significant impact.* If the environmental review indicated no significant environmental impacts, the responsible official will assure that a FNSI is prepared which lists any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(e) *Timing of action.* Pursuant to § 6.401(b), in no case shall a contract or grant be awarded until the prescribed 30-day review period for a final EIS has elapsed. Similarly, no action shall be taken until the 30-day comment period for a FNSI is completed.

§ 6.804 Record of decision.

The responsible official shall prepare a record of decision in any case where final EIS has been issued in accordance with 40 CFR 1505.2. It shall be prepared at the time of contract or grant award. The record of decision shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

Subpart I—Environmental Review Procedures for EPA Facility Support Activities

§ 6.900 Purpose.

This subpart amplifies the general requirements described in subparts A through D by providing environmental procedures for the preparation of EISs on construction and renovation of special purpose facilities.

§ 6.901 Definitions.

(a) The term *special purpose facility* means a building or space, including land incidental to its use, which is wholly or predominantly utilized for the special purpose of an agency and not generally suitable for other uses, as determined by the General Services Administration.

(b) The term *program of requirements* means a comprehensive document (booklet) describing program activities to be accomplished in the new special purpose facility or improvement. It includes architectural, mechanical, structural, and space requirements.

(c) The term *scope of work* means a document similar in content to the program of requirements but substantially abbreviated. It is usually prepared for small-scale projects.

§ 6.902 Applicability.

(a) *Actions covered.* These procedures apply to all new special purpose facility construction, activities related to this construction (e.g., site acquisition and clearing), and any improvements or modifications to facilities having potential environmental effects external to the facility, including

new construction and improvements undertaken and funded by the Facilities Engineering and Real Estate Branch, Facilities and Support Services Division, Office of the Assistant Administrator for Administration and Resource Management; or by a regional office .

(b) *Actions excluded.* This subpart does not apply to those activities of the Facilities Engineering and Real Estate Branch, Facilities and Support Services Division, for which the branch does not have full fiscal responsibility for the entire project. This includes pilot plant construction, land acquisition, site clearing and access road construction where the Facilities Engineering and Real Estate Branch's activity is only supporting a project financed by a program office. Responsibility for considering the environmental impacts of such projects rests with the office managing and funding the entire project. Other subparts of this regulation apply depending on the nature of the project.

[44 FR 64177, Nov. 6, 1979, as amended at 51 FR 32613, Sept. 12, 1986]

§ 6.903 Criteria for preparing EISs.

(a) *Preliminary information.* The responsible official shall request an environmental information document from a construction contractor or consulting architect/engineer employed by EPA if he is involved in the planning, construction or modification of special purpose facilities when his activities have potential environmental effects external to the facility. Such modifications include but are not limited to facility additions, changes in central heating systems or wastewater treatment systems, and land clearing for access roads and parking lots.

(b) *EIS preparation criteria.* The responsible official shall conduct an environmental review of all actions involving construction of special purpose facilities and improvements to these facilities. The responsible official shall assure that an EIS will be prepared when it is determined that any of the conditions in § 6.108 of this part exist.

[44 FR 64177, Nov. 6, 1979, as amended at 50 FR 26323, June 25, 1985]

§ 6.904 Environmental review process.

(a) *Environmental review.* (1) An environmental review shall be conducted when the program of requirements or scope of work has been completed for the construction, improvements, or modification of special purpose facilities. For special purpose facility construction, the Chief, Facilities Engineering and Real Estate Branch, shall request the assistance of the appropriate program office and Regional Administrator in the review. For modifications and improvement, the appropriate responsible official shall request assistance in making the review from other cognizant EPA offices.

(2) Any environmental information documents requested shall contain the same sections listed for EISs in subpart B. Contractors and consultants shall be notified in contractual documents when an environmental information document must be prepared.

(b) *Notice of intent, EIS, and FNSI.* The responsible official shall decide at the completion of the Environmental review whether there may be any significant environmental impacts. If there could be significant environmental impacts, a notice of intent and an EIS shall be prepared according to the procedures under subparts A, B, C and D. If there are not any significant environmental impacts, a FNSI shall be prepared according to the procedures in subparts A and D. The FNSI shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

(c) *Timing of action.* Pursuant to § 6.401(b), in no case shall a contract be awarded or construction activities begun until the prescribed 30-day wait period for a final EIS has elapsed. Similarly, under § 6.400(d), no action shall be taken until the 30-day comment period for FNSIs is completed.

§ 6.905 Record of decision.

At the time of contract award, the responsible official shall prepare a record of decision in those cases where a final EIS has been issued in accordance with 40 CFR 1505.2. The record of decision shall list any mitigation measures necessary to make the recommended alternative environmentally acceptable.

Subpart J—Assessing the Environmental Effects Abroad of EPA Actions

AUTHORITY: Executive Order 12114, 42 U.S.C. 4321, note.

SOURCE: 46 FR 3364, Jan. 14, 1981, unless otherwise noted.

§ 6.1001 Purpose and policy.

(a) *Purpose.* On January 4, 1979, the President signed Executive Order 12114 entitled ''Environmental Effects Abroad of Major Federal Actions.'' The purpose of this Executive Order is to enable responsible Federal officials in carrying out or approving major Federal actions which affect foreign nations or the global commons to be informed of pertinent environmental considerations and to consider fully the environmental impacts of the actions undertaken. While based on independent authority, this Order furthers the purpose of the Na-

tional Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) and the Marine Protection Research and Sanctuaries Act (MPRSA) (33 U.S.C. 1401 *et seq.*). It should be noted, however, that in fulfilling its responsibilities under Executive Order 12114, EPA shall be guided by CEQ regulations only to the extent that they are made expressly applicable by this subpart. The procedures set forth below reflect EPA's duties and responsibilities as required under the Executive Order and satisfy the requirement for issuance of procedures under section 2–1 of the Executive Order.

(b) *Policy.* It shall be the policy of this Agency to carry out the purpose and requirements of the Executive Order to the fullest extent possible. EPA, within the realm of its expertise, shall work with the Department of State and the Council on Environmental Quality to provide information to other Federal agencies and foreign nations to heighten awareness of and interest in the environment. EPA shall further cooperate to the extent possible with Federal agencies to lend special expertise and assistance in the preparation of required environmental documents under the Executive Order. EPA shall perform environmental reviews of activities significantly affecting the global commons and foreign nations as required under Executive Order 12114 and as set forth under these procedures.

§ 6.1002 Applicability.

(a) Administrative actions requiring environmental review. The environmental review requirements apply to the activities of EPA as set forth below:

(1) Major research or demonstration projects which affect the global commons or a foreign nation.

(2) Ocean dumping activities carried out under section 102 of the MPRSA which affect the related environment.

(3) Major permitting or licensing by EPA of facilities which affect the global commons or the environment of a foreign nation. This may include such actions as the issuance by EPA of hazardous waste treatment, storage, or disposal facility permits pursuant to section 3005 of the Resource Conservation and Recovery Act (42 U.S.C. 6925), NPDES permits pursuant to section 402 of the Clean Water Act (33 U.S.C. 1342), and prevention of significant deterioration approvals pursuant to Part C of the Clean Air Act (42 U.S.C. 7470 *et seq.*).

(4) Wastewater Treatment Construction Grants Program under section 201 of the Clean Water Act when activities addressed in the facility plan would have environmental effects abroad.

(5) Other EPA activities as determined by OER and OIA (see § 6.1007(c)).

§ 6.1003 Definitions.

As used in this subpart, *environment* means the natural and physical environment and excludes social, economic and other environments; *global commons* is that area (land, air, water) outside the jurisdiction of any nation; and *responsible official* is either the EPA Assistant Administrator or Regional Administrator as appropriate for the particular EPA program. Also, an action *significantly* affects the environment if it does *significant* harm to the environment even though on balance the action may be beneficial to the environment. To the extent applicable, the responsible official shall address the considerations set forth in the CEQ Regulations under 40 CFR 1508.27 in determining significant effect.

§ 6.1004 Environmental review and assessment requirements.

(a) *Research and demonstration projects.* The appropriate Assistant Administrator is responsible for performing the necessary degree of environmental review on research and demonstration projects undertaken by EPA. If the research or demonstration project affects the environment of the global commons, the applicant shall prepare an environmental analysis. This will assist the responsible official in determining whether an EIS is necessary. If it is determined that the action significantly affects the environment of the global commons, then an EIS shall be prepared. If the undertaking significantly affects a foreign nation EPA shall prepare a unilateral, bilateral or multilateral environmental study. EPA shall afford the affected foreign nation or international body or organization an opportunity to participate in this study. This environmental study shall discuss the need for the action, analyze the environmental impact of the various alternatives considered and list the agencies and other parties consulted.

(b) *Ocean dumping activities.* (1) The Assistant Administrator for Water and Waste Management shall ensure the preparation of appropriate environmental documents relating to ocean dumping activities in the global commons under section 102 of the MPRSA. For ocean dumping site designations prescribed pursuant to section 102(c) of the MPRSA and 40 CFR part 228, EPA shall prepare an environmental impact statement consistent with the requirements of EPA's Procedures for the Voluntary Preparation of Environmental Impact Statements dated October 21, 1974 (see 39 FR 37419). Also EPA shall prepare an environmental impact statement for the establishment or revision of criteria under section 102(a) of MPRSA.

(2) For individual permits issued by EPA under section 102(b) an environmental assessment shall be made by EPA. Pursuant to 40 CFR part 221, the permit applicant shall submit with the application an environmental analysis which includes a discussion of the need for the action, an outline of alternatives, and an analysis of the environmental impact of the proposed action and alternatives consistent with the EPA criteria established under section 102(a) of MPRSA. The information submitted under 40 CFR part 221 shall be sufficient to satisfy the environmental assessment requirement.

(c) *EPA permitting and licensing activities.* The appropriate Regional Administrator is responsible for conducting concise environmental reviews with regard to permits issued under section 3005 of the Resource Conservation and Recovery Act (RCRA permits), section 402 of the Clean Water Act (NPDES permits), and section 165 of the Clean Air Act (PSD permits), for such actions undertaken by EPA which affect the global commons or foreign nations. The information submitted by applicants for such permits or approvals under the applicable consolidated permit regulations (40 CFR parts 122 and 124) and Prevention of Significant Deterioration (PSD) regulations (40 CFR part 52) shall satisfy the environmental document requirement under section 2–4(b) of Executive Order 12114. Compliance with applicable requirements in part 124 of the consolidated permit regulations (40 CFR part 124) shall be sufficient to satisfy the requirements to conduct a concise environmental review for permits subject to this paragraph.

(d) *Wastewater treatment facility planning.* 40 CFR 6.506 details the environmental review process for the facilities planning process under the wastewater treatment works construction grants program. For the purpose of these regulations, the facility plan shall also include a concise environmental review of those activities that would have environmental effects abroad. This shall apply only to the Step 1 grants awarded after January 14, 1981, but on or before December 29, 1981, and facilities plans developed after December 29, 1981. Where water quality impacts identified in a facility plan are the subject or water quality agreements with Canada or Mexico, nothing in these regulations shall impose on the facility planning process coordination and consultation requirements in addition to those required by such agreements.

(e) *Review by other Federal agencies and other appropriate officials.* The responsible officials shall consult with other Federal agencies with relevant expertise during the preparation of the environmental document. As soon as feasible after preparation of the environmental document, the responsible official shall make the document available to the Council on Environmental Quality, Department of State, and other appropriate officials. The responsible official with assistance from OIA shall work with the Department of State to establish procedures for communicating with and making documents available to foreign nations and international organizations.

[46 FR 3364, Jan. 14, 1981, as amended at 50 FR 26323, June 25, 1985]

§ 6.1005 Lead or cooperating agency.

(a) *Lead Agency.* Section 3–3 of Executive Order 12114 requires the creation of a lead agency whenever an action involves more than one federal agency. In implementing section 3–3, EPA shall, to the fullest extent possible, follow the guidance for the selection of a lead agency contained in 40 CFR 1501.5 of the CEQ regulations.

(b) *Cooperating Agency.* Under section 2–4(d) of the Executive Order, Federal agencies with special expertise are encouraged to provide appropriate resources to the agency preparing environmental documents in order to avoid duplication of resources. In working with a lead agency, EPA shall to the fullest extent possible serve as a cooperating agency in accordance with 40 CFR 1501.6. When other program commitments preclude the degree of involvement requested by the lead agency, the responsible EPA official shall so inform the lead agency in writing.

§ 6.1006 Exemptions and considerations.

Under section 2–5 (b) and (c) of the Executive Order, Federal agencies may provide for modifications in the contents, timing and availability of documents or exemptions from certain requirements for the environmental review and assessment. The responsible official, in consultation with the Director, Office of Environmental Review (OER), and the Director, Office of International Activities (OIA), may approve modifications for situations described in section 2–5(b). The responsible official, in consultation with the Director, OER and Director OIA, shall obtain exemptions from the Administrator for situations described in section 2–5(c). The Department of State and the Council on Environmental Quality shall be consulted as soon as possible on the utilization of such exemptions.

§ 6.1007 Implementation.

(a) *Oversight.* OER is responsible for overseeing the implementation of these procedures and shall consult with OIA wherever appropriate. OIA shall be utilized for making formal contacts with the Department of State. OER shall assist the responsible officials in carrying out their responsibilities under these procedures.

(b) *Information exchange.* OER with the aid of OIA, shall assist the Department of State and the Council on Environmental Quality in developing the informational exchange on environmental review activities with foreign nations.

(c) *Unidentified activities.* The responsible official shall consult with OER and OIA to establish the type of environmental review or document appropriate for any new EPA activities or requirements imposed upon EPA by statute, international agreement or other agreements.

APPENDIX A—STATEMENT OF PROCEDURES ON FLOODPLAIN MANAGEMENT AND WETLANDS PROTECTION

Contents:

Section 1 General

a. Executive Order 11988 entitled ''Floodplain Management'' dated May 24, 1977, requires Federal agencies to evaluate the potential effects of actions it may take in a floodplain to avoid adversely impacting floodplains wherever possible, to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management, including the restoration and preservation of such land areas as natural undeveloped floodplains, and to prescribe procedures to implement the policies and procedures of this Executive Order. Guidance for implementation of the Executive Order has been provided by the U.S. Water Resources Council in its Floodplain Management Guidelines dated February 10, 1978 (see 40 FR 6030).

b. Executive Order 11990 entitled ''Protection of Wetlands'', dated May 24, 1977, requires Federal agencies to take action to avoid adversely impacting wetlands wherever possible, to minimize wetlands destruction and to preserve the values of wetlands, and to prescribe procedures to implement the policies and procedures of this Executive Order.

c. It is the intent of these Executive Orders that, wherever possible, Federal agencies implement the floodplains/wetlands requirements through existing procedures, such as those internal procedures established to implement the National Environmental Policy Act (NEPA) and OMB A–95 review procedures. In those instances where the environmental impacts of a proposed action are not significant enough to require an environmental impact statement (EIS) pursuant to section 102(2)(C) of NEPA, or where programs are not subject to the requirements of NEPA, alternative but equivalent floodplain/wetlands evaluation and notice procedures must be established.

Section 2 Purpose

a. The purpose of this Statement of Procedures is to set forth Agency policy and guidance for carrying out the provisions of Executive Orders 11988 and 11990.

b. EPA program offices shall amend existing regulations and procedures to incorporate the policies and procedures set forth in this Statement of Procedures.

c. To the extent possible, EPA shall accommodate the requirements of Executive Orders 11988 and 11990 through the Agency NEPA procedures contained in 40 CFR part 6.

Section 3 Policy

a. The Agency shall avoid wherever possible the long and short term impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of floodplain and wetlands development wherever there is a practicable alternative.

b. The Agency shall incorporate floodplain management goals and wetlands protection considerations into its planning, regulatory, and decisionmaking processes. It shall also promote the preservation and restoration of floodplains so that their natural and beneficial values can be realized. To the extent possible EPA shall:

(1) Reduce the hazard and risk of flood loss and wherever it is possible to avoid direct or indirect adverse impact on floodplains;

(2) Where there is no practical alternative to locating in a floodplain, minimize the impact of floods on human safety, health, and welfare, as well as the natural environment;

(3) Restore and preserve natural and beneficial values served by floodplains;

(4) Require the construction of EPA structures and facilities to be in accordance with the standards and criteria, of the regulations promulgated pursuant to the National Flood Insurance Program;

(5) Identify floodplains which require restoration and preservation and recommend management programs necessary to protect these floodplains and to include such considerations as part of on-going planning programs; and

(6) Provide the public with early and continuing information concerning floodplain management and with opportunities for participating in decision making including the (evaluation of) tradeoffs among competing alternatives.

c. The Agency shall incorporate wetlands protection considerations into its planning, regulatory, and decisionmaking processes. It shall minimize the destruction, loss, or degradation of wetlands and preserve and enhance the natural and beneficial values of wetlands. Agency activities shall continue to be carried out consistent with the Administrator's Decision Statement No. 4 dated February 21, 1973 entitled ''EPA Policy to Protect the Nation's Wetlands.''

Section 4 Definitions

a. *Base Flood* means that flood which has a one percent chance of occurrence in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

b. *Base Floodplain* means the land area covered by a 100-year flood (one percent chance floodplain). Also see definition of floodplain.

c. *Flood or Flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal

waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source, or flooding from any other source.

d. *Floodplain* means the lowland and relatively flat areas adjoining inland and coastal waters and other floodprone areas such as offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year. The base floodplain shall be used to designate the 100-year floodplain (one percent chance floodplain). The critical action floodplain is defined as the 500-year floodplain (0.2 percent chance floodplain).

e. *Floodproofing* means modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out or to reduce effects of water entry.

f. *Minimize* means to reduce to the smallest possible amount or degree.

g. *Practicable* means capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of the pertinent factors such as environment, community welfare, cost, or technology.

h. *Preserve* means to prevent modification to the natural floodplain environment or to maintain it as closely as possible to its natural state.

i. *Restore* means to re-establish a setting or environment in which the natural functions of the floodplain can again operate.

j. *Wetlands* means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

Section 5 Applicability

a. The Executive Orders apply to activities of Federal agencies pertaining to (1) acquiring, managing, and disposing of Federal lands and facilities, (2) providing Federally undertaken, financed, or assisted construction and improvements, and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

b. These procedures shall apply to EPA's programs as follows: (1) All Agency actions involving construction of facilities or management of lands or property. This will require amendment of the EPA Facilities Management Manual (October 1973 and revisions thereafter).

(2) All Agency actions where the NEPA process applies. This would include the programs under sections 306/402 of the Clean Water Act pertaining to new source permitting and section 201 of the Clean Water Act pertaining to wastewater treatment construction grants.

(3) All agency actions where there is sufficient independent statutory authority to carry out the floodplain/wetlands procedures.

(4) In program areas where there is no EIS requirement nor clear statutory authority for EPA to require procedural implementation, EPA shall continue to provide leadership and offer guidance so that the value of floodplain management and wetlands protection can be understood and carried out to the maximum extent practicable in these programs.

c. These procedures shall not apply to any permitting or source review programs of EPA once such authority has been transferred or delegated to a State. However, EPA shall, to the extent possible, require States to provide equivalent effort to assure support for the objectives of these procedures as part of the state assumption process.

Section 6 Requirements

a. Floodplain/Wetlands review of proposed Agency actions.

(1) *Floodplain/Wetlands Determination*—Before undertaking an Agency action, each program office must determine whether or not the action will be located in or affect a floodplain or wetlands. The Agency shall utilize maps prepared by the Federal Insurance Administration of the Federal Emergency Management Agency (Flood Insurance Rate Maps or Flood Hazard Boundary Maps), Fish and Wildlife Service (National Wetlands Inventory Maps), and other appropriate agencies to determine whether a proposed action is located in or will likely affect a floodplain or wetlands. If there is no floodplain/wetlands impact identified, the action may proceed without further consideration of the remaining procedures set forth below.

(2) *Early Public Notice*—When it is apparent that a proposed or potential agency action is likely to impact a floodplain or wetlands, the public should be informed through appropriate public notice procedures.

(3) *Floodplain/Wetlands Assessment*—If the Agency determines a proposed action is located in or affects a floodplain or wetlands, a floodplain/wetlands assessment shall be undertaken. For those actions where an environmental assessment (EA) or environmental impact statement (EIS) is prepared pursuant to 40 CFR part 6, the floodplain/wetlands assessment shall be prepared concurrently with these analyses and shall be included in the EA or EIS. In all other cases, a *floodplain/wetlands assessment* shall be prepared. Assessments shall consist of a description of the proposed action, a discussion of its effect on the floodplain/wetlands, and shall also describe the alternatives considered.

(4) *Public Review of Assessments*—For proposed actions impacting floodplain/wetlands where an EA or EIS is prepared, the opportunity for public review will be provided through the EIS provisions contained in 40 CFR parts 6, 25, or 35, where appropriate. In other cases, an equivalent public notice of the floodplain/wetlands assessment shall be made consistent with the public involvement requirements of the applicable program.

(5) *Minimize, Restore or Preserve*—If there is no practicable alternative to locating in or affecting the floodplain or wetlands, the Agency shall act to minimize potential harm to the floodplain or wetlands. The Agency shall also act to restore and preserve the natural and beneficial values of floodplains and wetlands as part of the analysis of all alternatives under consideration.

(6) *Agency Decision*—After consideration of alternative actions, as they have been modified in the preceding analysis, the Agency shall select the desired alternative. For all Agency actions proposed to be in or affecting a floodplain/wetlands, the Agency shall provide further public notice announcing this decision. This decision shall be accompanied by a Statement of Findings, not to exceed three pages. This Statement shall include: (i) The reasons why the proposed action must be located in or affect the floodplain or wetlands; (ii) a description of significant

facts considered in making the decision to locate in or affect the floodplain or wetlands including alternative sites and actions; (iii) a statement indicating whether the proposed action conforms to applicable State or local floodplain protection standards; (iv) a description of the steps taken to design or modify the proposed action to minimize potential harm to or within the floodplain or wetlands; and (v) a statement indicating how the proposed action affects the natural or beneficial values of the floodplain or wetlands. If the provisions of 40 CFR part 6 apply, the Statement of Findings may be incorporated in the final EIS or in the environmental assessment. In other cases, notice should be placed in the FEDERAL REGISTER or other local medium and copies sent to Federal, State, and local agencies and other entities which submitted comments or are otherwise concerned with the floodplain/wetlands assessment. For floodplain actions subject to Office of Management and Budget (OMB) Circular A–95, the Agency shall send the Statement of Findings to State and areawide A–95 clearinghouse in the geographic area affected. At least 15 working days shall be allowed for public and interagency review of the Statement of Findings.

(7) *Authorizations/Appropriations*—Any requests for new authorizations or appropriations transmitted to OMB shall include, a floodplain/wetlands assessment and, for floodplain impacting actions, a Statement of Findings, if a proposed action will be located in a floodplain or wetlands.

b. *Lead agency concept.* To the maximum extent possible, the Agency shall relay on the lead agency concept to carry out the provisions set forth in section 6.a of this appendix. Therefore, when EPA and another Federal agency have related actions, EPA shall work with the other agency to identify which agency shall take the lead in satisfying these procedural requirements and thereby avoid duplication of efforts.

c. *Additional floodplain management provisions relating to Federal property and facilities.*

(1) *Construction Activities*—EPA controlled structures and facilities must be constructed in accordance with existing criteria and standards set forth under the NFIP and must include mitigation of adverse impacts wherever feasible. Deviation from these requirements may occur only to the extent NFIP standards are demonstrated as inappropriate for a given structure or facility.

(2) *Flood Protection Measures*—If newly constructed structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be undertaken. To achieve flood protection, EPA shall, wherever practicable, elevate structures above the base flood level rather than filling land.

(3) *Restoration and Preservation*—As part of any EPA plan or action, the potential for restoring and preserving floodplains and wetlands so that their natural and beneficial values can be realized must be considered and incorporated into the plan or action wherever feasible.

(4) *Property Used by Public*—If property used by the public has suffered damage or is located in an identified flood hazard area, EPA shall provide on structures, and other places where appropriate, conspicuous indicators of past and probable flood height to enhance public knowledge of flood hazards.

(5) *Transfer of EPA Property*—When property in flood plains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, EPA shall reference in the conveyance those uses that are restricted under Federal, State and local floodplain regulations and attach other restrictions to uses of the property as may be deemed appropriate. Notwithstanding, EPA shall consider withholding such properties from conveyance.

Section 7 Implementation

a. Pursuant to section 2, the EPA program offices shall amend existing regulations, procedures, and guidance, as appropriate, to incorporate the policies and procedures set forth in this Statement of Procedures. Such amendments shall be made within six months of the date of these Procedures.

b. The Office of External Affairs (OEA) is responsible for the oversight of the implementation of this Statement of Procedures and shall be given advanced opportunity to review amendments to regulations, procedures, and guidance. OEA shall coordinate efforts with the program offices to develop necessary manuals and more specialized supplementary guidance to carry out this Statement of Procedures.

[44 FR 64177, Nov. 6, 1976, as amended at 50 FR 26323, June 25, 1985]

PART 7—NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL ASSISTANCE FROM THE ENVIRONMENTAL PROTECTION AGENCY

Subpart A—General

Sec.

Subpart B—Discrimination Prohibited on the Basis of Race, Color, National Origin or Sex

Subpart C—Discrimination Prohibited on the Basis of Handicap

Subpart D—Requirements for Applicants and Recipients

Subpart E—Agency Compliance Procedures

AUTHORITY: 42 U.S.C. 2000d to 2000d–4; 29 U.S.C. 794; 33 U.S.C. 1251 nt.

SOURCE: 49 FR 1659, Jan. 12, 1984, unless otherwise noted.

Subpart A—General

§ 7.10 Purpose of this part.

This part implements: Title VI of the Civil Rights Act of 1964, as amended; section 504 of the Rehabilitation Act of 1973, as amended; and section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92–500, (collectively, the Acts).

§ 7.15 Applicability.

This part applies to all applicants for, and recipients of, EPA assistance in the operation of programs or activities receiving such assistance beginning February 13, 1984. New construction (§ 7.70) for which design was initiated prior to February 13, 1984, shall comply with the accessibility requirements in the Department of Health, Education and Welfare (now the Department of Health and Human Services) nondiscrimination regulation, 45 CFR 84.23, issued June 3, 1977, or with equivalent standards that ensure the facility is readily accessible to and usable by handicapped persons. Such assistance includes but is not limited to that which is listed in the *Catalogue of Federal Domestic Assistance* under the 66.000 series. It supersedes the provisions of former 40 CFR parts 7 and 12.

§ 7.20 Responsible agency officers.

(a) The EPA Office of Civil Rights (OCR) is responsible for developing and administering EPA's compliance programs under the Acts.

(b) EPA's Project Officers will, to the extent possible, be available to explain to each recipient its obligations under this part and to provide recipients with technical assistance or guidance upon request.

§ 7.25 Definitions.

As used in this part:

Administrator means the Administrator of EPA. It includes any other agency official authorized to act on his or her behalf, unless explicity stated otherwise.

Alcohol abuse means any misuse of alcohol which demonstrably interferes with a person's health, interpersonal relations or working ability.

Applicant means any entity that files an application or unsolicited proposal or otherwise requests EPA assistance (see definition for *EPA assistance*).

Assistant Attorney General is the head of the Civil Rights Division, U.S. Department of Justice.

Award Official means the EPA official with the authority to approve and execute assistance agreements and to take other assistance related actions

authorized by this part and by other EPA regulations or delegation of authority.

Drug abuse means:

(a) The use of any drug or substance listed by the Department of Justice in 21 CFR 1308.11, under authority of the Controlled Substances Act, 21 U.S.C. 801, as a controlled substance unavailable for prescription because:

(1) The drug or substance has a high potential for abuse,

(2) The drug or other substance has no currently accepted medical use in treatment in the United States, or

(3) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

NOTE: Examples of drugs under paragraph (a)(1) of this section include certain opiates and opiate derivatives (*e.g.,* heroin) and hallucinogenic substances (*e.g.,* marijuana, mescaline, peyote) and depressants (*e.g.,* methaqualone). Examples of (a)(2) include opium, coca leaves, methadone, amphetamines and barbiturates.

(b) The misuse of any drug or substance listed by the Department of Justice in 21 CFR 1308.12–1308.15 under authority of the Controlled Substances Act as a controlled substance available for prescription.

EPA means the United States Environmental Protection Agency.

EPA assistance means any grant or cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which EPA provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of personnel; or

(3) Real or personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if EPA's share of its fair market value is not returned to EPA.

Facility means all, or any part of, or any interests in structures, equipment, roads, walks, parking lots, or other real or personal property.

Handicapped person:

(a) *Handicapped person* means any person who (1) has a physical or mental impairment which substantially limits one or more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. For purposes of employment, the term *handicapped person* does not include any person who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current drug or alcohol abuse, would constitute a direct threat to property or the safety of others.

(b) As used in this paragraph, the phrase:

(1) *Physical or mental impairment* means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; and (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(2) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means:

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined above but is treated by a recipient as having such an impairment.

Office of Civil Rights or OCR means the Director of the Office of Civil Rights, EPA Headquarters or his/her designated representative.

Project Officer means the EPA official designated in the assistance agreement (as defined in *EPA assistance*) as EPA's program contact with the recipient; Project Officers are responsible for monitoring the project.

Qualified handicapped person means:

(a) With respect to employment: A handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question.

(b) With respect to services: A handicapped person who meets the essential eligibility requirements for the receipt of such services.

Racial classifications: [1]

[1] Additional subcategories based on national origin or primary language spoken may be used where appropriate on either a national or a regional basis. Subparagraphs (a) through (e) are in conformity with Directive 15 of the Office of Federal Statistical Policy and Standards, whose function is now in the Office of Information and Regulatory Affairs, Office of Management and Budget. Should

(a) *American Indian or Alaskan native.* A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

(b) *Asian or Pacific Islander.* A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(c) *Black and not of Hispanic origin.* A person having origins in any of the black racial groups of Africa.

(d) *Hispanic.* A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless or race.

(e) *White, not of Hispanic origin.* A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Recipient means, for the purposes of this regulation, any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

Section 13 refers to section 13 of the Federal Water Pollution Control Act Amendments of 1972.

United States includes the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and all other territories and possessions of the United States; the term *State* includes any one of the foregoing.

Subpart B—Discrimination Prohibited on the Basis of Race, Color, National Origin or Sex

§ 7.30 General prohibition.

No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance on the basis of race, color, national origin, or on the basis of sex in any program or activity receiving EPA assistance under the Federal Water Pollution Control Act, as amended, including the Environmental Financing Act of 1972.

---

that office, or any successor office, change or otherwise amend the categories listed in Directive 15, the categories in this paragraph shall be interpreted to conform with any such changes or amendments.

§ 7.35 Specific prohibitions.

(a) As to any program or activity receiving EPA assistance, a recipient shall not directly or through contractual, licensing, or other arrangements on the basis of race, color, national origin or, if applicable, sex:

(1) Deny a person any service, aid or other benefit of the program;

(2) Provide a person any service, aid or other benefit that is different, or is provided differently from that provided to others under the program;

(3) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, aid, or benefit provided by the program;

(4) Subject a person to segregation in any manner or separate treatment in any way related to receiving services or benefits under the program;

(5) Deny a person or any group of persons the opportunity to participate as members of any planning or advisory body which is an integral part of the program, such as a local sanitation board or sewer authority;

(6) Discriminate in employment on the basis of sex in any program subject to section 13, or on the basis of race, color, or national origin in any program whose purpose is to create employment; or, by means of employment discrimination, deny intended beneficiaries the benefits of the EPA assistance program, or subject the beneficiaries to prohibited discrimination.

(7) In administering a program or activity receiving Federal financial assistance in which the recipient has previously discriminated on the basis of race, color, sex, or national origin, the recipient shall take affirmative action to provide remedies to those who have been injured by the discrimination.

(b) A recipient shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex.

(c) A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.

(d) The specific prohibitions of discrimination enumerated above do not limit the general prohibition of § 7.30.

Subpart C—Discrimination Prohibited on the Basis of Handicap

§ 7.45 General prohibition.

No qualified handicapped person shall solely on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving EPA assistance.

§ 7.50 Specific prohibitions against discrimination.

(a) A recipient, in providing any aid, benefit or service under any program or activity receiving EPA assistance shall not, on the basis of handicap, directly or through contractual, licensing, or other arrangement:

(1) Deny a qualified handicapped person any service, aid or other benefit of a federally assisted program;

(2) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless the action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;

(3) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an entity that discriminates on the basis of handicap in providing aids, benefits, or services to beneficiaries of the recipient's program;

(4) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(5) Limit a qualified handicapped person in any other way in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit or service from the program.

(b) A recipient may not, in determining the site or location of a facility, make selections: (1) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from EPA assistance or (2) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity receiving EPA assistance with respect to handicapped persons.

(c) A recipient shall not use criteria or methods of administering any program or activity receiving EPA assistance which have the effect of subjecting individuals to discrimination because of their handicap, or have the effect of defeating or substantially impairing accomplishment of the objectives of such program or activity with respect to handicapped persons.

(d) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(e) The exclusion of non-handicapped persons or specified classes of handicapped persons from programs limited by Federal statute or Executive Order to handicapped persons or a different class of handicapped persons is not prohibited by this subpart.

§ 7.55 Separate or different programs.

Recipients shall not deny a qualified handicapped person an opportunity equal to that afforded others to participate in or benefit from the aid, benefit, or service in the program receiving EPA assistance. Recipients shall administer programs in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ 7.60 Prohibitions and requirements relating to employment.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from Federal assistance.

(b) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur, and shall not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; or

(9) Any other term, condition, or privilege of employment.

(d) A recipient shall not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(e) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(f) A recipient shall not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(g) A recipient shall not conduct a preemployment medical examination or make a preemployment inquiry as to whether an applicant is a handicapped person or as to the nature or severity of a handicap except as permitted by the Department of Justice in 28 CFR 42.513.

§ 7.65 Accessibility.

(a) *General.* A recipient shall operate each program or activity receiving EPA assistance so that such program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not:

(1) Necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons.

(2) Require a recipient to take any action that the recipient can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If an action would result in such an alternation or such financial and administrative burdens, the recipient shall be required to take any other action that would not result in such an alteration or financial and administrative burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity receiving EPA assistance.

(b) *Methods of making existing programs accessible.* A recipient may comply with the accessibility requirements of this section by making structural changes, redesigning equipment, reassigning services to accessible buildings, assigning aides to beneficiaries, or any other means that make its program or activity accessible to handicapped persons. In choosing among alternatives, a recipient must give priority to methods that offer program benefits to handicapped persons in the most integrated setting appropriate.

(c) *Deadlines.* (1) Except where structural changes in facilities are necessary, recipients must adhere to the provisions of this section within 60 days after the effective date of this part.

(2) Recipients having an existing facility which does require alterations in order to make a program or activity accessible must prepare a transition plan in accordance with § 7.75 within six months from the effective date of this part. The recipient must complete the changes as soon as possible, but not later than three years from date of award.

(d) *Notice of accessibility.* The recipient must make sure that interested persons, including those with impaired vision or hearing, can find out about the existence and location of the assisted program services, activities, and facilities that are accessible to and usable by handicapped persons.

(e) *Structural and financial feasibility.* This section does not require structural alterations to existing facilities if making such alterations would not be structurally or financially feasible. An alteration is not structurally feasible when it has little likelihood of being accomplished without removing or altering a load-bearing structural member. Financial feasibility shall take into account the degree to which the alteration work is to be assisted by EPA assistance, the cost limitations of the program under which such assistance is provided, and the relative cost of accomplishing such alterations in manners consistent and inconsistent with accessibility.

§ 7.70 New construction.

(a) *General.* New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (appendix A to 41 CFR subpart 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical

rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

[49 FR 1659, Jan. 12, 1984, as amended at 55 FR 52138, 52142, Dec. 19, 1990]

§ 7.75 Transition plan.

If structural changes to facilities are necessary to make the program accessible to handicapped persons, a recipient must prepare a transition plan.

(a) *Requirements.* The transition plan must set forth the steps needed to complete the structural changes required and must be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. At a minimum, the transition plan must:

(1) Identify the physical obstacles in the recipient's facilities that limit handicapped persons' access to its program or activity,

(2) Describe in detail what the recipient will do to make the facilities accessible,

(3) Specify the schedule for the steps needed to achieve full program accessibility, and include a year-by-year timetable if the process will take more than one year,

(4) Indicate the person responsible for carrying out the plan.

(b) *Availability.* Recipients shall make available a copy of the transition plan to the OCR upon request and to the public for inspection at either the site of the project or at the recipient's main office.

Subpart D—Requirements for Applicants and Recipients

§ 7.80 Applicants.

(a) *Assurances*—(1) *General.* Applicants for EPA assistance shall submit an assurance with their applications stating that, with respect to their programs or activities that receive EPA assistance, they will comply with the requirements of this part. Applicants must also submit any other information that the OCR determines is necessary for preaward review. The applicant's acceptance of EPA assistance is an acceptance of the obligation of this assurance and this part.

(2) *Duration of assurance*—(i) *Real property.* When EPA awards assistance in the form of real property, or assistance to acquire real property, or structures on the property, the assurance will obligate the recipient, or transferee, during the period the real property or structures are used for the purpose for which EPA assistance is extended, or for another purpose in which similar services or benefits are provided. The transfer instrument shall contain a covenant running with the land which assures nondiscrimination. Where applicable, the covenant shall also retain a right of reverter which will permit EPA to recover the property if the covenant is ever broken.

(ii) *Personal property.* When EPA provides assistance in the form of personal property, the assurance will obligate the recipient for so long as it continues to own or possess the property.

(iii) *Other forms of assistance.* In all other cases, the assurance will obligate the recipient for as long as EPA assistance is extended.

(b) *Wastewater treatment project.* EPA Form 4700–4 shall also be submitted with applications for assistance under Title II of the Federal Water Pollution Control Act.

(c) *Compliance information.* Each applicant for EPA assistance shall submit regarding the program or activity that would receive EPA assistance:

(1) Notice of any lawsuit pending against the applicant alleging discrimination on the basis of race, color, sex, handicap, or national origin;

(2) A brief description of any applications pending to other federal agencies for assistance, and of Federal assistance being provided at the time of the application; and

(3) A statement describing any civil rights compliance reviews regarding the applicant conducted during the two-year period before the application, and information concerning the agency or organization performing the reviews.

(Approved by the Office of Management and Budget under control number 2000–0006)

§ 7.85 Recipients.

(a) *Compliance information.* Each recipient shall collect, maintain, and on request of the OCR, provide the following information to show compliance with this part:

(1) A brief description of any lawsuits pending against the recipient that allege discrimination which this part prohibits;

(2) Racial/ethnic, national origin, sex and handicap data, or EPA Form 4700–4 information submitted with its application;

(3) A log of discrimination complaints which identifies the complaint, the date it was filed, the date the recipient's investigation was completed, the disposition, and the date of disposition; and

(4) Reports of any compliance reviews conducted by any other agencies.

(b) *Additional compliance information.* If necessary, the OCR may require recipients to submit data and information specific to certain programs to determine compliance where there is reason to

believe that discrimination may exist in a program or activity receiving EPA assistance or to investigate a complaint alleging discrimination in a program or activity receiving EPA assistance. Requests shall be limited to data and information which is relevant to determining compliance and shall be accompanied by a written statement summarizing the complaint or setting forth the basis for the belief that discrimination may exist.

(c) *Self-evaluation.* Each recipient must conduct a self-evaluation of its administrative policies and practices, to consider whether such policies and practices may involve handicap discrimination prohibited by this part. When conducting the self-evaluation, the recipient shall consult with interested and involved persons including handicapped persons or organizations representing handicapped persons. The evaluation shall be completed within 18 months after the effective date of this part.

(d) Preparing compliance information. In preparing compliance information, a recipient must:

(1) [Reserved]

(2) Use the racial classifications set forth in § 7.25 in determining categories of race, color or national origin.

(e) *Maintaining compliance information.* Recipients must keep records for paragraphs (a) and (b) of this section for three (3) years after completing the project. When any complaint or other action for alleged failure to comply with this part is brought before the three-year period ends, the recipient shall keep records until the complaint is resolved.

(f) Accessibility to compliance information. A recipient shall:

(1) Give the OCR access during normal business hours to its books, records, accounts and other sources of information, including its facilities, as may be pertinent to ascertain compliance with this part;

(2) Make compliance information available to the public upon request; and

(3) Assist in obtaining other required information that is in the possession of other agencies, institutions, or persons not under the recipient's control. If such party refuses to release that information, the recipient shall inform the OCR and explain its efforts to obtain the information.

(g) *Coordination of compliance effort.* If the recipient employs fifteen (15) or more employees, it shall designate at least one person to coordinate its efforts to comply with its obligations under this part.

(Approved by the Office of Management and Budget under control number 2000–0006)

§ 7.90 Grievance procedures.

(a) *Requirements.* Each recipient shall adopt grievance procedures that assure the prompt and fair resolution of complaints which allege violation of this part.

(b) *Exception.* Recipients with fewer than fifteen (15) full-time employees need not comply with this section unless the OCR finds a violation of this part or determines that creating a grievance procedure will not significantly impair the recipient's ability to provide benefits or services.

§ 7.95 Notice of nondiscrimination.

(a) *Requirements.* A recipient shall provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, or handicap in a program or activity receiving EPA assistance or, in programs covered by section 13, on the basis of sex. Methods of notice must accommodate those with impaired vision or hearing. At a minimum, this notice must be posted in a prominent place in the recipient's offices or facilities. Methods of notice may also include publishing in newspapers and magazines, and placing notices in recipient's internal publications or on recipient's printed letterhead. Where appropriate, such notice must be in a language or languages other than English. The notice must identify the responsible employee designated in accordance with § 7.85.

(b) *Deadline.* Recipients of assistance must provide initial notice by thirty (30) calendar days after award and continuing notice for the duration of EPA assistance.

§ 7.100 Intimidation and retaliation prohibited.

No applicant, recipient, nor other person shall intimidate, threaten, coerce, or discriminate against any individual or group, either:

(a) For the purpose of interfering with any right or privilege guaranteed by the Acts or this part, or

(b) Because the individual has filed a complaint or has testified, assisted or participated in any way in an investigation, proceeding or hearing under this part, or has opposed any practice made unlawful by this regulation.

Subpart E—Agency Compliance Procedures

§ 7.105 General policy.

EPA's Administrator, Director of the Office of Civil Rights, Project Officers and other responsible officials shall seek the cooperation of applicants and recipients in securing compliance with this part, and are available to provide help.

§ 7.110 Preaward compliance.

(a) *Review of compliance information.* Within EPA's application processing period, the OCR will

determine whether the applicant is in compliance with this part and inform the Award Official. This determination will be based on the submissions required by § 7.80 and any other information EPA receives during this time (including complaints) or has on file about the applicant. When the OCR cannot make a determination on the basis of this information, additional information will be requested from the applicant, local government officials, or interested persons or organizations, including handicapped persons or organizations representing such persons. The OCR may also conduct an on-site review only when it has reason to believe discrimination may be occurring in a program or activity which is the subject of the application.

(b) *Voluntary compliance.* If the review indicates noncompliance, an applicant may agree in writing to take the steps the OCR recommends to come into compliance with this part. The OCR must approve the written agreement before any award is made.

(c) *Refusal to comply.* If the applicant refuses to enter into such an agreement, the OCR shall follow the procedure established by paragraph (b) of § 7.130.

§ 7.115 Postaward compliance.

(a) *Periodic review.* The OCR may periodically conduct compliance reviews of any recipient's programs or activities receiving EPA assistance, including the request of data and information, and may conduct on-site reviews when it has reason to believe that discrimination may be occurring in such programs or activities.

(b) *Notice of review.* After selecting a recipient for review or initiating a complaint investigation in accordance with § 7.120, the OCR will inform the recipient of:

(1) The nature of and schedule for review, or investigation; and

(2) Its opportunity, before the determination in paragraph (d) of this section is made, to make a written submission responding to, rebutting, or denying the allegations raised in the review or complaint.

(c) *Postreview notice.* (1) Within 180 calendar days from the start of the compliance review or complaint investigation, the OCR will notify the recipient in writing by certified mail, return receipt requested, of:

(i) Preliminary findings;

(ii) Recommendations, if any, for achieving voluntary compliance; and

(iii) Recipient's right to engage in voluntary compliance negotiations where appropriate.

(2) The OCR will notify the Award Official and the Assistant Attorney General for Civil Rights of the preliminary findings of noncompliance.

(d) *Formal determination of noncompliance.* After receiving the notice of the preliminary finding of noncompliance in paragraph (c) of this section, the recipient may:

(1) Agree to the OCR's recommendations, or

(2) Submit a written response sufficient to demonstrate that the preliminary findings are incorrect, or that compliance may be achieved through steps other than those recommended by OCR.

If the recipient does not take one of these actions within fifty (50) calendar days after receiving this preliminary notice, the OCR shall, within fourteen (14) calendar days, send a formal written determination of noncompliance to the recipient and copies to the Award Official and Assistant Attorney General.

(e) *Voluntary compliance time limits.* The recipient will have ten (10) calendar days from receipt of the formal determination of noncompliance in which to come into voluntary compliance. If the recipient fails to meet this deadline, the OCR must start proceedings under paragraph (b) of § 7.130.

(f) *Form of voluntary compliance agreements.* All agreements to come into voluntary compliance must:

(1) Be in writing;

(2) Set forth the specific steps the recipient has agreed to take, and

(3) Be signed by the Director, OCR or his/her designee and an official with authority to legally bind the recipient.

§ 7.120 Complaint investigations.

The OCR shall promptly investigate all complaints filed under this section unless the complainant and the party complained against agree to a delay pending settlement negotiations.

(a) *Who may file a complaint.* A person who believes that he or she or a specific class of persons has been discriminated against in violation of this part may file a complaint. The complaint may be filed by an authorized representative. A complaint alleging employment discrimination must identify at least one individual aggrieved by such discrimination. Complaints solely alleging employment discrimination against an individual on the basis of race, color, national origin, sex or religion shall be processed under the procedures for complaints of employment discrimination filed against recipients of federal assistance (see 28 CFR part 42, subpart H and 29 CFR part 1691). Complainants are encouraged but not required to make use of any grievance procedure established under § 7.90 before filing a complaint. Filing a complaint through a grievance procedure does not extend the 180 day calendar requirement of paragraph (b)(2 of this section.

(b) *Where, when and how to file complaint.* The complainant may file a complaint at any EPA of-

fice. The complaint may be referred to the region in which the alleged discriminatory acts occurred.

(1) The complaint must be in writing and it must describe the alleged discriminatory acts which violate this part.

(2) The complaint must be filed within 180 calendar days of the alleged discriminatory acts, unless the OCR waives the time limit for good cause. The filing of a grievance with the recipient does not satisfy the requirement that complaints must be filed within 180 days of the alleged discriminatory acts.

(c) *Notification.* The OCR will notify the complainant and the recipient of the agency's receipt of the complaint within five (5) calendar days.

(d) *Complaint processing procedures.* After acknowledging receipt of a complaint, the OCR will immediately initiate complaint processing procedures.

(1) *Preliminary investigation* (i) Within twenty (20) calendar days of acknowledgment of the complaint, the OCR will review the complaint for acceptance, rejection, or referral to the appropriate Federal agency.

(ii) If the complaint is accepted, the OCR will notify the complainant and the Award Official. The OCR will also notify the applicant or recipient complained against of the allegations and give the applicant or recipient opportunity to make a written submission responding to, rebutting, or denying the allegations raised in the complaint.

(iii) The party complained against may send the OCR a response to the notice of complaint within thirty (30) calendar days of receiving it.

(2) *Informal resolution.* (i) OCR shall attempt to resolve complaints informally whenever possible. When a complaint cannot be resolved informally, OCR shall follow the procedures established by paragraphs (c) through (e) of § 7.115.

(e) *Confidentiality.* EPA agrees to keep the complainant's identity confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Ordinarily in complaints of employment discrimination, the name of the complainant will be given to the recipient with the notice of complaint.

(f) [Reserved]

(g) *Dismissal of complaint.* If OCR's investigation reveals no violation of this part, the Director, OCR, will dismiss the complaint and notify the complainant and recipient.

§ 7.125 Coordination with other agencies.

If, in the conduct of a compliance review or an investigation, it becomes evident that another agency has jurisdiction over the subject matter, OCR will cooperate with that agency during the continuation of the review of investigation. EPA will:

(a) Coordinate its efforts with the other agency, and

(b) Ensure that one of the agencies is designated the lead agency for this purpose. When an agency other than EPA serves as the lead agency, any action taken, requirement imposed, or determination made by the lead agency, other than a final determination to terminate funds, shall have the same effect as though such action had been taken by EPA.

§ 7.130 Actions available to EPA to obtain compliance.

(a) General. If compliance with this part cannot be assured by informal means, EPA may terminate or refuse to award or to continue assistance. EPA may also use any other means authorized by law to get compliance, including a referral of the matter to the Department of Justice.

(b) Procedure to deny, annul, suspend or terminate EPA assistance.

(1) *OCR finding.* If OCR determines that an applicant or recipient is not in compliance with this part, and if compliance cannot be achieved voluntarily, OCR shall make a finding of noncompliance. The OCR will notify the applicant or recipient (by registered mail, return receipt requested) of the finding, the action proposed to be taken, and the opportunity for an evidentiary hearing.

(2) *Hearing.* (i) Within 30 days of receipt of the above notice, the applicant or recipient shall file a written answer, under oath or affirmation, and may request a hearing.

(ii) The answer and request for a hearing shall be sent by registered mail, return receipt requested, to the Chief Administrative Law Judge (ALJ) (A–110), United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Upon receipt of a request for a hearing, the ALJ will send the applicant or recipient a copy of the ALJ's procedures. If the recipient does not request a hearing, it shall be deemed to have waived its right to a hearing, and the OCR finding shall be deemed to be the ALJ's determination.

(3) *Final decision and disposition.* (i) The applicant or recipient may, within 30 days of receipt of the ALJ's determination, file with the Administrator its exceptions to that determination. When such exceptions are filed, the Administrator may, within 45 days after the ALJ's determination, serve to the applicant or recipient, a notice that he/she will review the determination. In the absence of either exceptions or notice of review, the ALJ's determination shall constitute the Administrator's final decision.

(ii) If the Administrator reviews the ALJ's determination, all parties shall be given reasonable opportunity to file written statements. A copy of the Administrator's decision will be sent to the applicant or recipient.

(iii) If the Administrator's decision is to deny an application, or annul, suspend or terminate EPA assistance, that decision becomes effective thirty (30) days from the date on which the Administrator submits a full written report of the circumstances and grounds for such action to the Committees of the House and Senate having legislative jurisdiction over the program or activity involved. The decision of the Administrator shall not be subject to further administrative appeal under EPA's General Regulation for Assistance Programs (40 CFR part 30, subpart L).

(4) *Scope of decision.* The denial, annulment, termination or suspension shall be limited to the particular applicant or recipient who was found to have discriminated, and shall be limited in its effect to the particular program or the part of it in which the discrimination was found.

§ 7.135 Procedure for regaining eligibility.

(a) *Requirements.* An applicant or recipient whose assistance has been denied, annulled, terminated, or suspended under this part regains eligibility as soon as it:

(1) Provides reasonable assurance that it is complying and will comply with this part in the future, and

(2) Satisfies the terms and conditions for regaining eligibility that are specified in the denial, annulment, termination or suspension order.

(b) *Procedure.* The applicant or recipient must submit a written request to restore eligibility to the OCR declaring that it has met the requirements set forth in paragraph (a) of this section. Upon determining that these requirements have been met, the OCR must notify the Award Official, and the applicant or recipient that eligibility has been restored.

(c) Rights on denial of restoration of eligibility. If the OCR denies a request to restore eligibility, the applicant or recipient may file a written request for a hearing before the EPA Chief Administrative Law Judge in accordance with paragraph (c) § 7.130, listing the reasons it believes the OCR was in error.

APPENDIX A TO PART 7—EPA ASSISTANCE PROGRAMS AS LISTED IN THE ''CATALOG OF FEDERAL DOMESTIC ASSISTANCE''

1. Assistance provided by the Office of Air, Noise and Radiation under the Clean Air Act of 1977, as amended; Pub. L. 95–95, 42 U.S.C. 7401 *et seq.* (ANR 66.001)

2. Assistance provided by the Office of Air, Noise and Radiation under the Clean Air Act of 1977, as amended; Pub. L. 95–95, 42 U.S.C. 7401 *et seq.* (ANR 66.003)

3. Assistance provided by the Office of Water under the Clean Water Act of 1977, as amended; sections 101(e), 109(b), 201–05, 207, 208(d), 210–12, 215–19, 304(d)(3), 313, 501, 502, 511 and 516(b); Pub. L. 97–117; Pub. L. 95–217; Pub. L. 96–483; 33 U.S.C. 1251 *et seq.* (OW 66.418)

4. Assistance provided by the Office of Water under the Clean Water Act of 1977, as amended; section 106; Pub. L. 95–217; 33 U.S.C. 1251 *et seq.* (OW 66.419)

5. Assistance provided by the Office of Water under the Clean Water Act of 1977, as amended; Pub. L. 95–217; 33 U.S.C. 1251 *et seq.* (OW 66.426)

6. Assistance provided by the Office of Water under the Public Health Service Act, as amended by the Safe Drinking Water Act, Pub. L. 93–523; as amended by Pub. L. 93–190; Pub. L. 96–63; and Pub. L. 93–502. (OW 66.432)

7. Assistance provided by the Office of Water under the Safe Drinking Water Act, Pub. L. 93–523, as amended by Pub. L. 96–63, Pub. L. 95–190, and Pub. L. 96–502. (OW 66.433)

8. Assistance provided by the Office of Water under the Clean Water Act of 1977, section 205(g), as amended by Pub. L. 95–217 and the Federal Water Pollution Control Act, as amended; Pub. L. 97–117; 33 U.S.C. 1251 *et seq.* (OW 66.438)

9. Assistance provided by the Office of Water under the Resource Conservation and Recovery Act of 1976; as amended by the Solid Waste Disposal Act; Pub. L. 94–580; section 3011, 42 U.S.C. 6931, 6947, 6948–49. (OW 66.802).

10. Assistance provided by the Office of Research and Development under the Clean Air Act of 1977, as amended; Pub. L. 95–95; 42 U.S.C. *et seq.*; Clean Water Act of 1977, as amended; Pub. L. 95–217; 33 U.S.C. 1251 *et seq.*, section 8001 of the Solid Water Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976; Pub. L. 94–580; 42 U.S.C. 6901, Public Health Service Act as amended by the Safe Drinking Water Act as amended by Pub. L. 95–190; Federal Insecticide, Fungicide and Rodenticide Act; Pub. L. 95–516; 7 U.S.C. 136 *et seq.*, as amended by Pub. L.'s 94–140 and 95–396; Toxic Substances Control Act; 15 U.S.C. 2609; Pub. L. 94–469. (ORD 66.500)

11. Assistance provided by the Office of Research and Development under the Clean Air Act of 1977, as amended; Pub. L. 95–95; 42 U.S.C. 7401 *et seq.* (ORD 66.501)

12. Assistance provided by the Office of Research and Development under the Federal Insecticide, Fungicide and Rodenticide Act, Pub. L. 95–516, 7 U.S.C. 136 *et seq.*, as amended by Pub. L.'s 94–140 and 95–396. (ORD 66.502)

13. Assistance provided by the Office of Research and Development under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976; 42 U.S.C. 6901, Pub. L. 94–580, section 8001. (ORD 66.504)

14. Assistance provided by the Office of Research and Development under the Clean Water Act of 1977, as amended; Pub. L. 95–217; 33 U.S.C. 1251 *et seq.* (ORD 66.505)

15. Assistance provided by the Office of Research and Development under the Public Health Service Act as

amended by the Safe Drinking Water Act, as amended by Pub. L. 95–190 (ORD 66.506)

16. Assistance provided by the Office of Research and Development under the Toxic Substances Control Act; Pub. L. 94–469; 15 U.S.C. 2609; section 10. (ORD 66.507)

17. Assistance provided by the Office of Administration, including but not limited to: Clean Air Act of 1977, as amended, Pub. L. 95–95; 42 U.S.C. 7401 *et seq.,* Clean Water Act of 1977, as amended; Pub. L. 95–217; 33 U.S.C. 1251 *et seq.;* Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976; 42 U.S.C. 6901; Pub. L. 94–580; Federal Insecticide, Fungicide and Rodenticide Act; Pub. L. 92–516; 7 U.S.C. 136 *et seq.* as amended by Pub. L.'s 94–140 and 95–396; Public Health Service Act, as amended by the Safe Drinking Water Act, as amended by Pub. L. 95–190. (OA 66.600)

18. Assistance provided by the Office of Administration under the Clean Water Act of 1977, as amended; Pub. L. 95–217; section 213; 33 U.S.C. 1251 *et seq.* (OA 66.603)

19. Assistance provided by the Office of Enforcement Counsel under the Federal Insecticide and Rodenticide Act, as amended; Pub. L. 92–516; 7 U.S.C. 136 *et seq.*, as amended by Pub. L. 94–140, section 23(a) and Pub. L. 95–396. (OA 66.700)

20. Assistance provided by the Office of Solid Waste and Emergency Response under the Comprehensive Environmental Responses, Compensation and Liability Act of 1980; Pub. L. 96–510, section 3012, 42 U.S.C. 9601, *et seq.* (OSW—number not to be assigned since Office of Management and Budget does not catalog one-year programs.)

21. Assistance provided by the Office of Water under the Clean Water Act as amended; Pub. L. 97–117, 33 U.S.C. 1313. (OW—66.454)

PART 8—ENVIRONMENTAL IMPACT ASSESSMENT OF NONGOVERNMENTAL ACTIVITIES IN ANTARCTICA

Sec.

AUTHORITY: 16 U.S.C. 2401 *et seq.,* as amended, 16 U.S.C. 2403a.

SOURCE: 62 FR 23545, Apr. 30, 1997, unless otherwise noted.

§ 8.1 Purpose.

(a) This part is issued pursuant to the Antarctic Science, Tourism, and Conservation Act of 1996. As provided in that Act, this part implements the requirements of Article 8 and Annex I to the Protocol on Environmental Protection to the Antarctic Treaty of 1959 and provides for:

(1) the environmental impact assessment of nongovernmental activities, including tourism, for which the United States is required to give advance notice under paragraph 5 of Article VII of the Antarctic Treaty of 1959; and

(2) coordination of the review of information regarding environmental impact assessment received by the United States from other Parties under the Protocol.

(b) The procedures in this part are designed to: Ensure that nongovernmental operators identify and assess the potential impacts of their proposed activities, including tourism, on the Antarctic environment; that operators consider these impacts in deciding whether or how to proceed with proposed activities; and that operators provide environmental documentation pursuant to the Act and Annex I of the Protocol. These procedures are consistent with and implement the environmental impact assessment provisions of Article 8 and Annex I to the Protocol on Environmental Protection to the Antarctic Treaty.

§ 8.2 Applicability and effect.

(a) This part is intended to ensure that potential environmental effects of nongovernmental activities undertaken in Antarctica are appropriately identified and considered by the operator during the planning process and that to the extent practicable, appropriate environmental safeguards which would mitigate or prevent adverse impacts on the Antarctic environment are identified by the operator.

(b) The requirements set forth in this part apply to nongovernmental activities for which the United States is required to give advance notice under paragraph 5 of Article VII of the Antarctic Treaty of 1959: All nongovernmental expeditions to and within Antarctica organized in or proceeding from its territory.

(c) This part does not apply to activities undertaken in the Antarctic Treaty area that are governed by the Convention on the Conservation of Antarctic Marine Living Resources or the Convention for the Conservation of Antarctic Seals. Persons traveling to Antarctica are subject to the requirements of the Marine Mammal Protection Act, 16 U.S.C. 1371 *et seq.*

(d) This part is effective on April 30, 1997. This part will expire upon the earlier of the end of the 1998–99 austral summer season or upon issuance of a final regulation.

§ 8.3 Definitions.

As used in this part:

Act means 16 U.S.C. 2401 *et seq.,* Public Law 104–227, the Antarctic Science, Tourism, and Conservation Act of 1996.

Annex I refers to Annex I, Environmental Impact Assessment, of the Protocol.

Antarctica means the Antarctic Treaty area; i.e., the area south of 60 degrees south latitude.

Antarctic environment means the natural and physical environment of Antarctica and its dependent and associated ecosystems, but excludes social, economic, and other environments.

Antarctic Treaty area means the area south of 60 degrees south latitude.

Antarctic Treaty Consultative Meeting (ATCM) means a meeting of the Parties to the Antarctic Treaty, held pursuant to Article IX(1) of the Treaty.

Comprehensive Environmental Evaluation (CEE) means a study of the reasonably foreseeable potential effects of a proposed activity on the Antarctic environment, prepared in accordance with the provisions of this part and includes all comments received thereon. (See: 40 CFR 8.8.)

Environmental document or environmental documentation (Document) means a preliminary environmental review memorandum, an initial environmental evaluation, or a comprehensive environmental evaluation.

Environmental impact assessment (EIA) means the environmental review process required by the provisions of this part and by Annex I of the Protocol, and includes preparation by the operator and

U.S. government review of an environmental document, and public access to and circulation of environmental documents to other Parties and the Committee on Environmental Protection as required by Annex I of the Protocol.

EPA means the Environmental Protection Agency.

Expedition means any activity undertaken by one or more nongovernmental persons organized within or proceeding from the United States to or within the Antarctic Treaty area for which advance notification is required under Paragraph 5 of Article VII of the Treaty.

Impact means impact on the Antarctic environment and dependent and associated ecosystems.

Initial Environmental Evaluation (IEE) means a study of the reasonably foreseeable potential effects of a proposed activity on the Antarctic environment prepared in accordance with 40 CFR 8.7.

Operator or operators means any person or persons organizing a nongovernmental expedition to or within Antarctica.

Person has the meaning given that term in section 1 of title 1, United States Code, and includes any person subject to the jurisdiction of the United States except that the term does not include any department, agency, or other instrumentality of the Federal Government.

Preliminary environmental review means the environmental review described under that term in 40 CFR 8.6.

Preliminary Environmental Review Memorandum (PERM) means the documentation supporting the conclusion of the preliminary environmental review that the impact of a proposed activity will be less than minor or transitory on the Antarctic environment.

Protocol means the Protocol on Environmental Protection to the Antarctic Treaty, done at Madrid, October 4, 1991, and all annexes thereto which are in force for the United States.

This part means 40 CFR part 8.

§ 8.4 Preparation of environmental documents, generally.

(a) *Basic information requirements.* In addition to the information required pursuant to other sections of this part, all environmental documents shall contain the following:

(1) The name, mailing address, and phone number of the operator;

(2) The anticipated date(s) of departure of each expedition to Antarctica;

(3) An estimate of the number of persons in each expedition;

(4) The means of conveyance of expedition(s) to and within Antarctica;

(5) Estimated length of stay of each expedition in Antarctica;

(6) Information on proposed landing sites in Antarctica; and

(7) Information concerning training of staff, supervision of expedition members, and what other measures, if any, that will be taken to avoid or minimize possible environmental impacts.

(b) *Preparation of an environmental document.* Unless an operator determines and documents that a proposed activity will have less than a minor or transitory impact on the Antarctic environment, the operator will prepare an IEE or CEE in accordance with this part. In making the determination what level of environmental documentation is appropriate, the operator should consider, as applicable, whether and to what degree the proposed activity:

(1) Has the potential to adversely affect the Antarctic environment;

(2) May adversely affect climate or weather patterns;

(3) May adversely affect air or water quality;

(4) May affect atmospheric, terrestrial (including aquatic), glacial, or marine environments;

(5) May detrimentally affect the distribution, abundance, or productivity of species, or populations of species of fauna and flora;

(6) May further jeopardize endangered or threatened species or populations of such species;

(7) May degrade, or pose substantial risk to, areas of biological, scientific, historic, aesthetic, or wilderness significance;

(8) Has highly uncertain environmental effects, or involves unique or unknown environmental risks; or

(9) Together with other activities, the effects of any one of which is individually insignificant, may have at least minor or transitory cumulative environmental effects.

(c) *Type of environmental document.* The type of environmental document required under this part depends upon the nature and intensity of the environmental impacts that could result from the activity under consideration. A PERM must be prepared by the operator to document the conclusion of the operator's preliminary environmental review that the impact of a proposed activity on the Antarctic environment will be less than minor or transitory. (See: 40 CFR 8.6.) An IEE must be prepared by the operator for proposed activities which may have at least (but no more than) a minor or transitory impact on the Antarctic environment. (See: 40 CFR 8.7.) A CEE must be prepared by the operator if an IEE indicates, or if it is otherwise determined, that a proposed activity is likely to have more than a minor or transitory impact on the Antarctic environment (See: 40 CFR 8.8.)

(d) *Incorporation of information and consolidation of environmental documentation* (1) An operator may incorporate material into an environmental document by referring to it in the document when the effect will be to reduce paperwork without impeding the review of the environmental document by EPA and other Federal agencies. The incorporated material shall be cited and its content briefly described. No material may be incorporated by referring to it in the document unless it is reasonably available to the EPA.

(2) Provided that environmental documentation complies with all applicable provisions of Annex I to the Protocol and this part and is appropriate in light of the specific circumstances of the operator's proposed expedition or expeditions, an operator may include more than one proposed expedition within one environmental document and one environmental document may also be used to address expeditions being carried out by more than one operator provided that the environmental document indicates the names of each operator for which the environmental documentation is being submitted pursuant to obligations under this part.

§ 8.5 Submission of environmental documents.

(a) An operator shall submit environmental documentation to the EPA for review. The EPA, in consultation with other interested federal agencies, will carry out a review to determine if the submitted environmental documentation meets the requirements of Article 8 and Annex I of the Protocol and the provisions of this part. The EPA will provide its comments, if any, on the environmental documentation to the operator and will consult with the operator regarding any suggested revisions. If EPA has no comments, or if the documentation is satisfactorily revised in response to EPA's comments, and the operator does not receive a notice from EPA that the environmental documentation does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of this part, the operator will have no further obligations pursuant to the applicable requirements of this part provided that any appropriate measures, which may include monitoring, are put in place to assess and verify the impact of the activity. Alternatively, following final response from the operator, the EPA, in consultation with other federal agencies and with the concurrence of the National Science Foundation, will inform the operator that EPA finds that the environmental documentation does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of this part. If the operator then proceeds with the expedition without fulfilling the requirements of this part, the operator is subject to enforcement proceedings pursuant to sections 7, 8, and 9 of the Antarctic Conservation Act, as amended by the Act; 16 U.S.C. 2407, 2408, 2409, and 45 CFR part 672.

(b) The EPA may waive or modify deadlines pursuant to this part where EPA determines an operator is acting in good faith and that circumstances outside the control of the operator created delays, provided that the environmental documentation fully meets deadlines under the Protocol.

§ 8.6 Preliminary environmental review.

(a) Unless an operator has determined to prepare an IEE or CEE, the operator shall conduct a preliminary environmental review that assesses the potential direct and reasonably foreseeable indirect impacts on the Antarctic environment of the proposed expedition. A Preliminary Environmental Review Memorandum (PERM) shall contain sufficient detail to assess whether the proposed activity may have less than a minor or transitory impact, and shall be submitted to the EPA for review no less than 180 days before the proposed departure of the expedition. The EPA, in consultation with other interested federal agencies, will review the PERM to determine if it is sufficient to demonstrate that the activity will have less than a minor or transitory impact or whether additional environmental documentation, i.e., an IEE or CEE, is required to meet the obligations of Article 8 and Annex I of the Protocol. The EPA will provide its comments to the operator within fifteen (15) days of receipt of the PERM, and the operator shall have seventy-five (75) days to prepare a revised PERM or an IEE, if necessary. Following the final response from the operator, EPA may make a finding that the environmental documentation submitted does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of this part. This finding will be made with the concurrence of the National Science Foundation. If EPA does not provide such notice within thirty (30) days, the operator will be deemed to have met the requirements of this part provided that any required procedures, which may include appropriate monitoring, are put in place to assess and verify the impact of the activity.

(b) If EPA recommends an IEE and one is prepared and submitted within the seventy-five (75) day response period, it will be reviewed under the time frames set out for an IEE in 40 CFR 8.7. If EPA recommends a CEE and one is prepared, it will be reviewed under the time frames set out for a CEE in 40 CFR 8.8.

§ 8.7 Initial environmental evaluation.

(a) *Submission of IEE to the EPA.* Unless a PERM has been submitted pursuant to 40 CFR 8.6

which meets the environmental documentation requirements under Article 8 and Annex I to the Protocol and the provisions of this part or a CEE is being prepared, an IEE shall be submitted by the operator to the EPA no fewer than ninety (90) days before the proposed departure of the expedition.

(b) *Contents*. An IEE shall contain sufficient detail to assess whether a proposed activity may have more than a minor or transitory impact on the Antarctic environment and shall include the following information:

(1) A description of the proposed activity, including its purpose, location, duration, and intensity; and

(2) Consideration of alternatives to the proposed activity and any impacts that the proposed activity may have on the Antarctic environment, including consideration of cumulative impacts in light of existing and known proposed activities.

(c) *Further environmental review*. (1) The EPA, in consultation with other interested federal agencies, will review an IEE to determine whether the IEE meets the requirements under Annex I to the Protocol and the provisions of this part. The EPA will provide its comments to the operator within thirty (30) days of receipt of the IEE, and the operator will have forty-five (45) days to prepare a revised IEE, if necessary. Following the final response from the operator, EPA may make a finding that the documentation submitted does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of this part. This finding will be made with the concurrence of the National Science Foundation. If such a notice is required, EPA will provide it within fifteen (15) days of receiving the final IEE from the operator or, if the operator does not provide a final IEE, within sixty (60) days following EPA's comments on the original IEE. If EPA does not provide notice within these time limits, the operator will be deemed to have met the requirements of this part provided that any required procedures, which may include appropriate monitoring, are put in place to assess and verify the impact of the activity.

(2) If a CEE is required, the operator must adhere to the time limits applicable to such documentation. (See: 40 CFR 8.8.) In this event EPA, at the operator's request, will consult with the operator regarding possible changes in the proposed activity which would allow preparation of an IEE.

§ 8.8 Comprehensive environmental evaluation.

(a) *Preparation of a CEE*. Unless a PERM or an IEE has been submitted and determined to meet the environmental documentation requirements of this part, the operator shall prepare a CEE. A CEE shall contain sufficient information to enable informed consideration of the reasonably foreseeable potential environmental effects of a proposed activity and possible alternatives to that proposed activity. A CEE shall include the following:

(1) A description of the proposed activity, including its purpose, location, duration and intensity, and possible alternatives to the activity, including the alternative of not proceeding, and the consequences of those alternatives;

(2) A description of the initial environmental reference state with which predicted changes are to be compared and a prediction of the future environmental reference state in the absence of the proposed activity;

(3) A description of the methods and data used to forecast the impacts of the proposed activity;

(4) Estimation of the nature, extent, duration and intensity of the likely direct impacts of the proposed activity;

(5) A consideration of possible indirect or second order impacts from the proposed activity;

(6) A consideration of cumulative impacts of the proposed activity in light of existing activities and other known planned activities;

(7) Identification of measures, including monitoring programs, that could be taken to minimize or mitigate impacts of the proposed activity and to detect unforeseen impacts and that could provide early warning of any adverse effects of the activity as well as to deal promptly and effectively with accidents;

(8) Identification of unavoidable impacts of the proposed activity;

(9) Consideration of the effects of the proposed activity on the conduct of scientific research and on other existing uses and values;

(10) An identification of gaps in knowledge and uncertainties encountered in compiling the information required under this section;

(11) A non-technical summary of the information provided under this section; and

(12) The name and address of the person or organization which prepared the CEE and the address to which comments thereon should be directed.

(b) *Submission of Draft CEE to the EPA and Circulation to Other Parties*. (1) For the 1998–1999 season, any operator who plans a nongovernmental expedition which would require a CEE must submit a draft of the CEE by December 1, 1997. Within fifteen (15) days of receipt of the draft CEE, EPA will: send it to the Department of State which will circulate it to all Parties to the Protocol and forward it to the Committee for Environmental Protection established by the Protocol, and publish notice of receipt of the CEE and request for comments on the CEE in the FEDERAL REGISTER, and will provide copies to any person

upon request. The EPA will accept public comments on the CEE for a period of ninety (90) days following notice in the FEDERAL REGISTER. The EPA, in consultation with other interested federal agencies, will evaluate the CEE to determine if the CEE meets the requirements under Article 8 and Annex I to the Protocol and the provisions of this part and will transmit its comments to the operator within 120 days following publication in the FEDERAL REGISTER of the notice of availability of the CEE.

(2) The operator shall send a final CEE to EPA at least seventy-five (75) days before commencement of the proposed activity in the Antarctic Treaty area. The CEE must include (or summarize) any comments on the draft CEE received from EPA, the public, and the Parties, including comments offered at the XXII Antarctic Treaty Consultative Meeting in 1998. Following the final response from the operator, the EPA will inform the operator if EPA, with the concurrence of the National Science Foundation, makes the finding that the environmental documentation submitted does not meet the requirements of Article 8 and Annex I of the Protocol and the provisions of this part. This notification will occur within fifteen (15) days of submittal of the final CEE by the operator if the final CEE is submitted by the operator within the time limits set out in this section. If no final CEE is submitted or the operator fails to meet these time limits, EPA will provide such notification sixty (60) days prior to departure of the expedition. If EPA does not provide such notice, the operator will be deemed to have met the requirements of this part provided that procedures, which include appropriate monitoring, are put in place to assess and verify the impact of the activity. The EPA will transmit the CEE, along with a notice of any decisions by the operator relating thereto, to the Department of State which shall circulate it to all Parties no later than sixty (60) days before commencement of the proposed activity in the Antarctic Treaty area. The EPA will also publish a notice of availability of the final CEE in the FEDERAL REGISTER.

(3) No final decision shall be taken to proceed with any activity for which a CEE is prepared unless there has been an opportunity for consideration of the draft CEE by the Antarctic Treaty Consultative Meeting on the advice of the Committee for Environmental Protection, provided that no expedition need be delayed through the operation of paragraph 5 of Article 3 to Annex I of the Protocol for longer than 15 months from the date of circulation of the draft CEE.

(c) *Decisions based on CEE*. The decision to proceed, based on environmental documentation that meets the requirements under Article 8 and Annex I to the Protocol and the provisions of this part, rests with the operator. Any decision by an operator on whether to proceed with or modify a proposed activity for which a CEE was required shall be based on the CEE and other relevant considerations.

§ 8.9 Measures to assess and verify environmental impacts.

(a) The operator shall conduct appropriate monitoring of key environmental indicators as proposed in the CEE to assess and verify the potential environmental impacts of activities which are the subject of a CEE. The operator may also need to carry out monitoring in order to assess and verify the impact of an activity for which an IEE has been prepared.

(b) All proposed activities for which an IEE or CEE has been prepared shall include procedures designed to provide a regular and verifiable record of the impacts of these activities, in order, *inter alia*, to:

(1) Enable assessments to be made of the extent to which such impacts are consistent with the Protocol; and

(2) Provide information useful for minimizing and mitigating those impacts, and, where appropriate, information on the need for suspension, cancellation, or modification of the activity.

§ 8.10 Cases of emergency.

This part shall not apply to activities taken in cases of emergency relating to the safety of human life or of ships, aircraft, equipment and facilities of high value, or the protection of the environment, which require an activity to be undertaken without completion of the procedures set out in this part. Notice of any such activities which would have otherwise required the preparation of a CEE shall be provided within fifteen (15) days to the Department of State, as provided below, for circulation to all Parties to the Protocol and to the Committee on Environmental Protection, and a full explanation of the activities carried out shall be provided within forty-five (45) days of those activities. Notification shall be provided to: The Director, The Office of Oceans Affairs, OES/OA, Room 5805, Department of State, 2201 C Street, NW, Washington, DC 20520–7818.

§ 8.11 Prohibited acts, enforcement and penalties.

(a) It shall be unlawful for any operator to violate this part.

(b) An operator who violates any of this part is subject to enforcement, which may include civil and criminal enforcement proceedings, and penalties, pursuant to sections 7, 8, and 9 of the Antarctic Conservation Act, as amended by the Act;

16 U.S.C. 2407, 2408, 2409, and 45 CFR part 672.

§ 8.12 Coordination of reviews from other Parties.

(a) Upon receipt of a draft CEE from another Party, the Department of State shall publish notice in the FEDERAL REGISTER and shall circulate a copy of the CEE to all interested federal agencies. The Department of State shall coordinate responses from federal agencies to the CEE and shall transmit the coordinated response to the Party which has circulated the CEE. The Department of State shall make a copy of the CEE available upon request to the public.

(b) Upon receipt of the annual list of IEEs from another Party prepared in accordance with Article 2 of Annex I and any decisions taken in consequence thereof, the Department of State shall circulate a copy to all interested federal agencies. The Department of State shall make a copy of the list of IEEs prepared in accordance with Article 2 and any decisions taken in consequence thereof available upon request to the public.

(c) Upon receipt of a description of appropriate national procedures for environmental impact statements from another Party, the Department of State shall circulate a copy to all interested federal agencies. The Department of State shall make a copy of these descriptions available upon request to the public.

(d) Upon receipt from another Party of significant information obtained, and any action taken in consequence therefrom from procedures put in place with regard to monitoring pursuant to Articles 2(2) and 5 of Annex I to the Protocol, the Department of State shall circulate a copy to all interested federal agencies. The Department of State shall make a copy of this information available upon request to the public.

(e) Upon receipt from another Party of a final CEE, the Department of State shall circulate a copy to all interested federal agencies. The Department of State shall make a copy available upon request to the public.

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

AUTHORITY: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

§ 9.1 OMB approvals under the Paperwork Reduction Act.

This part consolidates the display of control numbers assigned to collections of information in certain EPA regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This part fulfills the requirements of section 3507(f) of the PRA.

40 CFR citation	OMB control No.
Public Information	
Part 2, subpart B	2050–0143
General Regulation for Assistance Programs for Other than State and Local Governments	
30.400	2030–0020
30.500	2030–0020
30.501	2030–0020
30.503	2030–0020
30.505	2030–0020
30.510	2030–0020
30.520	2030–0020
30.530	2030–0020
30.531	2030–0020
30.532	2030–0020
30.535	2030–0020
30.1002	2030–0020
30.1003	2030–0020
30.1200	2030–0020
Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments	
31.10	2030–0020
31.20–31.21	2030–0020
31.31–31.32	2030–0020
31.36(g)–31.36(h)	2030–0020
31.40	2030–0020
31.42	2030–0020
31.6	2030–0020
Procurement Under Assistance Agreements	
33.110	2030–0003
33.211	2030–0003
State and Local Assistance	
35.2015	2040–0027
35.2025	2040–0027
35.2034	2040–0027
35.2040	2040–0027
35.2105–35.2107	2040–0027
35.2110	2040–0027
35.2114	2040–0027
35.2118	2040–0027
35.2120	2040–0027
35.2127	2040–0027
35.2130	2040–0027
35.2140	2040–0027
35.2211–35.2212	2040–0027
35.2215–35.2216	2040–0027
35.2218	2040–0027
35.3010	2040–0095
35.3030	2040–0095
35.3130	2040–0118
35.3135	2040–0118
35.3140	2040–0118
35.3145	2040–0118
35.3150	2040–0118
35.3155	2040–0118
35.3160	2040–0118
35.3165	2040–0118
35.3170	2040–0118
35.6055(a)(2)	2010–0020
35.6055(b)(1)	2010–0020
35.6055(b)(2)(i)–(ii)	2010–0020
35.6105(a)(2)(i)–(v), (vii)	2010–0020
35.6110(b)(2)	2010–0020
35.6120	2010–0020
35.6145	2010–0020
35.6155(a), (c)	2010–0020
35.6230(a), (c)	2010–0020
35.6300(a)(3)	2010–0020
35.6315(c)	2010–0020
35.6320	2010–0020
35.6340(a)	2010–0020
35.6350	2010–0020
35.6500	2010–0020
35.6550(a)(1)(ii)	2010–0020
35.6550(b)(1)(iii)	2010–0020
35.6550(b)(2)(i)	2010–0020
35.6585	2010–0020
35.6595(a)	2010–0020
35.6600(a)	2010–0020
35.6650	2010–0020
35.6655	2010–0020
35.6660	2010–0020
35.6665(a)	2010–0020
35.6700	2010–0020
35.6705	2010–0020
35.6710	2010–0020
35.6805	2010–0020
35.6815 (a), (d), (e)	2010–0020
35.9000–35.9070	2040–0138
Requirements for Preparation, Adoption, and Submittal of Implementation Plans	
51.160–51.166	2060–0003
51.321–51.323	2060–0088
51.353–51.354	2060–0252
51.365–51.366	2060–0252
51.370–51.371	2060–0252
51.850–51.860	2060–0279
Approval and Promulgation of Implementation Plans	
52.21	2060–0003
52.741	2060–0203

40 CFR citation	OMB control No.
Outer Continental Shelf Air Regulations	
55.4–55.8	2060–0249
55.11–55.14	2060–0249
Ambient Air Quality Surveillance	
58.11–58.14	2060–0084
58.20–58.23	2060–0084
58.25–58.28	2060–0084
58.30–58.31	2060–0084
58.33	2060–0084
58.35	2060–0084
58.40–58.41	2060–0084
58.43	2060–0084
58.45	2060–0084
58.50	2060–0084
Standards of Performance for New Stationary Sources [1]	
60.7(d)	2060–0207
60.45–60.47	2060–0026
60.46a–60.49a	2060–0023
60.40b	2060–0072
60.42b	2060–0072
60.44b–60.49b	2060–0072
60.42c	2060–0202
60.44c–60.48c	2060–0202
60.53–60.54	2060–0040
60.50a	2060–0210
60.56a–60.59a	2060–0210
60.63–60.65	2060–0025
60.73–60.74	2060–0019
60.84–60.85	2060–0041
60.93	2060–0083
60.104–60.108	2060–0022
60.113a–60.115a	2060–0121
60.113b–60.116b	2060–0074
60.123	2060–0080
60.133	2060–0110
60.142–60.144	2060–0029
60.143a–60.145a	2060–0029
60.153–60.155	2060–0035
60.192(b)	2060–0031
60.194–60.195	2060–0031
60.203–60.204	2060–0037
60.213–60.214	2060–0037
60.223–60.224	2060–0037
60.233–60.234	2060–0037
60.243–60.244	2060–0037
60.253–60.254	2060–0122
60.273–60.276	2060–0038
60.273a–60.276a	2060–0038
60.284–60.286	2060–0021
60.292–60.293	2060–0054
60.296	2060–0054
60.303	2060–0082
60.310	2060–0106
60.313–60.316	2060–0106
60.334–60.335	2060–0028
60.343–60.344	2060–0063
60.373–60.374	2060–0081
60.384–60.386	2060–0016
60.393–60.396	2060–0034
60.398	2060–0034
60.403–60.404	2060–0111
60.433–60.435	2060–0105
60.443–60.447	2060–0004
60.453–60.456	2060–0108
60.463–60.466	2060–0107
60.473–60.474	2060–0002
60.482–2	2060–0012
60.482–3	2060–0012
60.482–4	2060–0012
60.482–7	2060–0012
60.482–8	2060–0012
60.482–10	2060–0012
60.483–1	2060–0012
60.483–2	2060–0012
60.484–60.487	2060–0012
60.493–60.496	2060–0001
60.502–60.503	2060–0006
60.505	2060–0006
60.530–60.536	2060–0161
60.537 (a)(1)–(2), (a)(4)–(5), (b)–(i)	2060–0161
60.538–60.539	2060–0161
60.543 (b)(2)–(4), (c)–(n)	2060–0156
60.544	2060–0156
60.545 (a)–(d), (f)	2060–0156
60.546 (a)–(e), (f)(4)–(6), (g)–(j)	2060–0156
60.547	2060–0156
60.562–1	2060–0145
60.562–2	2060–0145
60.563–60.565	2060–0145
60.580	2060–0073
60.583–60.585	2060–0073
60.592–60.593	2060–0067
60.603–60.604	2060–0059
60.613–60.615	2060–0197
60.622	2060–0079
60.624–60.625	2060–0079
60.632–60.636	2060–0120
60.640	2060–0120
60.642–60.644	2060–0120
60.646–60.647	2060–0120
60.663–60.665	2060–0197
60.670	2060–0050
60.672	2060–0050
60.674–60.676	2060–0050
60.683–60.685	2060–0114
60.692–1	2060–0172
60.692–2	2060–0172
60.692–3	2060–0172
60.692–4	2060–0172
60.692–5	2060–0172
60.693–1	2060–0172
60.693–2	2060–0172
60.695–60.698	2060–0172
60.703–60.705	2060–0269
60.710	2060–0171
60.713–60.717	2060–0171
60.722–60.725	2060–0162
60.734–60.736	2060–0251
60.740	2060–0181
60.743–60.747	2060–0181
National Emission Standards for Hazardous Air Pollutants [2]	
61.24–61.25	2060–0191
61.32–61.34	2060–0092
61.53–61.55	2060–0097
61.65(b)–(d)	2060–0071
61.67–61.71	2060–0071
61.93–61.95	2060–0191
61.103–61.105	2060–0191
61.107	2060–0191
61.123–61.124	2060–0191
61.126	2060–0191
61.132–61.133	2060–0185
61.135–61.139	2060–0185
61.142	2060–0101

40 CFR citation	OMB control No.
61.144–61.147	2060–0101
61.149	2060–0101
61.150–61.155	2060–0101
61.163–61.165	2060–0043
61.203	2060–0191
61.206–61.209	2060–0191
61.223–61.224	2060–0191
61.242–1	2060–0068
61.242–2	2060–0068
61.242–3	2060–0068
61.242–4	2060–0068
61.242–7	2060–0068
61.242–8	2060–0068
61.242–10	2060–0068
61.242–11	2060–0068
61.243–1	2060–0068
61.243–2	2060–0068
61.244–61.247	2060–0068
61.253–61.255	2060–0191
61.271–61.276	2060–0185
61.300	2060–0182
61.302–61.305	2060–0182
61.342	2060–0183
61.344–61.349	2060–0183
61.354–61.357	2060–0183
National Emission Standards for Hazardous Air Pollutants for Source Categories [3]	
63.5(d)	2060–0330
63.52–63.56	2060–0266
63.72	2060–0222
63.74–63.79	2060–0222
63.91–63.96	2060–0264
63.103	2060–0282
63.105	2060–0282
63.117–63.118	2060–0282
63.122–63.123	2060–0282
63.129–63.130	2060–0282
63.146–63.148	2060–0282
63.151–63.152	2060–0282
63.181–63.182	2060–0282
63.302–63.311	2060–0253
63.322–63.325	2060–0234
63.345–63.347	2060–0327
63.363–63.367	2060–0283
63.403–63.406	2060–0268
63.420	2060–0325
63.422–63.428	2060–0325
63.467–63.468	2060–0273
63.525–63.528	2060–0290
63.548–63.550	2060–0296
63.563–63.567	2060–0289
63.653	2060–0340
63.654	2060–0340
63.703–63.707	2060–0326
63.752–63.753	2060–0341
63.787 (a)–(b)	2060–0330
63.788 (a)–(c)	2060–0330
63.806–63.807	2060–0324
63.829–63.830	2060–0335
63.1311	2060–0351
63.1314	2060–0351
63.1315	2060–0351
63.1319	2060–0351
63.1320	2060–0351
63.1325–63.1332	2060–0351
63.1335	2060–0351

40 CFR citation	OMB control No.
Chemical Accident Prevention Provisions	
68.120 (a), (e), and (g)	2050–0127
State Operating Permit Programs	
70.3–70.11	2060–0243
Federal Operating Permit Programs	
71.5	2060–0336
71.6(a),(c),(d),(g)	2060–0336
71.7	2060–0336
71.9(e)–(j)	2060–0336
71.24–71.26	2060–0276
Permits Regulation	
72.7–72.10	2060–0258
72.20–72.25	2060–0258
72.30–72.33	2060–0258
72.40–72.44	2060–0258
72.50–72.51	2060–0258
72.60–72.69	2060–0258
72.70–72.74	2060–0258
72.80–72.85	2060–0258
72.90–72.96	2060–0258
Allowance System	
73.10–73.13	2060–0261
73.16	2060–0261
73.18–73.21	2060–0261
73.30–73.38	2060–0258
73.50–73.53	2060–0258
73.70–73.77	2060–0221
73.80–73.86	2060–0258
73.90	2060–0258
Sulfur Dioxide Opt-ins	
74.12	2060–0258
74.14	2060–0258
74.16	2060–0258
74.18	2060–0258
74.20	2060–0258
74.22	2060–0258
74.24–74.25	2060–0258
74.41	2060–0258
74.43–74.44	2060–0258
74.46–74.47	2060–0258
74.60–74.64	2060–0258
Continuous Emission Monitoring	
75.4–75.5	2060–0258
75.10–75.18	2060–0258
75.20–75.24	2060–0258
75.30–75.34	2060–0258
75.40–75.48	2060–0258
75.50–75.52	2060–0258
75.53–75.56	2060–0258
75.60–75.67	2060–0258
Nitrogen Oxides Emission Reduction Program	
76.8–76.15	2060–0258
Excess Emissions	
77.3–77.6	2060–0258

40 CFR citation	OMB control No.
Appeal Procedures for Acid Rain Program	
78.1–78.20	2060–0258
Registration of Fuels and Fuel Additives	
79.10–79.11	2060–0150
79.20–79.21	2060–0150
79.31–79.33	2060–0150
79.51(a), (c), (d), (g), (h)	2060–0150
79.52	2060–0150
79.57(a)(5)	2060–0150
79.57(f)(5)	2060–0150
79.58(e)	2060–0150
79.59(b)–(d)	2060–0150
79.60	2060–0150
79.61(e)	2060–0150
79.62–79.68	2060–0297
Regulation of Fuels and Fuel Additives	
80.20	2060–0066
80.25	2060–0066
80.27	2060–0178
80.29(c)	2060–0308
80.141(c)–(f)	2060–0275
80.157	2060–0275
80.158	2060–0275
80.160	2060–0275
80.161	2060–0275
80.162	2060–0275
80.163(d)(3)	2060–0275
80.164	2060–0275
80.165	2060–0275
80.166	2060–0275
80.167(d)	2060–0275
80.170	2060–0275
80.171	2060–0275
80.173	2060–0275
Protection of Stratospheric Ozone	
82.9–82.13	2060–0170
82.21	2060–0170
82.36	2060–0247
82.38	2060–0247
82.40	2060–0247
82.42	2060–0247
82.122	2060–0259
82.156	2060–0256
82.160–82.162	2060–0256
82.164	2060–0256
82.166	2060–0256
82.176(a)	2060–0226
82.176(c)(3)	2060–0226
82.178	2060–0226
82.180	2060–0350
82.180(a)(5)	2060–0226
82.180(b)(3)	2060–0226
82.184(c)	2060–0226
82.184(e)	2060–0226
Control of Air Pollution From Motor Vehicles and Motor Vehicle Engines	
85.503	2060–0104
85.505	2060–0104
85.1503–85.1507	2060–0095
85.1509–85.1510	2060–0095
85.1511(b)–(d), (f)	2060–0095
85.1511(b)(3)	2060–0007
85.1512	2060–0095
85.1514–85.1515	2060–0095
85.1703	2060–0124
85.1705–85.1706	2060–0007
85.1901–85.1909	2060–0048
85.2112–85.2123	2060–0065
85.2114	2060–0016
85.2115	2060–0016
Control of Air Pollution From New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures	
86.079–31–86.079–33	2060–0104
86.079–36	2060–0104
86.079–39	2060–0104
86.080–12	2060–0104
86.082–34	2060–0104
86.085–13	2060–0104
86.085–37	2060–0104
86.087–38	2060–0104
86.090–14	2060–0104
86.090–21	2060–0104
86.090–25	2060–0104
86.090–26	2060–0104
86.090–27	2060–0104
86.091–7	2060–0104
86.091–15	2060–0104
86.091–21	2060–0104
86.091–23	2060–0104
86.091–28	2060–0104
86.091–30	2060–0104
86.092–14	2060–0104
86.092–15	2060–0104
86.092–23	2060–0104
86.092–24	2060–0104
86.092–26	2060–0104
86.092–35	2060–0104
86.094–7–86.094–9	2060–0104
86.094–15–86.094–16	2060–0104
86.094–17	2060–0104
86.094–18	2060–0104
86.094–21	2060–0104
86.094–23	2060–0104
86.094–24(a)(3)(iii)	2060–0314
86.094–25	2060–0104
86.094–30	2060–0104
86.094–35	2060–0104
86.095–14	2060–0104
86.095–23	2060–0104
86.095–24	2060–0104
86.095–26	2060–0104
86.095–30	2060–0104
86.095–35	2060–0104
86.094–38	2060–0104
86.096–7	2060–0104
86.096–8	2060–0104
86.096–9	2060–0104
86.096–10	2060–0104
86.096–14	2060–0104
86.096–21	2060–0104
86.096–23	2060–0104
86.096–24	2060–0104
86.096–26	2060–0104
86.096–30	2060–0104
86.096–35	2060–0104
86.097–9	2060–0104
86.098–23	2060–0104
86.098–28	2060–0104
86.099–8	2060–0104
86.099–9	2060–0104

40 CFR citation	OMB control No.
86.099–10	2060–0104
86.111–94	2060–0104
86.113–82	2060–0104
86.113–87	2060–0104
86.113–90	2060–0104
86.113–91	2060–0104
86.113–94	2060–0104
86.135–82	2060–0104
86.135–90	2060–0104
86.135–94	2060–0104
86.142–90	2060–0104
86.144–90	2060–0104
86.144–94	2060–0104
86.150–98	2060–0104
86.336–79	2060–0104
86.337–79	2060–0104
86.412–78	2060–0104
86.414–78	2060–0104
86.415–78	2060–0104
86.416–80	2060–0104
86.421–78	2060–0104
86.423–78	2060–0104
86.427–78	2060–0104
86.428–80	2060–0104
86.429–78	2060–0104
86.431–78	2060–0104
86.432–78	2060–0104
86.434–78	2060–0104
86.435–78	2060–0104
86.436–78	2060–0104
86.437–78	2060–0104
86.438–78	2060–0104
86.439–78	2060–0104
86.440–78	2060–0104
86.513–94	2060–0104
86.537–90	2060–0104
86.542–90	2060–0104
86.603–88	2060–0064
86.604–84	2060–0064
86.605–88	2060–0064
86.606–84	2060–0064
86.607–84	2060–0064
86.608–88	2060–0064
86.608–90	2060–0064
86.608–96	2060–0104
86.609–84	2060–0064
86.609–96	2060–0104
86.612–84	2060–0064
86.614–84	2060–0064
86.615–84	2060–0064
86.709–94	2060–0104
86.709–99	2060–0104
86.884–5	2060–0104
86.884–7	2060–0104
86.884–9	2060–0104
86.884–10	2060–0104
86.884–12	2060–0104
86.884–13	2060–0104
86.1003–90	2060–0064
86.1004–84	2060–0064
86.1005–90	2060–0064
86.1006–84	2060–0064
86.1007–84	2060–0064
86.1008–90	2060–0064
86.1008–96	2060–0104
86.1009–84	2060–0064
86.1009–96	2060–0104
86.1012–84	2060–0064
86.1014–84	2060–0064
86.1015–87	2060–0064
86.1106–87	2060–0132
86.1108–87	2060–0132
86.1110–87	2060–0132
86.1111–87	2060–0104
86.1112–87–86.1115–87	2060–0132
86.1213–85	2060–0104
86.1213–87	2060–0104
86.1242–85	2060–0104
86.1242–90	2060–0104
86.1308–84	2060–0104
86.1310–90	2060–0104
86.1311–94	2060–0104
86.1313–84	2060–0104
86.1313–87	2060–0104
86.1313–90	2060–0104
86.1313–91	2060–0104
86.1313–94	2060–0104
86.1314–84	2060–0104
86.1316–84	2060–0104
86.1316–90	2060–0104
86.1319–84	2060–0104
86.1319–90	2060–0104
86.1321–84	2060–0104
86.1321–90	2060–0104
86.1323–84	2060–0104
86.1327–84	2060–0104
86.1327–88	2060–0104
86.1327–90	2060–0104
86.1332–84	2060–0104
86.1332–90	2060–0104
86.1334–84	2060–0104
86.1335–90	2060–0104
86.1336–84	2060–0104
86.1340–84	2060–0104
86.1340–90	2060–0104
86.1341–90	2060–0104
86.1342–90	2060–0104
86.1344–94	2060–0104
86.1413	2060–0104
86.1427	2060–0104
86.1432	2060–0104
86.1434	2060–0104
86.1437	2060–0104
86.1442	2060–0104
86.1542–84	2060–0104
86.1544–84	2060–0104
86.2500	2060–0104

Clean–Fuel Vehicles

88.104–94 (a), (c), (e), (f), (g), (h), (i), (j), (k)	2060–0104
88.105–94	2060–0104
88.204–94(b)(1)	2060–0314
88.204–94(c)	2060–0314
88.305–94	2060–0104
88.306–94(a), (b) introductory text	2060–0104
88.306–94(b)(1)	2060–0314
88.306–94(b)(2)	2060–0314
88.306–94(b)(4)	2060–0314
88.306–94(c)	2060–0314
88.306–94(f)	2060–0314

Control of Emissions From New and In-Use Nonroad Engines

89.1	2060–0124
89.2	2060–0124
89.114–96–89.120–96	2060–0287
89.122–96–89.127–96	2060–0287
89.129–96	2060–0287
89.203–96–89.207–96	2060–0287
89.209–96–89.211–96	2060–0287

40 CFR citation	OMB control No.
89.304–96–89.331–96	2060–0287
89.404–96–89.424–96	2060–0287
89.505–89.905	2060–0064
89.511	2060–0064
89.512	2060–0064
89.603–89.605	2060–0095
89.607–89.610	2060–0095
89.611	2060–0007, 2060–0095
89.612	2060–0095
89.801	2060–0048
89.803	2060–0048
89.903	2060–0048
89.905	2060–0007
89.906	2060–0007
Control of Emissions From New and In-use Nonroad Engines	
90.107–90.108	2060–0338
90.113	2060–0338
90.115–90.124	2060–0338
90.126	2060–0338
90.304–90.329	2060–0338
90.404–90.427	2060–0338
90.505–90.509	2060–0295
90.511–90.512	2060–0295
90.604	2060–0294
90.611–90.613	2060–0294
90.800	2060–0048
90.802–90.804	2060–0048
90.806	2060–0048
90.903	2060–0124
90.905–90.906	2060–0007
Determining Conformity of Federal Actions to State or Federal Implementation Plans	
93.150–93.160	2060–0279
Mandatory Patent Licenses	
95.2	2060–0307
Oil Pollution Prevention	
112.1–112.7	2050–0021
Oil Pollution Prevention; Non-Transportation-Related Onshore Facilities	
112.20	2050–0135
Designation, Reportable Quantities, and Notification for Hazardous Substances	
116.4	2050–0046
117.3	2050–0046
117.21	2050–0046
EPA Administered Permit Programs: The National Pollutant Discharge Elimination System	
122.21(f)–(l)	2040–0086, 2040–0170
122.21(j)(4)	2040–0150
122.21(m)–(p)	2040–0068, 2040–0170
122.26(c), (d)	2040–0086
122.41(h)	2040–0068, 2040–0170
122.41(j)	2040–0009, 2040–0110, 2040–0170
122.41(l)	2040–0110, 2040–0068, 2040–0170
122.42(c)	2040–0086
122.42(a), (b), (l)	2040–0068, 2040–0170
122.44(g), (i)	2040–0004, 2040–0170
122.44(r)	2040–0180
122.45(b)	2040–0004, 2040–0110
122.45(b)(4)	2040–0068
122.47(a)	2040–0110, 2040–0170
122.47(b)	2040–0110, 2040–0068, 2040–0170
122.48	2040–0004, 2040–0170
122.62(a)	2040–0068, 2040–0170
122.63	2040–0068, 2040–0170
State Permit Requirements	
123.21–123.24	2040–0057, 2040–0170
123.25	2040–0004, 2040–0110, 2040–0170, 2040–0180
123.26–123.29	2040–0057, 2040–0170
123.43	2040–0057, 2040–0170
123.44	2040–0057, 2040–0170, 2040–0180
123.45	2040–0057, 2040–0170
123.62	2040–0057, 2040–0170, 2040–0180
123.63	2040–0057, 2040–0170, 2040–0180
123.64	2040–0057, 2040–0170
Procedures for Decisionmaking	
124.5	2040–0068
124.31	2050–0149
124.32	2050–0149
124.33	2050–0149
124.53–124.54	2040–0057
Criteria and Standards for the National Pollutant Discharge Elimination System	
125.59–125.67, and Appendix A and B	2040–0088
Water Quality Planning and Management	
130.6–130.10	2040–0071
130.15	2040–0071

40 CFR citation	OMB control No.
Water Quality Standards Regulation	
131.1	2040–0180
131.5	2040–0180
131.6–131.8	2040–0049
131.20	2040–0049
131.21	2040–0049, 2040–0180
131.22	2040–0049
131.31–131.36	2040–0049
Water Quality Guidance for the Great Lakes System	
132.1	2040–0180
132.2	2040–0180
132.3	2040–0180
132.4	2040–0180
132.5	2040–0180
Part 132, Appendix A	2040–0180
Part 132, Appendix B	2040–0180
Part 132, Appendix C	2040–0180
Part 132, Appendix D	2040–0180
Part 132, Appendix E	2040–0180
Part 132, Appendix F	2040–0180
National Primary Drinking Water Regulations	
141.2	2040–0090
141.4	2040–0090
141.11–141.15	2040–0090
141.21–141.22	2040–0090
141.23–141.24	2040–0090
141.25–141.30	2040–0090
141.31–141.32	2040–0090
141.33–141.35	2040–0090
141.40	2040–0090
141.41–141.43	2040–0090
141.50–141.52	2040–0090
141.60–141.63	2040–0090
141.70–141.75	2040–0090
141.80–141.91	2040–0090
141.100	2040–0090
141.110–141.111	2040–0090
141.140–141.144	2040–0183
National Primary Drinking Water Regulations Implementation	
142.2–142.3	2040–0090
142.10–142.15	2040–0090
142.16	2060–0090
142.17–142.24	2040–0090
142.56–142.57	2040–0090
142.60–142.61	2040–0090
142.62	2040–0090
142.63–142.64	2040–0090
142.70–142.78	2040–0090
142.81–142.81	2040–0090
Underground Injection Control Program	
144.8	2040–0042
144.12	2040–0042
144.14–144.15	2040–0042
144.23	2040–0042
144.25–144.28	2040–0042
144.31–144.33	2040–0042
144.38	2040–0042
144.41	2040–0042
144.51–144.55	2040–0042
144.62–144.66	2040–0042
144.70	2040–0042
Underground Injection Control Program: Criteria and Standards	
146.10	2040–0042
146.12–146.15	2040–0042
146.22–146.25	2040–0042
146.32–146.35	2040–0042
146.52	2040–0042
146.64	2040–0042
146.66–146.73	2040–0042
State Underground Injection Control Programs	
147.104	2040–0042
147.304–147.305	2040–0042
147.504	2040–0042
147.754	2040–0042
147.904	2040–0042
147.1154	2040–0042
147.1354–147.1355	2040–0042
147.1454	2040–0042
147.1654	2040–0042
147.1954	2040–0042
147.2103–147.2104	2040–0042
147.2154	2040–0042
147.2402	2040–0042
147.2905	2040–0042
147.2912–147.2913	2040–0042
147.2915	2040–0042
147.2918	2040–0042
147.2920–147.2926	2040–0042
147.2929	2040–0042
147.3002–147.3003	2040–0042
147.3006–147.3007	2040–0042
147.3011	2040–0042
147.3014–147.3016	2040–0042
147.3101	2040–0042
147.3104–147.3105	2040–0042
147.3107–147.3109	2040–0042
Hazardous Waste Injection Restrictions	
148.5	2040–0042
148.20–148.23	2040–0042
Pesticide Registration and Classification Procedures	
152.46	2070–0060
152.50	2070–0024, 2070–0040, 2070–0060
152.80	2070–0040, 2070–0060
152.85	2070–0040, 2070–0060
152.98	2070–0060
152.122	2070–0060
152.132	2070–0044
152.135	2070–0060
152.164	2070–0060
152.404	2070–0040, 2070–0060
152.406	2070–0040, 2070–0060
152.412	2070–0040, 2070–0060
152.414	2070–0040, 2070–0060

40 CFR citation	OMB control No.
Registration Standards	
155.30	2070–0057
Labeling Requirements for Pesticides and Devices	
156.36	2070–0052
156.206	2070–0060
156.208	2070–0060
156.210	2070–0060
156.212	2070–0060
Packaging Requirements for Pesticides and Devices	
157.22	2070–0052
157.24	2070–0052
157.34	2070–0052
157.36	2070–0052
Data Requirements for Registration	
158.30	2070–0040, 2070–0057, 2070–0060, 2070–0107
158.32	2070–0040, 2070–0053, 2070–0057, 2070–0060, 2070–0107
158.34	2070–0040, 2070–0057, 2070–0060, 2070–0107
158.45	2070–0040, 2070–0057, 2070–0060, 2070–0107
158.75	2070–0040, 2070–0057, 2070–0060, 2070–0107
158.101	2070–0040, 2070–0057, 2070–0060, 2070–0107
158.155	2070–0040, 2070–0057, 2070–0060, 2070–0107
158.160	2070–0040, 2070–0057, 2070–0060, 2070–0107
158.162	2070–0040, 2070–0057, 2070–0060, 2070–0107
158.165	2070–0040, 2070–0057, 2070–0060, 2070–0107
158.167	2070–0040, 2070–0057, 2070–0060, 2070–0107
158.170	2070–0040, 2070–0057, 2070–0060, 2070–0107
158.175	2070–0040, 2070–0057, 2070–0060, 2070–0107
158.180	2070–0040, 2070–0057, 2070–0060, 2070–0107
158.190	2070–0040, 2070–0057, 2070–0060, 2070–0107
158.240	2070–0057, 2070–0060, 2070–0107
158.290	2070–0057, 2070–0060, 2070–0107
158.340	2070–0057, 2070–0060, 2070–0107
158.390	2070–0057, 2070–0060, 2070–0107
158.440	2070–0057, 2070–0060, 2070–0107
158.490	2070–0057, 2070–0060, 2070–0107
158.540	2070–0057, 2070–0060, 2070–0107
158.590	2070–0057, 2070–0060, 2070–0107
158.640	2070–0057, 2070–0060, 2070–0107
158.690	2070–0057, 2070–0060, 2070–0107
158.740	2070–0057, 2070–0060, 2070–0107
Good Laboratory Practice Standards	
Part 160	2070–0024, 2070–0032, 2070–0040, 2070–0055, 2070–0057, 2070–0060, 2070–0107
State Registration of Pesticide Products	
162.153	2070–0055
Certification of Usefulness of Pesticide Chemicals	
163.4	2070–0060, 2070–0024
163.5	2070–0060, 2070–0024
Exemption of Federal and State Agencies for Use of Pesticides Under Emergency Conditions	
166.20	2070–0032

40 CFR citation	OMB control No.
166.32	2070–0032
166.43	2070–0032
166.50	2070–0032
Registration of Pesticide and Active Ingredient Producing Establishments, Submission of Pesticide Reports	
Part 167	2070–0078
Statements of Enforcement Policies and Interpretations	
168.65	2070–0027
168.75	2070–0027
168.85	2070–0027, 2070–0028,, 2070–0078
Books and Records of Pesticide Production and Distribution	
169.2	2070–0028
Worker Protection Standards for Agricultural Pesticides	
Part 170	2070–0148
Certification of Pesticide Applicators	
171.7	2070–0029
171.8	2070–0029
171.9	2070–0029
171.10	2070–0029
171.11	2070–0029
Experimental Use Permits	
172.4	2070–0040
172.8	2070–0040
Issuance of Food Additive Regulations	
177.81	2070–0024
177.92	2070–0024
177.98	2070–0024
177.99	2070–0024
177.102	2070–0024
177.105	2070–0024
177.110	2070–0024
177.116	2070–0024
Tolerances and Exemptions from Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities	
180.7	2070–0024
180.8	2070–0024
180.9	2070–0024
180.31	2070–0024
180.32	2070–0024
180.33	2070–0024
404 State Program Regulations	
233.10–233.12	2040–0168
233.21	2040–0168
233.30	2040–0168
233.50	2040–0168
233.52	2040–0168
233.61	2040–0140

40 CFR citation	OMB control No.
Criteria for Classification of Solid Waste Disposal Facilities and Practices	
257.24	2050–0154
257.25	2050–0154
257.27	2050–0154
Criteria for Municipal Solid Waste Landfills	
Part 258	2050–0122
258.10–258.16	2050–0122
258.20	2050–0122
258.23	2050–0122
258.28–258.29	2050–0122
258.51	2050–0122
258.53–258.55	2050–0122
258.57–258.58	2050–0122
258.60–258.61	2050–0122
258.71–258.74	2050–0122
Hazardous Waste Management System: General	
260.20–260.22	2050–0053
260.23	2050–0145
260.31–260.33	2050–0053
Identification and Listing of Hazardous Waste	
261.3	2050–0085
261.4	2050–0053
261.35	2050–0115
Standards Applicable to Generators of Hazardous Waste	
262.12	2050–0028
262.20	2050–0039
262.22–262.23	2050–0039
262.34	2050–0035, 2050–0085
262.40(a)	2050–0039
262.40(b)	2050–0024
262.40(c)	2050–0035
262.41	2050–0024
262.42	2050–0039
262.43	2050–0035
262.44(a)–(b)	2050–0039
262.44(c)	2050–0035
262.53–262.57	2050–0035
262.60	2050–0035
Standards Applicable to Transporters of Hazardous Waste	
263.11	2050–0028
263.20–263.22	2050–0039
263.30	2050–0039
Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	
264.11	2050–0028
264.12 (a)	2050–0120
264.13	2050–0120, 2050–0009
264.14	2050–0009
264.15	2050–0120, 2050–0009
264.16	2050–0120, 2050–0009
264.17	2050–0120
264.18	2050–0009
264.19	2050–0009

40 CFR citation	OMB control No.
264.32	2050–0009
264.35	2050–0009
264.37	2050–0120
264.51	2050–0009
264.52	2050–0009
264.53	2050–0120
264.54	2050–0120
264.56	2050–0120
264.71	2050–0039
264.72	2050–0039
264.73	2050–0120
264.74	2050–0120
264.75	2050–0024
264.76	2050–0039
264.90	2050–0009
264.96	2050–0120
264.97 (g)	2050–0120
264.97 (h)	2050–0009
264.97 (j)	2050–0120
264.98 (c), (g)(1), (g)(5), (g)(6)	2050–0033
264.98 (g)(4), (h)	2050–0009
264.99 (c), (g), (h)(1), (i)(1), (i)(2)	2050–0033
264.99 (h)(2), (i)(3), (j)	2050–0009
264.100 (e), (f), (g)	2050–0033
264.100 (h)	2050–0009
264.101	2050–0120
264.112 (a), (b), (c)	2050–0009
264.112 (d)	2050–0120
264.113 (a), (b), (d)	2050–0120
264.113 (e)	2050–0050
264.115	2050–0120
264.116	2050–0120
264.118	2050–0009
264.119 (a), (b)	2050–0120
264.119 (c)	2050–0009
264.120	2050–0120
264.142 (a)	2050–0009
264.142 (b), (c), (d)	2050–0120
264.143	2050–0120
264.144 (a)	2050–0009
264.144 (b), (c), (d)	2050–0120
264.145	2050–0120
264.147 (a)(7), (b)(7), (f),(g)	2050–0120
264.147 (a)(1), (b)(1), (c), (f), (g), (h), (i), (j)	2050–0009
264.148	2050–0120
264.149	2050–0009
264.150	2050–0009
264.190	2050–0050
264.191	2050–0050
264.192 (a)	2050–0009
264.192 (g)	2050–0050
264.193 (c), (d), (e), (g), (h)	2050–0009
264.193 (i)	2050–0050
264.196	2050–0050
264.197 (b)	2050–0050
264.197 (c)	2050–0009
264.221	2050–0009
264.222 (a)	2050–0009
264.222 (b)	2050–0050
264.223 (a)	2050–0009
264.223 (b), (c)	2050–0050
264.226 (c)	2050–0050, 2050–0009
264.226 (d)	2050–0050
264.227	2050–0050
264.231	2050–0009
264.251	2050–0009
264.252 (a)	2050–0009
264.252 (b)	2050–0050
264.253 (a)	2050–0009
264.253 (b), (c)	2050–0050
264.254	2050–0050
264.259	2050–0009
264.271	2050–0009
264.272	2050–0009
264.276	2050–0050, 2050–0009
264.278 (a)–(f), (h)	2050–0050
264.278 (g)	2050–0050, 2050–0009
264.280	2050–0050
264.283	2050–0009
264.301	2050–0009
264.302 (a)	2050–0009
264.302 (b)	2050–0050
264.303 (a)	2050–0009
264.303 (b)	2050–0050
264.304 (a)	2050–0009
264.304 (b), (c)	2050–0050
264.314	2050–0050
264.317	2050–0009
264.340	2050–0009
264.343	2050–0050
264.344	2050–0009
264.347	2050–0050
264.552	2050–0009
264.570	2050–0050
264.571	2050–0050
264.573	2050–0050
264.574	2050–0050
264.575	2050–0009
264.603	2050–0050
264.1033 (a)	2050–0009
264.1033 (j)	2050–0050
264.1034	2050–0050
264.1035	2050–0050
264.1036	2050–0050
264.1061	2050–0050
264.1062	2050–0050
264.1063	2050–0050
264.1064	2050–0050, 2050–0009
264.1065	2050–0050
264.1089	2060–0318
264.1090	2060–0318
264.1100	2050–0050
264.1101	2050–0050

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

265.11	2050–0028
265.12 (a)	2050–0120
265.13	2050–0120
265.15	2050–0120
265.16	2050–0120
265.19	2050–0120
265.37	2050–0120
265.51	2050–0120
265.52	2050–0120
265.53	2050–0120
265.54	2050–0120
265.56	2050–0120
265.71	2050–0039
265.72	2050–0039
265.73	2050–0120
265.75	2050–0024
265.76	2050–0039
265.90	2050–0033
265.92	2050–0033
265.93	2050–0033

40 CFR citation	OMB control No.
265.94	2050–0033
265.112	2050–0120
265.113 (a), (b), (d)	2050–0120
265.113 (e)	2050–0050
265.115	2050–0120
265.116	2050–0120
265.118	2050–0120
265.119	2050–0120
265.120	2050–0120
265.142	2050–0120
265.143	2050–0120
265.144	2050–0120
265.145	2050–0120
265.147	2050–0120
265.148	2050–0120
265.149	2050–0120
265.150	2050–0120
265.190	2050–0035, 2050–0050
265.191	2050–0035, 2050–0050
265.192	2050–0035, 2050–0050
265.193	2050–0035, 2050–0050
265.195	2050–0120
265.196	2050–0035, 2050–0050
265.197 (b)	2050–0050
265.197 (c)	2050–0120
265.221	2050–0050
265.222	2050–0050
265.223	2050–0050
265.225	2050–0050
265.226	2050–0050
265.229	2050–0050
265.254	2050–0050
265.255	2050–0050
265.259	2050–0050
265.260	2050–0050
265.273	2050–0120
265.276	2050–0050
265.278	2050–0050
265.280	2050–0050
265.301	2050–0050
265.302	2050–0050
265.303	2050–0050
265.304	2050–0050
265.314	2050–0050
265.340	2050–0050
265.352	2050–0050
265.383	2050–0050
265.404	2050–0050
265.440	2050–0050
265.441	2050–0050
265.443	2050–0050
265.444	2050–0050
265.445	2050–0120
265.1033	2050–0050
265.1034	2050–0050
265.1035	2050–0050
265.1061	2050–0050
265.1062	2050–0050
265.1063	2050–0050
265.1064	2050–0050
265.1090	2060–0318
265.1100	2050–0050
265.1101	2050–0050

40 CFR citation	OMB control No.
Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities	
266.70 (b)	2050–0028
266.70 (c)	2050–0050
266.80	2050–0028
266.100	2050–0073
266.102	2050–0073
266.103	2050–0073
266.104	2050–0073
266.106	2050–0073
266.107	2050–0073
266.108	2050–0073
266.109	2050–0073
266.111	2050–0073
266.112	2050–0073
Appendix IX	2050–0073
Land Disposal Restrictions	
268.4–268.5	2050–0085
268.6	2050–0062
268.7	2050–0085
268.9	2050–0085
268.42	2050–0085
268.44	2050–0085
EPA Administered Permit Programs: The Hazardous Waste Permit Program	
270.1	2050–0028, 2050–0034, 2050–0009
270.10	2050–0009
270.11	2050–0034
270.13	2050–0034
270.14	2050–0009
270.14 (b)(21)	2050–0062, 2050–0085
270.15	2050–0009
270.16	2050–0009
270.17	2050–0009
270.18	2050–0009
270.19	2050–0009
270.20	2050–0009
270.21	2050–0009
270.22	2050–0073
270.23	2050–0009
270.24	2050–0009
270.25	2050–0009
270.26	2050–0115
270.30	2050–0120
270.33	2050–0009
270.40	2050–0009
270.41	2050–0009
270.42	2050–0009
270.51	2050–0009
270.62	2050–0009, 2050–0149
270.63	2050–0009
270.65	2050–0009
270.66	2050–0073, 2050–0149
270.72	2050–0034
270.73	2050–0009
Requirements for Authorization of State Hazardous Waste Programs	
271.5–271.8	2050–0041

40 CFR citation	OMB control No.
271.20–271.21	2050–0041
271.23	2050–0041
Standards for Universal Waste Management	
273.14	2050–0145
273.15	2050–0145
273.18	2050–0145
273.32	2050–0145
273.34	2050–0145
273.35	2050–0145
273.38	2050–0145
273.39	2050–0145
273.61	2050–0145
273.62	2050–0145
273.80	2050–0145
Standards for Management of Used Oil	
279.10–279.11	2050–0124
279.42	2050–0028, 2050–0124
279.43–279.44	2050–0124
279.46	2050–0050
279.51	2050–0028
279.52–279.55	2050–0124
279.56	2050–0050
279.57	2050–0050, 2050–0124
279.62	2050–0028
279.63	2050–0124
279.65–279.66	2050–0050
279.72	2050–0050
279.73	2050–0028
279.74–279.75	2050–0050
279.82	2050–0124
Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks (USTs)	
280.11(a)	2050–0068
280.20(a)–(b)	2050–0068
280.20(e)	2050–0068
280.22(a)–(f)	2050–0068
280.22(g)	2050–0068
280.31	2050–0068
280.33(f)	2050–0068
280.34(a)	2050–0068
280.34(b)	2050–0068
280.34(c)	2050–0068
280.40	2050–0068
280.43	2050–0068
280.44	2050–0068
280.45	2050–0068
280.50	2050–0068
280.53	2050–0068
280.61	2050–0068
280.62	2050–0068
280.63	2050–0068
280.64	2050–0068
280.65	2050–0068
280.66(a)	2050–0068
280.66(c)	2050–0068
280.66(d)	2050–0068
280.67	2050–0068
280.71(a)	2050–0068
280.72(a)	2050–0068
280.74	2050–0068
280.95	2050–0068
280.96	2050–0068
280.97	2050–0068
280.98	2050–0068
280.99	2050–0068
280.100	2050–0068
280.101	2050–0068
280.102	2050–0068
280.103	2050–0068
280.104	2050–0068
280.105	2050–0068
280.106	2050–0068
280.107	2050–0068
280.108	2050–0068
280.109(a)	2050–0068
280.109(b)	2050–0068
280.110	2050–0068
280.111	2050–0068
280.111(b)(11)	2050–0068
280.114(a)–(d)	2050–0068
280.114(e)	2050–0068
Approval of State Underground Storage Tank Programs	
281.120(a)	2050–0068
281.120(g)	2050–0068
281.121	2050–0068
281.122	2050–0068
281.124	2050–0068
281.125	2050–0068
281.140	2050–0068
281.143(a)	2050–0068
281.150	2050–0068
281.152	2050–0068
281.161	2050–0068
National Oil and Hazardous Substances Pollution Contingency Plan	
300.405	2050–0046
300.425	2050–0095
300.430	2050–0096
300.435	2050–0096
300.920	2050–0141
Part 300, Appendix A	2050–0095
Designation, reportable quantities, and notification	
302.4	2050–0046
302.6	2050–0046
302.8	2050–0086
Hazardous Substances Superfund; Response Claims Procedures	
307.11–307.14	2050–0106
307.21–307.23	2050–0106
307.30–307.32	2050–0106
Reimbursement to Local Governments for Emergency Response to Hazardous Substance Releases	
310.05	2050–0077
310.10–310.12	2050–0077
310.20	2050–0077
310.30	2050–0077
310.40	2050–0077
310.50	2050–0077
310.60	2050–0077
310.70	2050–0077
310.80	2050–0077
310.90	2050–0077
Part 310, Appendix II	2050–0077

40 CFR citation	OMB control No.
Worker Protection Standards for Hazardous Waste Operations and Emergency Response	
311.1–311.2	2050–0105
Trade Secrecy Claims for Emergency Planning and Community Right-to-Know; Health Professionals	
350.5–350.16	2050–0078
350.27	2050–0078
350.40	2050–0078
Emergency planning and notification	
Part 355, Appendix A, Appendix B	2050–0046
Toxic Chemical Release Reporting: Community Right–to–Know	
Part 372	2070–0093
Part 372, subpart A	2070–0093, 2070–0143
372.22	2070–0093, 2070–0143
372.25	2070–0093
372.27	2070–0143
372.30	2070–0093, 2070–0143
372.38	2070–0093, 2070–0143
Part 372, subpart C	2070–0093, 2070–0143
Part 372, subpart D	2070–0093, 2070–0143
372.85	2070–0093
372.95	2070–0143
General Pretreatment Regulations for Existing and New Sources of Pollution	
403.5(b)	2040–0009
403.6–403.7	2040–0009
403.8(a)–(e)	2040–0009
403.8(f)	2040–0009
403.9–403.10	2040–0009
403.12(b)–(g)	2040–0009
403.12 (h), (i)	2040–0009
403.12 (j), (k), (l), (o)	2040–0009
403.12 (m), (p)	2040–0009
403.13	2040–0009
403.15	2040–0009
403.17–403.18	2040–0009, 2040–0170
Steam Electric Generating Point Source Category	
423.12–423.13	2040–0033
423.15	2040–0033
Pulp, Paper, and Paperboard Point Source Category	
430.14–430.17	2040–0033
430.24–430.27	2040–0033
430.54–430.57	2040–0033
430.64–430.67	2040–0033
430.74–430.77	2040–0033
430.84–430.87	2040–0033
430.94–430.97	2040–0033
430.104–430.107	2040–0033
430.114–430.117	2040–0033
430.134–430.137	2040–0033
430.144–430.147	2040–0033
430.154–430.157	2040–0033
430.164–430.167	2040–0033
430.174–430.177	2040–0033
430.184–430.187	2040–0033
430.194–430.197	2040–0033
430.204–430.207	2040–0033
430.214–430.217	2040–0033
430.224–430.227	2040–0033
430.234–430.237	2040–0033
430.244–430.247	2040–0033
430.254–430.257	2040–0033
430.264–430.267	2040–0033
The Builders' Paper and Board Mills Point Source Category	
431.14–431.17	2040–0033
Pharmaceutical Manufacturing Point Source Category	
439.14–439.17	2040–0033
439.24–439.27	2040–0033
439.34–439.37	2040–0033
439.44–439.47	2040–0033
Coil Coating Point Source Category	
465.03	2040–0033
Porcelain Enameling Point Source Category	
466.03	2040–0033
Aluminum Forming Point Source Category	
467.03	2040–0033
State Sludge Management Program Requirements	
501.15(a)	2040–0086, 2040–0110
501.15(b)	2040–0004, 2040–0068, 2040–0110
501.15(c)	2040–0068
501.16	2040–0057
501.21	2040–0057
Standards for the Use or Disposal of Sewage Sludge	
503.17–503.18	2040–0157
503.27–503.28	2040–0157
503.47–503.48	2040–0157
Fuel Economy of Motor Vehicles	
600.006–86	2060–0104
600.007–80	2060–0104
600.010–86	2060–0104
600.113–88	2060–0104
600.113–93	2060–0104
600.206–86	2060–0104
600.207–86	2060–0104
600.209–85	2060–0104
600.306–86	2060–0104
600.307–86	2060–0104
600.311–86	2060–0104
600.312–86	2060–0104
600.313–86	2060–0104
600.314–86	2060–0104
600.507–86	2060–0104
600.509–86	2060–0104

40 CFR citation	OMB control No.
600.510–86	2060–0104
600.512–86	2060–0104
Toxic Substances Control Act: General	
700.45	2070–0012, 2070–0038
Reporting and Recordkeeping Requirements	
704.5	2010–0019, 2070–0067
704.11	2010–0019, 2070–0067
704.25	2070–0067
704.33	2070–0067
704.43	2070–0067
704.45	2070–0067
704.95	2070–0067
704.102	2070–0067
704.104	2070–0067
704.175	2070–0067
Chemical Imports and Exports	
707.65	2070–0030
707.67	2070–0030
707.72	2070–0030
Inventory Reporting Regulations	
Part 710	2070–0070
Chemical Information Rules	
712.5	2070–0054
712.7	2070–0054
712.20	2070–0054
712.28	2070–0054
712.30	2070–0054
Health and Safety Data Reporting	
716.5	2070–0004
716.10	2070–0004
716.20	2070–0004
716.25	2070–0004
716.30	2070–0004
716.35	2070–0004
716.40	2070–0004
716.45	2070–0004
716.50	2070–0004
716.60	2070–0004
716.65	2070–0004
716.105	2070–0004
716.120	2070–0004
Records and Reports of Allegations That Chemical Substances Cause Significant Adverse Reactions to Health or the Environment	
717.5	2070–0017
717.7	2070–0017
717.12	2070–0017
717.15	2070–0017
717.17	2070–0017
Premanufacture Notification	
720.1	2070–0012
720.22	2070–0012
720.25	2070–0012
720.30	2070–0012
720.36	2070–0012
720.38	2070–0012
Part 720, subpart C	2070–0012
720.62	2070–0012
720.75	2070–0012
720.78	2070–0012
720.80	2070–0012
720.85	2070–0012
720.87	2070–0012
720.90	2070–0012
720.102	2070–0012
Part 720, Appendix A	2070–0012
Significant New Uses of Chemical Substances	
Part 721, subpart A	2070–0012, 2070–0038
721.72	2070–0012, 2070–0038
721.125	2070–0012, 2070–0038
721.160	2070–0012, 2070–0038
721.170	2070–0012, 2070–0038
721.185	2070–0012, 2070–0038
721.225	2070–0012
721.267	2070–0012
721.275	2070–0012
721.285	2070–0012
721.320	2070–0012
721.323	2070–0012
721.325	2070–0012
721.336	2070–0012
721.370	2070–0012
721.390	2070–0012
721.400	2070–0012
721.415	2070–0012
721.430	2070–0012
721.445	2070–0012
721.460	2070–0012
721.470	2070–0012
721.484	2070–0012
721.490	2070–0012
721.505	2070–0012
721.520	2070–0012
721.530	2070–0012
721.536	2070–0012
721.540	2070–0012
721.550	2070–0012
721.562	2070–0012
721.575	2070–0012
721.600	2070–0012
721.625	2070–0012
721.639	2070–0012
721.642	2070–0012
721.646	2070–0012
721.650	2070–0038
721.700	2070–0012
721.715	2070–0012
721.750	2070–0012
721.757	2070–0012
721.775	2070–0012
721.785	2070–0012
721.805	2070–0012
721.825	2070–0012
721.840	2070–0012
721.875	2070–0012
721.925	2070–0012

40 CFR citation	OMB control No.
721.950	2070–0012
721.982	2070–0012
721.1000	2070–0012
721.1025	2070–0038
721.1050	2070–0012
721.1068	2070–0012
721.1075	2070–0012
721.1120	2070–0012
721.1150	2070–0012
721.1175	2070–0012
721.1187	2070–0012
721.1193	2070–0012
721.1210	2070–0012
721.1225	2070–0012
721.1240	2070–0012
721.1300	2070–0012
721.1325	2070–0012
721.1350	2070–0012
721.1372	2070–0012
721.1375	2070–0012
721.1425	2070–0038
721.1430	2070–0038
721.1435	2070–0038
721.1440	2070–0038
721.1450	2070–0012
721.1500	2070–0012
721.1525	2070–0012
721.1550	2070–0012
721.1555	2070–0012
721.1568	2070–0012
721.1575	2070–0012
721.1612	2070–0012
721.1625	2070–0012
721.1630	2070–0012
721.1637	2070–0012
721.1640	2070–0012
721.1643	2070–0012
721.1645	2070–0012
721.1650	2070–0012
721.1660	2070–0038
721.1675	2070–0012
721.1700	2070–0012
721.1725	2070–0012
721.1728	2070–0012
721.1732	2070–0012
721.1735	2070–0012
721.1737	2070–0012
721.1738	2070–0012
721.1740	2070–0012
721.1745	2070–0012
721.1750	2070–0012
721.1755	2070–0012
721.1765	2070–0012
721.1769	2070–0012
721.1775	2070–0012
721.1790	2070–0038
721.1800	2070–0012
721.1820	2070–0012
721.1825	2070–0012
721.1850	2070–0012
721.1875	2070–0012
721.1900	2070–0012
721.1920	2070–0012
721.1925	2070–0012
721.1950	2070–0012
721.2025	2070–0012
721.2050	2070–0012
721.2075	2070–0012
721.2084	2070–0038
721.2085	2070–0012
721.2086	2070–0012
721.2088	2070–0012
721.2089	2070–0012
721.2092	2070–0038
721.2095	2070–0012
721.2097	2070–0012
721.2120	2070–0012
721.2140	2070–0012
721.2170	2070–0012
721.2175	2070–0012
721.2250	2070–0012
721.2260	2070–0012
721.2270	2070–0012
721.2275	2070–0012
721.2287	2070–0038
721.2340	2070–0012
721.2355	2070–0038
721.2380	2070–0012
721.2410	2070–0012
721.2420	2070–0012
721.2475	2070–0012
721.2520	2070–0012
721.2527	2070–0012
721.2540	2070–0012
721.2560	2070–0012
721.2565	2070–0012
721.2575	2070–0012
721.2600	2070–0038
721.2625	2070–0012
721.2650	2070–0012
721.2675	2070–0012
721.2725	2070–0038
721.2750	2070–0012
721.2800	2070–0038
721.2815	2070–0012
721.2825	2070–0012
721.2840	2070–0012
721.2860	2070–0012
721.2880	2070–0012
721.2900	2070–0012
721.2920	2070–0012
721.2930	2070–0012
721.2940	2070–0012
721.2950	2070–0012
721.3000	2070–0012
721.3020	2070–0012
721.3028	2070–0012
721.3034	2070–0012
721.3040	2070–0012
721.3060	2070–0012
721.3063	2070–0012
721.3080	2070–0012
721.3100	2070–0012
721.3120	2070–0012
721.3140	2070–0012
721.3152	2070–0012
721.3160	2070–0038
721.3180	2070–0012
721.3200	2070–0012
721.3220	2070–0038
721.3248	2070–0012
721.3260	2070–0012
721.3320	2070–0012
721.3340	2070–0012
721.3350	2070–0038
721.3360	2070–0012
721.3364	2070–0012
721.3374	2070–0012
721.3380	2070–0012
721.3390	2070–0012
721.3420	2070–0012
721.3430	2070–0038

40 CFR citation	OMB control No.
721.3435	2070–0012
721.3437	2070–0012
721.3440	2070–0012
721.3460	2070–0012
721.3480	2070–0012
721.3486	2070–0012
721.3500	2070–0012
721.3520	2070–0012
721.3560	2070–0012
721.3620	2070–0012
721.3625	2070–0012
721.3627	2070–0012
721.3628	2070–0012
721.3629	2070–0012
721.3640	2070–0012
721.3680	2070–0012
721.3700	2070–0012
721.3720	2070–0012
721.3740	2070–0012
721.3760	2070–0012
721.3764	2070–0012
721.3780	2070–0012
721.3790	2070–0012
721.3800	2070–0012
721.3815	2070–0012
721.3840	2070–0012
721.3860	2070–0012
721.3870	2070–0012
721.3880	2070–0012
721.3900	2070–0012
721.4000	2070–0012
721.4020	2070–0012
721.4040	2070–0012
721.4060	2070–0012
721.4080	2070–0038
721.4100	2070–0012
721.4110	2070–0012
721.4128	2070–0012
721.4133	2070–0012
721.4140	2070–0038
721.4155	2070–0038
721.4160	2070–0038
721.4180	2070–0038
721.4200	2070–0012
721.4215	2070–0012
721.4220	2070–0012
721.4240	2070–0012
721.4250	2070–0012
721.4255	2070–0012
721.4260	2070–0012
721.4270	2070–0012
721.4280	2070–0012
721.4300	2070–0012
721.4320	2070–0012
721.4340	2070–0012
721.4360	2070–0038
721.4380	2070–0012
721.4390	2070–0012
721.4400	2070–0012
721.4420	2070–0012
721.4460	2070–0012
721.4463	2070–0012
721.4466	2070–0012
721.4470	2070–0012
721.4473	2070–0012
721.4484	2070–0012
721.4480	2070–0012
721.4490	2070–0012
721.4494	2070–0012
721.4497	2070–0012
721.4500	2070–0012
721.4520	2070–0012
721.4550	2070–0012
721.4568	2070–0012
721.4585	2070–0012
721.4587	2070–0012
721.4590	2070–0012
721.4594	2070–0012
721.4600	2070–0012
721.4620	2070–0012
721.4640	2070–0012
721.4660	2070–0012
721.4663	2070–0012
721.4668	2070–0012
721.4680	2070–0012
721.4685	2070–0012
721.4700	2070–0012
721.4720	2070–0012
721.4740	2070–0038
721.4780	2070–0012
721.4790	2070–0012
721.4794	2070–0012
721.4800	2070–0012
721.4820	2070–0012
721.4840	2070–0012
721.4880	2070–0012
721.4925	2070–0038
721.5050	2070–0012
721.5075	2070–0012
721.5175	2070–0038
721.5192	2070–0012
721.5200	2070–0012
721.5225	2070–0012
721.5250	2070–0012
721.5275	2070–0012
721.5276	2070–0012
721.5278	2070–0012
721.5282	2070–0012
721.5285	2070–0012
721.5300	2070–0012
721.5310	2070–0012
721.5325	2070–0012
721.5330	2070–0012
721.5350	2070–0012
721.5375	2070–0012
721.5385	2070–0012
721.5400	2070–0012
721.5425	2070–0012
721.5450	2070–0012
721.5475	2070–0012
721.5500	2070–0012
721.5525	2070–0012
721.5540	2070–0012
721.5545	2070–0012
721.5550	2070–0012
721.5575	2070–0012
721.5600	2070–0038
721.5700	2070–0012
721.5705	2070–0012
721.5710	2070–0038
721.5740	2070–0012
721.5760	2070–0012
721.5763	2070–0012
721.5769	2070–0012
721.5780	2070–0012
721.5800	2070–0012
721.5820	2070–0012
721.5840	2070–0012
721.5860	2070–0012
721.5880	2070–0012
721.5900	2070–0012
721.5910	2070–0012

40 CFR citation	OMB control No.
721.5915	2070–0012
721.5920	2070–0012
721.5930	2070–0012
721.5960	2070–0012
721.5970	2070–0012
721.5980	2070–0012
721.5990	2070–0012
721.6000	2070–0038
721.6020	2070–0012
721.6060	2070–0012
721.6070	2070–0012
721.6080	2070–0012
721.6085	2070–0012
721.6090	2070–0012
721.6097	2070–0012
721.6100	2070–0012
721.6110	2070–0012
721.6120	2070–0012
721.6140	2070–0012
721.6160	2070–0012
721.6180	2070–0012
721.6186	2070–0012
721.6200	2070–0012
721.6220	2070–0012
721.6440	2070–0012
721.6470	2070–0012
721.6500	2070–0012
721.6520	2070–0012
721.6540	2070–0012
721.6560	2070–0012
721.6580	2070–0012
721.6600	2070–0012
721.6620	2070–0012
721.6625	2070–0012
721.6640	2070–0012
721.6660	2070–0012
721.6680	2070–0012
721.6700	2070–0012
721.6720	2070–0012
721.6740	2070–0012
721.6760	2070–0012
721.6780	2070–0012
721.6820	2070–0012
721.6840	2070–0012
721.6880	2070–0012
721.6900	2070–0012
721.6920	2070–0012
721.6940	2070–0012
721.6960	2070–0012
721.6980	2070–0012
721.7000	2070–0012
721.7020	2070–0012
721.7040	2070–0012
721.7046	2070–0012
721.7080	2070–0012
721.7100	2070–0012
721.7140	2070–0012
721.7160	2070–0012
721.7180	2070–0012
721.7200	2070–0012
721.7210	2070–0012
721.7220	2070–0012
721.7240	2070–0012
721.7260	2070–0012
721.7280	2070–0012
721.7300	2070–0012
721.7320	2070–0012
721.7340	2070–0012
721.7360	2070–0012
721.7370	2070–0012
721.7400	2070–0012
721.7420	2070–0012
721.7440	2070–0012
721.7450	2070–0012
721.7460	2070–0012
721.7480	2070–0012
721.7500	2070–0012
721.7540	2070–0012
721.7560	2070–0012
721.7580	2070–0012
721.7600	2070–0012
721.7620	2070–0012
721.7655	2070–0012
721.7660	2070–0012
721.7680	2070–0012
721.7780	2070–0012
721.7710	2070–0012
721.7720	2070–0012
721.7700	2070–0012
721.7740	2070–0012
721.7760	2070–0012
721.7770	2070–0012
721.8075	2070–0012
721.8082	2070–0012
721.8090	2070–0012
721.8100	2070–0012
721.8155	2070–0012
721.8160	2070–0012
721.8170	2070–0012
721.8175	2070–0012
721.8225	2070–0012
721.8250	2070–0012
721.8265	2070–0012
721.8275	2070–0012
721.8290	2070–0012
721.8300	2070–0012
721.8325	2070–0012
721.8335	2070–0012
721.8350	2070–0012
721.8375	2070–0012
721.8400	2070–0012
721.8425	2070–0012
721.8450	2070–0012
721.8475	2070–0012
721.8500	2070–0012
721.8525	2070–0012
721.8550	2070–0012
721.8575	2070–0012
721.8600	2070–0012
721.8650	2070–0012
721.8654	2070–0012
721.8670	2070–0012
721.8673	2070–0012
721.8675	2070–0012
721.8700	2070–0012
721.8750	2070–0012
721.8775	2070–0012
721.8825	2070–0012
721.8850	2070–0012
721.8875	2070–0012
721.8900	2070–0012
721.8965	2070–0012
721.9000	2070–0038
721.9075	2070–0012
721.9100	2070–0012
721.9220	2070–0012
721.9240	2070–0012
721.9260	2070–0012
721.9280	2070–0012
721.9300	2070–0012
721.9320	2070–0012
721.9360	2070–0012

40 CFR citation	OMB control No.
721.9400	2070–0012
721.9420	2070–0012
721.9460	2070–0012
721.9470	2070–0038
721.9480	2070–0012
721.9495	2070–0012
721.9500	2070–0012
721.9505	2070–0012
721.9507	2070–0012
721.9510	2070–0012
721.9520	2070–0012
721.9525	2070–0012
721.9526	2070–0012
721.9527	2070–0012
721.9530	2070–0012
721.9540	2070–0012
721.9550	2070–0012
721.9570	2070–0012
721.9580	2070–0038
721.9620	2070–0012
721.9630	2070–0012
721.9650	2070–0012
721.9656	2070–0012
721.9658	2070–0012
721.9660	2070–0038
721.9665	2070–0012
721.9675	2070–0012
721.9680	2070–0012
721.9700	2070–0012
721.9720	2070–0012
721.9730	2070–0012
721.9740	2070–0012
721.9750	2070–0012
721.9780	2070–0012
721.9800	2070–0012
721.9820	2070–0012
721.9850	2070–0012
721.9870	2070–0012
721.9892	2070–0012
721.9900	2070–0012
721.9920	2070–0012
721.9925	2070–0012
721.9930	2070–0038
721.9940	2070–0012
721.9957	2070–0038
721.9970	2070–0012
721.9975	2070–0012
Premanufacture Notification Exemptions	
723.50	2070–0012
723.175	2070–0012
723.250(m)(1)	2070–0012
Lead-Based Paint Poisoning Prevention in Certain Residential Structures	
Part 745, subpart F	2070–0151
Part 745, subpart L	2070–0155
Part 745, subpart Q	2070–0155
Water Treatment Chemicals	
Part 749, subpart D	2060–0193
749.68	2060–0193
Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions	
761.20	2070–0008, 2070–0021
761.30	2070–0003, 2070–0008, 2070–0021
761.60	2070–0011
761.65	2070–0112
761.70	2070–0011
761.75	2070–0011
761.80	2070–0021
761.93	2070–0149
761.93(a)(1)(iii)	2070–0149
761.93(b)	2070–0149
761.125	2070–0112
761.180	2070–0112
761.185	2070–0008
761.187	2070–0008
761.193	2070–0008
761.202	2070–0112
761.205	2070–0112
761.207	2070–0112
761.207(a)	2050–0039
761.208	2070–0112
761.209	2070–0112
761.210	2070–0112
761.211	2070–0112
761.215	2070–0112
761.218	2070–0112
Asbestos	
Part 763, subpart E	2070–0091
Part 763, subpart G	2070–0072
Part 763, subpart I	2070–0082
Dibenzo-para-dioxin/Dibenzofurans	
766.35(b)(1)	2070–0054
766.35(b)(2)	2070–0054
766.35(b)(3)	2070–0017
766.35(b)(4)(iii)	2070–0054
766.35(c)(1)(i)	2070–0054
766.35(c)(1)(ii)	2070–0054
766.35(c)(1)(iii)	2070–0017
766.35(d) Form	2070–0017
766.38	2070–0054
Procedures Governing Testing Consent Agreements and Test Rules	
790.5	2070–0033
790.42	2070–0033
790.45	2070–0033
790.50	2070–0033
790.55	2070–0033
790.60	2070–0033
790.62	2070–0033
790.68	2070–0033
790.80	2070–0033
790.82	2070–0033
790.85	2070–0033
790.99	2070–0033
Good Laboratory Practice Standards	
Part 792	2010–0019, 2070–0004, 2070–0017, 2070–0033, 2070–0054, 2070–0067

40 CFR citation	OMB control No.
Provisional Test Guidelines	
795.45	2070–0067
795.232	2070–0033
Identification of Specific Chemical Substance and Mixture Testing Requirements	
799.1053	2070–0033
799.1250	2070–0033
799.1560	2070–0033
799.1575	2070–0033
799.1645	2070–0033
799.1700	2070–0033
799.2155	2070–0033
799.2325	2070–0033
799.2475	2070–0033
799.2500	2070–0033
799.2700	2070–0033
799.3300	2070–0033
799.4360	2070–0033
799.4440	2070–0033
799.5000	2070–0033
799.5025	2070–0033
799.5050	2070–0033
799.5055	2070–0033
799.5075	2070–0033

[1] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 60, subpart A, which are not independent information collection requirements.

[2] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 61, subpart A, which are not independent information collection requirements.

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

[58 FR 27472, May 10, 1993]

EDITORIAL NOTE: For Federal Register citations affecting § 9.1 see the List of CFR Sections Affected in the Finding Aids section of this volume.

PART 10—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

Subpart A—General

Sec.

Subpart B—Procedures

AUTHORITY: Sec. 1, 80 Stat. 306; 28 U.S.C. 2672; 28 CFR Part 14.

SOURCE: 38 FR 16868, June 27, 1973, unless otherwise noted.

Subpart A—General

§ 10.1 Scope of regulations.

The regulations in this part apply only to claims asserted under the Federal Tort Claims Act, as amended, 28 U.S.C. 2671–2680, for money damages against the United States because of damage to or loss of property or personal injury or death, caused by the negligent or wrongful act or omission of any employee of the Environmental Protection Agency (EPA) while acting within the scope of his/her employment.

[51 FR 25832, July 16, 1986]

Subpart B—Procedures

§ 10.2 Administrative claim; when presented; place of filing.

(a) For purpose of the regulations in this part, a claim shall be deemed to have been presented when the Environmental Protection Agency receives, at a place designated in paragraph (c) of this section, an executed Standard Form 95 or other written notification of an incident accompanied by a claim for money damages in a sum certain for damage to or loss of property, for personal injury, or for death, alleged to have occurred by reason of the incident. A claim which should have been presented to EPA, but which was mistakenly addressed to or filed with another Federal agency, shall be deemed to be presented to EPA as of the date that the claim is received by EPA. A claim mistakenly addressed to or filed with EPA shall forthwith be transferred to the appropriate Federal agency, if ascertainable, or returned to the claimant.

(b) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final action by the Administrator, or his designee, or prior to the exercise of the claimant's option to bring suit under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, EPA shall have 6 months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of an amendment.

(c) Forms may be obtained and claims may be filed with the EPA office having jurisdiction over the employee involved in the accident or incident, or with the EPA Claims Officer, Office of General Counsel (LE–132G), 401 M Street SW., Washington, DC 20460.

[38 FR 16868, June 27, 1973, as amended at 51 FR 25832, July 16, 1986]

§ 10.3 Administrative claims; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property interest which is the subject of the claim, his duly authorized agent, or his legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or his legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually as their respective interests appear, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 10.4 Evidence to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.

(4) Degree of support afforded by the decendent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payments for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(b) *Personal Injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed or designated by EPA. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that the claimant has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees in writing to make available to EPA any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, hospital and related expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected duration of and expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he is a full or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on the responsibility of the United States for either the personal injury or the damages claimed.

(c) *Property Damage.* In support of a claim for damage to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, market value of the property as of date of damage, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on the responsibility of the United States either for the injury to or loss of property or for the damage claimed.

(d) *Time limit.* All evidence required to be submitted by this section shall be furnished by the claimant within a reasonable time. Failure of a claimant to furnish evidence necessary to a determination of his claim within three months after a request therefor has been mailed to his last known address may be deemed an abandonment of the claim. The claim may be thereupon disallowed.

§ 10.5 Investigation, examination, and determination of claims.

The EPA Claims Officer adjusts, determines, compromises and settles all administrative tort claims filed with EPA. In carrying out these functions, the EPA Claims Officer makes such investigations as are necessary for a determination of the validity of the claim. The decision of the EPA Claims Officer is a final agency decision of purposes of 28 U.S.C. 2675.

[51 FR 25832, July 16, 1986]

§ 10.6 Final denial of claim.

(a) Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with EPA's action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

(b) Prior to the commencement of suit and prior to the expiration of the 6-month period after the date of mailing by certified or registered mail of notice of final denial of the claim as provided in 28 U.S.C. 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the EPA for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration, EPA shall have 6 months from the date of filing in which to make a final disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) to bring suit shall not accrue until 6 months after the filing of a request for reconsideration. Final action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a) of this section.

§ 10.7 Payment of approved claim.

(a) Upon allowance of his claim, claimant or his duly authorized agent shall sign the voucher for payment, Standard Form 1145, before payment is made.

(b) When the claimant is represented by an attorney, the voucher for payment (SF 1145) shall designate both the claimant and his attorney as ''payees.'' The check shall be delivered to the attorney whose address shall appear on the voucher.

(c) No attorney shall charge fees in excess of 25 percent of a judgment or settlement after litigation, or in excess of 20 percent of administrative settlements (28 U.S.C. 2678).

§ 10.8 Release.

Acceptance by the claimant, his agent or legal representative of any award, compromise or settlement made hereunder, shall be final and conclusive on the claimant, his agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of all claims against either the United States or any employee of the Government arising out of the same subject matter.

§ 10.9 Penalties.

A person who files a false claim or makes a false or fraudulent statement in a claim against the United States may be liable to a fine of not more than $10,000 or to imprisonment of not more than 5 years, or both (18 U.S.C. 287,1001), and, in addition, to a forfeiture of $2,000 and a penalty of double the loss or damage sustained by the United States (31 U.S.C. 3729).

[38 FR 16868, June 27, 1973, as amended at 51 FR 25832, July 16, 1986]

§ 10.10 Limitation on Environmental Protection Agency's authority.

(a) An award, compromise or settlement of a claim hereunder in excess of $25,000 shall be effected only with the prior written approval of the Attorney General or his designee. For the purposes of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised or settled hereunder only after consultation with the Department of Justice when, in the opinion of the Environmental Protection Agency:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and the Agency is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised, or settled by EPA hereunder only after consultation with the Department of Justice when EPA is informed or is otherwise aware that the United States or an employee, agent, or cost-plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 10.11 Relationship to other agency regulations.

The regulations in this part supplement the Attorney General's regulations in part 14 of Chapter 1 of title 28, CFR, as amended. Those regulations, including subsequent amendments thereto, and the regulations in this part apply to the consideration by the Environmental Protection Agency of administrative claims under the Federal Tort Claims Act.

[38 FR 16868, June 27, 1973, as amended at 51 FR 25832, July 16, 1986]

PART 11—SECURITY CLASSIFICATION REGULATIONS PURSUANT TO EXECUTIVE ORDER 11652

Sec.

AUTHORITY: Executive Order 11652 (37 FR 5209, March 10, 1972) and the National Security Directive of May 17, 1972 (37 FR 10053, May 19, 1972).

SOURCE: 37 FR 23541, Nov. 4, 1972, unless otherwise noted.

§ 11.1 Purpose.

These regulations establish policy and procedures governing the classification and declassification of national security information. They apply also to information or material designated under the Atomic Energy Act of 1954, as amended, as ''Restricted Data,'' or ''Formerly Restricted Data'' which, additionally, is subject to the provisions of the Act and regulations of the Atomic Energy Commission.

§ 11.2 Background.

While the Environmental Protection Agency does not have the authority to originally classify information or material in the interest of the national security, it may under certain circumstances downgrade or declassify previously classified material or generate documents incorporating classified information properly originated by other agencies of the Federal Government which must be safeguarded. Agency policy and procedures must conform to applicable provisions of Executive Order 11652, and the National Security Council Directive of May 17, 1972, governing the safeguarding of national security information.

§ 11.3 Responsibilities.

(a) Classification and Declassification Committee: This committee, appointed by the Administrator, has the authority to act on all suggestions and complaints with respect to EPA's administration of this order. It shall establish procedures to review and act within 30 days upon all applications and appeals regarding requests for declassification. The Administrator, acting through the committee, shall be authorized to overrule previous determinations in whole or in part when, in its judgment, continued protection is no longer required. If the committee determines that continued classification is required under section 5(B) of Executive Order 11652, it shall promptly so notify the requester and advise him that he may appeal the denial to the Interagency Classification Review Committee.

(b) Director, Security and Inspection Division, Office of Administration: The Director, Security and Inspection Division, is responsible for the overall management and direction of a program designed to assure the proper handling and protection of classified information, and that classified information in the Agency's possession bears the appropriate classification markings. He also will assure that the program operates in accordance with the policy established herein, and will serve as Secretary of the Classification and Declassification Committee.

(c) Assistant Administrators, Regional Administrators, Heads of Staff Offices, Directors of National Environmental Research Centers are responsible for designating an official within their respective areas who shall be responsible for:

(1) Serving as that area's liaison with the Director, Security and Inspection Division, for questions or suggestions concerning security classification matters.

(2) Reviewing and approving, as the representative of the contracting offices, the DD Form 254, Contract Security Classification Specification, issued to contractors.

(d) Employees; (1) Those employees generating documents incorporating classified information properly originated by other agencies of the Federal Government are responsible for assuring that the documents are marked in a manner consistent with security classification assignments.

(2) Those employees preparing information for public release are responsible for assuring that such information is reviewed to eliminate classified information.

(3) All employees are responsible for bringing to the attention of the Director, Security and Inspection Division, any security classification problems needing resolution.

§ 11.4 Definitions.

(a) *Classified information.* Official information which has been assigned a security classification category in the interest of the national defense or foreign relations of the United States.

(b) *Classified material.* Any document, apparatus, model, film, recording, or any other physical object from which classified information can be derived by study, analysis, observation, or use of the material involved.

(c) *Marking.* The act of physically indicating the classification assignment on classified material.

(d) *National security information.* As used in this order this term is synonymous with ''classified information.'' It is any information which must be protected against unauthorized disclosure

in the interest of the national defense or foreign relations of the United States.

(e) *Security classification assignment.* The prescription of a specific security classification for a particular area or item of information. The information involved constitutes the sole basis for determining the degree of classification assigned.

(f) *Security classification category.* The specific degree of classification (Top Secret, Secret or Confidential) assigned to classified information to indicate the degree of protection required.

(1) *Top Secret.* Top Secret refers to national security information or material which requires the highest degree of protection. The test for assigning Top Secret classification shall be whether its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security. Examples of ''exceptionally grave damage'' include armed hostilities against the United States or its allies; disruption of foreign relations vitally affecting the national security; the compromise of vital national defense plans or complex cryptologic and communications intelligence systems; the revelation of sensitive intelligence operations; and the disclosure of scientific or technological developments vital to national security. This classification shall be used with the utmost restraint.

(2) *Secret.* Secret refers to that national security information or material which requires a substantial degree of protection. The test for assigning Secret classification shall be whether its unauthorized disclosure could reasonably be expected to cause serious damage to the national security. Examples of ''serious damage'' include disruption of foreign relations significantly affecting the national security; significant impairment of a program or policy directly related to the national security; revelation of significant military plans or intelligence operations; and compromise of scientific or technological developments relating to national security. The classification Secret shall be sparingly used.

(3) *Confidential.* Confidential refers to that national security information or material which requires protection. The test for assigning Confidential classification shall be whether its unauthorized disclosure could reasonably be expected to cause damage to the national security.

§ 11.5 Procedures.

(a) *General.* Agency instructions on access, marking, safekeeping, accountability, transmission, disposition, and destruction of classification information and material will be found in the EPA Security Manual for Safeguarding Classified Material. These instructions shall conform with the National Security Council Directive of May 17, 1972, governing the classification, downgrading, declassification, and safeguarding of National Security Information.

(b) *Classification.* (1) When information or material is originated within EPA and it is believed to require classification, the person or persons responsible for its origination shall protect it in the manner prescribed for protection of classified information. The information will then be transmitted under appropriate safeguards to the Director, Security and Inspection Division, who will forward it to the department having primary interest in it with a request that a classification determination be made.

(2) A holder of information or material which incorporates classified information properly originated by other agencies of the Federal Government shall observe and respect the classification assigned by the originator.

(3) If a holder believes there is unnecessary classification, that the assigned classification is improper, or that the document is subject to declassification, he shall so advise the Director, Security and Inspection Division, who will be responsible for obtaining a resolution.

(c) *Downgrading and declassification.* Classified information and material officially transferred to the Agency during its establishment, pursuant to Reorganization Plan No. 3 of 1970, shall be declassified in accordance with procedures set forth below. Also, the same procedures will apply to the declassification of any information in the Agency's possession which originated in departments or agencies which no longer exist, except that no declassification will occur in such cases until other departments having an interest in the subject matter have been consulted. Other classified information in the Agency's possession may be downgraded or declassified by the official authorizing its classification, by a successor in capacity, or by a supervisory official of either.

(1) *General Declassification Schedule*—(i) *Top Secret.* Information or material originally classified Top Secret shall become automatically downgraded to Secret at the end of the second full calendar year following the year in which it was originated, downgraded to Confidential at the end of the fourth full calendar year following the year in which it was originated, and declassified at the end of the 10th full calendar year following the year in which it was originated.

(ii) *Secret.* Information and material originally classified Secret shall become automatically downgraded to Confidential at the end of the second full calendar year following the year in which it was originated, and declassified at the end of the eighth full calendar year following the year in which it was originated.

(iii) *Confidential.* Information and material originally classified Confidential shall become

automatically declassified at the end of the sixth full calendar year following the year in which it was originated.

(2) *Exemption from the General Declassification Schedule.* Information or material classified before June 1, 1972, assigned to Group 4 under Executive Order No. 10501, as amended, shall be subject to the General Declassification Schedule. All other information or material classified before June 1, 1972, whether or not assigned to Groups 1, 2, or 3, of Executive Order No. 10501, as amended, shall be excluded from the General Declassification Schedule. However, at any time after the expiration of 10 years after the date of origin it shall be subject to a mandatory classification review and disposition in accordance with the following criteria and conditions:

(i) It shall be declassified unless it falls within one of the following criteria:

(*a*) Classified information or material furnished by foreign governments or international organizations and held by the United States on the understanding that it be kept in confidence.

(*b*) Classified information or material specifically covered by statute, or pertaining to cryptography, or disclosing intelligence sources or methods.

(*c*) Classified information or material disclosing a system, plan, installation, project, or specific foreign relations matter, the continuing protection of which is essential to the national security.

(*d*) Classified information or material the disclosure of which would place a person in immediate jeopardy.

(ii) *Mandatory review of exempted material.* All classified information and material originated after June 1, 1972, which is exempted under any of the above criteria shall be subject to a classification review by the originating department at any time after the expiration of 10 years from the date of origin provided:

(*a*) A department or member of the public requests a review;

(*b*) The request describes the document or record with sufficient particularity to enable the department to identify it; and

(*c*) The record can be obtained with a reasonable amount of effort.

(*d*) Information or material which no longer qualifies for exemption under any of the above criteria shall be declassified. Information or material which continues to qualify under any of the above criteria shall be so marked, and, unless impossible, a date for automatic declassification shall be set.

(iii) All requests for ''mandatory review'' shall be directed to:

Director, Security and Inspection Division, Environmental Protection Agency, Washington, DC 20460.

The Director, Security and Inspection Division shall promptly notify the action office of the request, and the action office shall immediately acknowledge receipt of the request in writing.

(iv) *Burden of proof for administrative determinations.* The burden of proof is on the originating Agency to show that continued classification is warranted within the terms of this paragraph (c)(2).

(v) *Availability of declassified material.* Upon a determination under paragraph (ii) of this paragraph (c)(2), that the requested material no longer warrants classification, it shall be declassified and made promptly available to the requester, if not otherwise exempt from disclosure under section 552(b) of Title 5 U.S.C. (Freedom of Information Act) or other provision of law.

(vi) *Classification review requests.* As required by paragraph (ii) of this paragraph (c)(2) of this order, a request for classification review must describe the document with sufficient particularity to enable the Department or Agency to identify it and obtain it with a reasonable amount of effort. Whenever a request is deficient in its description of the record sought, the requester should be asked to provide additional identifying information whenever possible. Before denying a request on the ground that it is unduly burdensome, the requester should be asked to limit his request to records that are reasonably obtainable. If nonetheless the requester does not describe the records sought with sufficient particularity, or the record requested cannot be obtained with a reasonable amount of effort, the requester shall be notified of the reasons why no action will be taken and of his right to appeal such decision.

§ 11.6 Access by historical researchers and former Government officials.

(a) Access to classified information or material may be granted to historical researchers or to persons who formerly occupied policymaking positions to which they were appointed by the President: *Provided, however,* That in each case the head of the originating Department shall:

(1) Determine that access is clearly consistent with the interests of the national security; and

(2) Take appropriate steps to assure that classified information or material is not published or otherwise compromised.

(b) Access granted a person by reason of his having previously occupied a policymaking position shall be limited to those papers which the former official originated, reviewed, signed, or received while in public office, except as related to the ''Declassification of Presidential Papers,'' which shall be treated as follows:

(1) *Declassification of Presidential Papers.* The Archivist of the United States shall have authority

to review and declassify information and material which has been classified by a President, his White House Staff or special committee or commission appointed by him and which the Archivist has in his custody at any archival depository, including a Presidential library. Such declassification shall only be undertaken in accord with:

(i) The terms of the donor's deed of gift;

(ii) Consultations with the Departments having a primary subject-matter interest; and

(iii) The provisions of § 11.5(c).

PART 12—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE ENVIRONMENTAL PROTECTION AGENCY

AUTHORITY: 29 U.S.C. 794.

SOURCE: 52 FR 30606, Aug. 14, 1987, unless otherwise noted.

§ 12.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the U.S. Postal Service. Section 504 regulations applicable to recipients of financial assistance from the Environmental Protection Agency (EPA) may be found at 40 CFR part 7 (1986).

§ 12.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 12.103 Definitions.

For purposes of this part, the term—

Agency means Environmental Protection Agency.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, U.S. Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive, genitourinary; hemic and lymphatic; skin, and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity, without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 12.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 12.104—12.109 [Reserved]

§ 12.110 Self-evaluation.

(a) The agency shall, by November 13, 1987, begin a nationwide evaluation, of its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps to, participate in the self-evaluation process by submitting comments (both oral and written).

(b) The evaluation shall be concluded by September 14, 1988, with a written report submitted to the Administrator that states the findings of the self-evaluation, any remedial action taken, and recommendations, if any, for further remedial action.

(c) The Administrator shall, within 60 days of the receipt of the report of the evaluation and recommendations, direct that certain remedial actions be taken as he/she deems appropriate.

(d) The agency shall, for at least three years following completion of the evaluation required under paragraph (b) of this section, maintain on file and make available for public inspection:

(1) A list of the interested persons consulted;

(2) A description of the areas examined and any problems identified; and

(3) A description of any modifications made.

§ 12.111 Notice.

The agency shall make available to employees, unions representing employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 12.112—12.129 [Reserved]

§ 12.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b) (1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is pro-

vided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the program or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 12.131—12.139 [Reserved]

§ 12.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 12.141—12.148 [Reserved]

§ 12.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 12.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 12.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 12.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or

such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by November 13, 1987, except that where structural changes in facilities are undertaken, such changes shall be made by September 14, 1990, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 14, 1988, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 12.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 12.152—12.159 [Reserved]

§ 12.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individuals with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 12.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or designee after consid-

ering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 12.161—12.169 [Reserved]

§ 12.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for coordinating implementation of this section shall be vested in the Director of the Office of Civil Rights, EPA or his/her designate.

(d) The complainant may file a complete complaint at any EPA office. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause. The agency shall accept and investigate all complete complaints for which it has jurisdiction.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building of facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by paragraph (g) of this section. The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Administrator or a designee.

(j) The Administrator or a designee shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Administrator or designee determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section above may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§§ 12.171—12.999 [Reserved]

PART 13—CLAIMS COLLECTION STANDARDS

Subpart A—General

Subpart B—Collection

Subpart C—Administrative Offset

Subpart D—Compromise of Debts

Subpart E—Suspension of Collection Action

Subpart F—Termination of Debts

Subpart G—Referrals

Subpart H—Referral of Debts to IRS for Tax Refund Offset

AUTHORITY:5 U.S.C. 552a, 5512, and 5514; 31 U.S.C. 3711 *et seq.* and 3720A; 4 CFR parts 101–10.

SOURCE: 53 FR 37270, Sept. 23, 1988, unless otherwise noted.

Subpart A—General

§ 13.1 Purpose and scope.

This regulation prescribes standards and procedures for the Environmental Protection Agency's (EPA's) collection and disposal of debts. These standards and procedures are applicable to all debts for which a statute, regulation or contract does not prescribe different standards or procedures. This regulation covers EPA's collection, compromise, suspension, termination, and referral of debts.

§ 13.2 Definitions.

(a) *Debt* means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, grants, contracts, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources. As used in this regulation, the terms *debt* and *claim* are synonymous.

(b) *Delinquent debt* means any debt which has not been paid by the date specified by the Government for payment or which has not been satisfied in accordance with a repayment agreement.

(c) *Debtor* means an individual, organization, association, corporation, or a State or local government indebted to the United States or a person or entity with legal responsibility for assuming the debtor's obligation.

(d) *Agency* means the United States Environmental Protection Agency.

(e) *Administrator* means the Administrator of EPA or an EPA employee or official designated to act on the Administrator's behalf.

(f) *Administrative offset* means the withholding of money payable by the United States to, or held by the United States for, a person to satisfy a debt the person owes the Government.

(g) *Creditor agency* means the Federal agency to which the debt is —wed.

(h) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount described in 5 CFR 581.105 (b) through (f). These deductions include, but are not limited to: Social security

withholdings; Federal, State and local tax withholdings; health insurance premiums; retirement contributions; and life insurance premiums.

(i) *Employee* means a current employee of the Federal Government including a current member of the Armed Forces.

(j) *Person* means an individual, firm, partnership, corporation, association and, except for purposes of administrative offsets under subpart C and interest, penalty and administrative costs under subpart B of this regulation, includes State and local governments and Indian tribes and components of tribal governments.

(k) *Employee salary offset* means the administrative collection of a debt by deductions at one or more officially established pay intervals from the current pay account of an employee without the employee's consent.

(l) *Waiver* means the cancellation, remission, forgiveness or non-recovery of a debt or debt-related charge as permitted or required by law.

§ 13.3 Interagency claims.

This regulation does not apply to debts owed EPA by other Federal agencies. Such debts will be resolved by negotiation between the agencies or by referral to the General Accounting Office (GAO).

§ 13.4 Other remedies.

(a) This regulation does not supersede or require omission or duplication of administrative proceedings required by contract, statute, regulation or other Agency procedures, *e.g.*, resolution of audit findings under grants or contracts, informal grant appeals, formal appeals, or review under a procurement contract.

(b) The remedies and sanctions available to the Agency under this regulation for collecting debts are not intended to be exclusive. The Agency may impose, where authorized, other appropriate sanctions upon a debtor for inexcusable, prolonged or repeated failure to pay a debt. For example, the Agency may stop doing business with a grantee, contractor, borrower or lender; convert the method of payment under a grant or contract from an advance payment to a reimbursement method; or revoke a grantee's or contractor's letter-of-credit.

§ 13.5 Claims involving criminal activities or misconduct.

(a) The Administrator will refer cases of suspected criminal activity or misconduct to the EPA Office of Inspector General. That office has the responsibility for investigating or referring the matter, where appropriate, to the Department of Justice (DOJ), and/or returning it to the Administrator for further actions. Examples of activities which should be referred are matters involving fraud, anti-trust violations, embezzlement, theft, false claims or misuse of Government money or property.

(b) The Administrator will not administratively compromise, terminate, suspend or otherwise dispose of debts involving criminal activity or misconduct without the approval of DOJ.

§ 13.6 Subdivision of claims not authorized.

A claim will not be subdivided to avoid the $20,000 limit on the Agency's authority to compromise, suspend, or terminate a debt. A debtor's liability arising from a particular transaction or contract is a single claim.

§ 13.7 Omission not a defense.

Failure by the Administrator to comply with any provision of this regulation is not available to a debtor as a defense against payment of a debt.

Subpart B—Collection

§ 13.8 Collection rule.

(a) The Administrator takes action to collect all debts owed the United States arising out of EPA activities and to reduce debt delinquencies. Collection actions may include sending written demands to the debtor's last known address. Written demand may be preceded by other appropriate action, including immediate referral to DOJ for litigation, when such action is necessary to protect the Government's interest. The Administrator may contact the debtor by telephone, in person and/or in writing to demand prompt payment, to discuss the debtor's position regarding the existence, amount or repayment of the debt, to inform the debtor of its rights (*e.g.*, to apply for waiver of the indebtedness or to have an administrative review) and of the basis for the debt and the consequences of nonpayment or delay in payment.

(b) The Administrator maintains an administrative file for each debt and/or debtor which documents the basis for the debt, all administrative collection actions regarding the debt (including communications to and from the debtor) and its final disposition. Information from a debt file relating to an individual may be disclosed only for purposes which are consistent with this regulation, the Privacy Act of 1974 and other applicable law.

§ 13.9 Initial notice.

(a) When the Administrator determines that a debt is owed EPA, he provides a written initial notice to the debtor. Unless otherwise provided by agreement, contract or order, the initial notice informs the debtor:

(1) Of the amount, nature and basis of the debt;

(2) That payment is due immediately upon receipt of the notice;

(3) That the debt is considered delinquent if it is not paid within 30 days of the date mailed or hand-delivered;

(4) That interest charges and, except for State and local governments and Indian tribes, penalty charges and administrative costs may be assessed against a delinquent debt;

(5) Of any rights available to the debtor to dispute the validity of the debt or to have recovery of the debt waived (citing the available review or waiver authority, the conditions for review or waiver, and the effects of the review or waiver request on the collection of the debt), and of the possibility of assessment of interest, penalty and administrative costs; and

(6) The address, telephone number and name of the person available to discuss the debt.

(b) EPA will respond promptly to communications from the debtor. Response generally will be within 20 days of receipt of communication from the debtor.

(c) Subsequent demand letters also will advise the debtor of any interest, penalty or administrative costs which have been assessed and will advise the debtor that the debt may be referred to a credit reporting agency (see § 13.14), a collection agency (see § 13.13) or to DOJ (see § 13.33) if it is not paid.

§ 13.10 Aggressive collection actions; documentation.

(a) EPA takes actions and effective follow-up on a timely basis to collect all claims of the United States for money and property arising out of EPA's activities. EPA cooperates with other Federal agencies in their debt collection activities.

(b) All administrative collection actions are documented in the claim file, and the bases for any compromise, termination or suspension of collection actions is set out in detail. This documentation, including the Claims Collection Litigation Report required § 13.33, is retained in the appropriate debt file.

§ 13.11 Interest, penalty and administrative costs.

(a) *Interest.* EPA will assess interest on all delinquent debts unless prohibited by statute, regulation or contract.

(1) Interest begins to accrue on all debts from the date of the initial notice to the debtor. EPA will not recover interest where the debt is paid within 30 days of the date of the notice. EPA will assess an annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the FEDERAL REGISTER and the Treasury Fiscal Requirements Manual Bulletins, unless a different rate is necessary to protect the interest of the Government. EPA will notify the debtor of the basis for its finding that a different rate is necessary to protect the interest of the Government.

(2) The Administrator may extend the 30-day period for payment where he determines that such action is in the best interest of the Government. A decision to extend or not to extend the payment period is final and is not subject to further review.

(3) The rate of interest, as initially assessed, remains fixed for the duration of the indebtedness. If a debtor defaults on a repayment agreement, interest may be set at the Treasury rate in effect on the date a new agreement is executed.

(4) Interest will not be assessed on interest charges, administrative costs or later payment penalties. However, where a debtor defaults on a previous repayment agreement and interest, administrative costs and penalties charges have been waived under the defaulted agreement, these charges can be reinstated and added to the debt principal under any new agreement and interest charged on the entire amount of the debt.

(b) *Administrative costs of collecting overdue debts.* The costs of the Agency's administrative handling of overdue debts, based on either actual or average cost incurred, will be charged on all debts except those owed by State and local governments and Indian tribes. These costs include both direct and indirect costs. Administrative costs will be assessed monthly throughout the period the debt is overdue except as provided by § 13.12.

(c) *Penalties.* As provided by 31 U.S.C. 3717(e)(2), a penalty charge will be assessed on all debts, except those owned by State and local governments and Indian tribes, more than 90 days delinquent. The penalty charge will be at a rate not to exceed 6% per annum and will be assessed monthly.

(d) *Allocation of payments.* A partial payment by a debtor will be applied first to outstanding administrative costs, second to penalty assessments, third to accrued interest and then to the outstanding debt principal.

(e) *Waiver*. (1) The Administrator may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty or administrative costs, where he determines that—

(i) Waiver is justified under the criteria of § 13.25;

(ii) The debt or the charges resulted from the Agency's error, action or inaction, and without fault by the debtor; or

(iii) Collection of these charges would be against equity and good conscience or not in the best interest of the United States.

(2) A decision to waive interest, penalty charges or administrative costs may be made at any time prior to payment of a debt. However, where these charges have been collected prior to the waiver decision, they will not be refunded. The Administrator's decision to waive or not waive collection of these charges is a final agency action.

§ 13.12 Interest and charges pending waiver or review.

Interest, penalty charges and administrative costs will continue to accrue on a debt during administrative appeal, either formal or informal, and during waiver consideration by the Agency; *except*, that interest, penalty charges and administrative costs will not be assessed where a statute or a regulation specifically prohibits collection of the debt during the period of the administrative appeal or the Agency review.

§ 13.13 Contracting for collection services.

EPA will use private collection services where it determines that their use is in the best interest of the Government. Where EPA determines that there is a need to contract for collection services it will—

(a) Retain sole authority to resolve any dispute by the debtor of the validity of the debt, to compromise the debt, to suspend or terminate collection action, to refer the debt to DOJ for litigation, and to take any other action under this part which does not result in full collection of the debt;

(b) Require the contractor to comply with the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), with applicable Federal and State laws pertaining to debt collection practices (*e.g.,* the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*)), and with applicable regulations of the Internal Revenue Service;

(c) Require the contractor to account accurately and fully for all amounts collected; and

(d) Require the contractor to provide to EPA, upon request, all data and reports contained in its files relating to its collection actions on a debt.

§ 13.14 Use of credit reporting agencies.

EPA reports delinquent debts to appropriate credit reporting agencies.

(a) EPA provides the following information to the reporting agencies:

(1) A statement that the claim is valid and is overdue;

(2) The name, address, taxpayer identification number and any other information necessary to establish the identity of the debtor;

(3) The amount, status and history of the debt; and

(4) The program or pertinent activity under which the debt arose.

(b) Before disclosing debt information, EPA will:

(1) Take reasonable action to locate the debtor if a current address is not available; and

(2) If a current address is available, notify the debtor by certified mail, return receipt requested, that:

(i) The designated EPA official has reviewed the claim and has determined that it is valid and overdue;

(ii) That within 60 days EPA intends to disclose to a credit reporting agency the information authorized for disclosure by this subsection; and

(iii) The debtor can request a complete explanation of the claim, can dispute the information in EPA's records concerning the claim, and can file for an administrative review, waiver or reconsideration of the claim, where applicable.

(c) Before information is submitted to a credit reporting agency, EPA will provide a written statement to the reporting agency that all required actions have been taken. Additionally, EPA will, thereafter, ensure that the credit reporting agency is promptly informed of any substantive change in the conditions or amounts of the debt, and promptly verify or correct information relevant to the claim.

(d) If a debtor disputes the validity of the debt, the credit reporting agency will refer the matter to the appropriate EPA official. The credit reporting agency will exclude the debt from its reports until EPA certifies in writing that the debt is valid.

§ 13.15 Taxpayer information.

(a) The Administrator may obtain a debtor's current mailing address from the Internal Revenue Service.

(b) Addresses obtained from the Internal Revenue Service will be used by the Agency, its officers, employees, agents or contractors and other Federal agencies only to collect or dispose of debts, and may be disclosed to credit reporting agencies only for the purpose of their use in preparing a commercial credit report on the taxpayer for use by EPA.

§ 13.16 Liquidation of collateral.

Where the Administrator holds a security instrument with a power of sale or has physical possession of collateral, he may liquidate the security or collateral and apply the proceeds to the overdue debt. EPA will exercise this right where the debtor fails to pay within a reasonable time after demand, unless the cost of disposing of the collateral is disproportionate to its value or special circumstances

require judicial foreclosure. However, collection from other businesses, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance company unless expressly required by contract or statute. The Administrator will give the debtor reasonable notice of the sale and an accounting of any surplus proceeds and will comply with any other requirements of law or contract.

§ 13.17 Suspension or revocation of license or eligibility.

When collecting statutory penalties, forfeitures, or debts for purposes of enforcement or compelling compliance, the Administrator may suspend or revoke licenses or other privileges for any inexcusable, prolonged or repeated failure of a debtor to pay a claim. Additionally, the Administrator may suspend or disqualify any contractor, lender, broker, borrower, grantee or other debtor from doing business with EPA or engaging in programs EPA sponsors or funds if a debtor fails to pay its debts to the Government within a reasonable time. Debtors will be notified before such action is taken and applicable suspension or debarment procedures will be used. The Administrator will report the failure of any surety to honor its obligations to the Treasury Department for action under 6 U.S.C. 11.

§ 13.18 Installment payments.

(a) Whenever, feasible, and except as otherwise provided by law, debts owed to the United States, together with interest, penalty and administrative costs, as required by § 13.11, will be collected in a single payment. However, where the Administrator determines that a debtor is financially unable to pay the indebtedness in a single payment or that an alternative payment mechanism is in the best interest of the United States, the Administrator may approve repayment of the debt in installments. The debtor has the burden of establishing that it is financially unable to pay the debt in a single payment or that an alternative payment mechanism is warranted. If the Administrator agrees to accept payment by installments, the Administrator may require a debtor to execute a written agreement which specifies all the terms of the repayment arrangement and which contains a provision accelerating the debt in the event of default. The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. The installment payments will be sufficient in size and frequency to liquidate the debt in not more than 3 years, unless the Administrator determines that a longer period is required. Installment payments of less than $50 per month generally will not be accepted, but may be accepted where the debtor's financial or other circumstances justify. If the debt is unsecured, the Administrator may require the debtor to execute a confess-judgment note with a tax carry-forward and a tax carry-back provision. Where the Administrator secures a confess-judgment note, the Administrator will provide the debtor a written explanation of the consequences of the debtor's signing the note.

(b) If a debtor owes more than one debt and designates how a voluntary installment payment is to be applied among the debts, that designation will be approved if the Administrator determines that the designation is in the best interest of the United States. If the debtor does not designate how the payment is to be applied, the Administrator will apply the payment to the various debts in accordance with the best interest of the United States, paying special attention to applicable statutes of limitations.

§ 13.19 Analysis of costs; automation; prevention of overpayments, delinquencies or defaults.

(a) The Administrator may periodically compare EPA's costs in handling debts with the amounts it collects,

(b) The Administrator may periodically consider the need, feasibility, and cost effectiveness of automated debt collection operations.

(c) The Administrator may establish internal controls to identify the causes of overpayments and delinquencies and may issue procedures to prevent future occurrences of the identified problems.

Subpart C—Administrative Offset

§ 13.20 Administrative offset of general debts.

This subpart provides for EPA's collection of debts by administrative offset under section 5 of the Debt Collection Act of 1982 (31 U.S.C. 3716), other statutory authorities and the common law. It does not apply to offsets against employee salaries covered by §§ 13.21, 13.22 and 13.23 of this subpart. EPA will collect debts by administrative offsets where it determines that such collections are feasible and are not otherwise prohibited by statute or contract.

EPA will decide, on a case-by-case basis, whether collection by administrative offset is feasible and that its use furthers and protects the interest of the United States.

(a) *Standards.* (1) The Administrator collects debts by administrative offset if—

(i) The debt is certain in amount;

(ii) Efforts to obtain direct payment from the debtor have been, or would most likely be, unsuc-

cessful or the Administrator and the debtor agree to the offset;

(iii) Offset is not expressly or implicitly prohibited by statute, regulation or contract;

(iv) Offset is cost-effective or has significant deterrent value;

(v) Offset does not substantially impair or defeat program objectives; and

(vi) Offset is best suited to further and protect the Government's interest.

(2) The Administrator may, in determining the method and amount of the offset, consider the financial impact on the debtor.

(b) *Interagency offset.* The Administrator may offset a debt owed to another Federal agency from amounts due or payable by EPA to the debtor, or may request another Federal agency to offset a debt owed to EPA. The Administrator may request the Internal Revenue Service to offset an overdue debt from a Federal income tax refund due a debtor where reasonable attempts to obtain payment have failed. Interagency offsets from employee salaries will be made in accordance with the procedures contained in §§ 13.22 and 13.23.

(c) *Multiple debts.* Where moneys are available for offset against multiple debts of a debtor, it will be applied in accordance with the best interest of the Government as determined by the Administrator on a case-by-case basis.

(d) *Statutory bar to offset.* Administrative offset will not be made more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not have been known through the exercise of reasonable care by the officer responsible for discovering or collecting the debt. For purposes of offset, the right to collect a debt accrues when the appropriate EPA official determines that a debt exists (e.g., contracting officer, grant award official, etc.), when it is affirmed by an administrative appeal or a court having jurisdiction, or when a debtor defaults on a payment agreement, whichever is latest. An offset occurs when money payable to the debtor is first withheld or when EPA requests offset from money held by another agency.

(e) *Pre-offset notice.* Before initiating offset, the Administrator sends the debtor written notice of:

(1) The basis for and the amount of the debt as well as the Agency's intention to collect the debt by offset if payment or satisfactory response has not been received within 30 days of the notice;

(2) The debtor's right to submit an alternative repayment schedule, to inspect and copy agency records pertaining to the debt, to request review of the determination of indebtedness or to apply for waiver under any available statute or regulation; and

(3) Applicable interest, penalty charges and administrative costs.

(f) *Alternative repayment.* The Administrator may, at the Administrator's discretion, enter into a repayment agreement with the debtor in lieu of offset. In deciding whether to accept payment of the debt by an alternative repayment agreement, the Administrator may consider such factors as the amount of the debt, the length of the proposed repayment period, whether the debtor is willing to sign a confess-judgment note, past Agency dealings with the debtor, documentation submitted by the debtor indicating that an offset will cause undue financial hardship, and the debtor's financial ability to adhere to the terms of a repayment agreement. The Administrator may require financial documentation from the debtor before considering the repayment arrangement.

(g) *Review of administrative determination.* (1) A debt will not be offset while a debtor is seeking either formal or informal review of the validity of the debt under this section or under another statute, regulation or contract. However, interest, penalty and administrative costs will continue to accrue during this period, unless otherwise waived by the Administrator. The Administrator may initiate offset as soon as practical after completion of review or after a debtor waives the opportunity to request review.

(2) The Administrator may administratively offset a debt prior to the completion of a formal or informal review where the determines that:

(i) Failure to take the offset would substantially prejudice EPA's ability to collect the debt; and

(ii) The time before the first offset is to be made does not reasonably permit the completion of the review procedures. (Offsets taken prior to completion of the review process will be followed promptly by the completion of the process. Amounts recovered by offset but later found not to be owed will be refunded promptly.)

(3) The debtor must provide a written request for review of the decision to offset the debt no later than 15 days after the date of the notice of the offset unless a different time is specifically prescribed. The debtor's request must state the basis for the request for review.

(4) The Administrator may grant an extension of time for filing a request for review if the debtor shows good cause for the late filing. A debtor who fails timely to file or to request an extension waives the right to review.

(5) The Administrator will issue, no later than 60 days after the filing of the request, a written final decision based on the evidence, record and applicable law.

§ 13.21 Employee salary offset—general.

(a) *Purpose.* This section establishes EPA's policies and procedures for recovery of debts owed to the United States by installment collection from the current pay account of an employee.

(b) *Scope.* The provisions of this section apply to collection by salary offset under 5 U.S.C. 5514 of debts owed EPA and debts owed to other Federal agencies by EPA employees. This section does not apply to debts owed EPA arising from travel advances under 5 U.S.C. 5705, employee training expenses under 5 U.S.C. 4108 and to other debts where collection by salary offset is explicitly provided for or prohibited by another statute.

(c) *References.* The following statutes and regulations apply to EPA's recovery of debts due the United States by salary offset:

(1) 5 U.S.C. 5514, as amended, governing the installment collection of debts;

(2) 31 U.S.C. 3716, governing the liquidation of debts by administrative offset;

(3) 5 CFR part 550, subpart K, setting forth the minimum requirements for executive agency regulations on salary offset; and

(4) 4 CFR parts 101–105, the Federal Claims Collection Standards.

§ 13.22 Salary offset when EPA is the creditor agency.

(a) *Entitlement to notice, hearing, written response and decision.* (1) Prior to initiating collection action through salary offset, EPA will first provide the employee with the opportunity to pay in full the amount owed, unless such notification will compromise the Government's ultimate ability to collect the debt.

(2) Except as provided in paragraph (b) of this section, each employee from whom the Agency proposes to collect a debt by salary offset under this section is entitled to receive a written notice as described in paragraph (c) of this section.

(3) Each employee owing a debt to the United States which will be collected by salary offset is entitled to request a hearing on the debt. This request must be filed as prescribed in paragraph (d) of this section. The Agency will make appropriate hearing arrangements which are consistent with law and regulations. Where a hearing is held, the employee is entitled to a written decision on the following issues:

(i) The determination of the Agency concerning the existence or amount of the debt; and

(ii) The repayment schedule, if it was not established by written agreement between the employee and the Agency.

(b) *Exceptions to entitlement to notice, hearing, written response and final decision.* The procedural requirements of paragraph (a) of this section are not applicable to any adjustment of pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program (such as health insurance) requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less. However, if the amount to be recovered was accumulated over more than four pay periods the full procedures prescribed under paragraph (d) of this section will be extended to the employee.

(c) *Notification before deductions begin.* Except as provided in paragraph (b) of this section, deductions will not be made unless the employee is first provided with a minimum of 30 calendar days written notice. Notice will be sent by certified mail (return receipt requested), and must include the following:

(1) The Agency's determination that a debt is owed, including the origin, nature, and amount of the debt;

(2) The Agency's intention to collect the debt by means of deductions from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date and duration of the intended deductions. (The proposed beginning date for salary offset cannot be earlier than 30 days after the date of notice, unless this would compromise the Government's ultimate ability to resolve the debt);

(4) An explanation of the requirements concerning interest, penalty and administrative costs;

(5) The employee's right to inspect and copy all records relating to the debt or to request and receive a copy of such records;

(6) If not previously provided, the employee's right to enter into a written agreement for a repayment schedule differing from that proposed by the Agency where the terms of the proposed repayment schedule are acceptable to the Agency. (Such an agreement must be in writing and signed by both the employee and the appropriate EPA official and will be included in the employee's personnel file and documented in the EPA payroll system);

(7) The right to a hearing conducted by a hearing official not under the control of the Administrator, if a request is filed;

(8) The method and time for requesting a hearing;

(9) That the filing of a request for hearing within 15 days of receipt of the original notification will stay the assessment of interest, penalty and administrative costs and the commencement of collection proceedings;

(10) That a final decision on the hearing (if requested) will be issued at the earliest practical date, but no later than 60 days after the filing of

the request, unless the employee requests and the hearing official grants a delay in the proceedings;

(11) That knowingly false or frivolous statements, representations or evidence may subject the employee to—

(i) Disciplinary procedures under 5 U.S.C. chapter 75 or any other applicable statutes or regulations;

(ii) Criminal penalties under 18 U.S.C. 286, 287, 1001 and 1002 or other applicable statutory authority; or

(iii) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority;

(12) Any other rights and remedies available under statutes or regulations governing the program for which the collection is being made; and

(13) That amounts paid or deducted for the debt, except administrative costs and penalty charges where the entire debt is not waived or terminated, which are later waived or found not owed to the United States will be promptly refunded to the employee.

(d) *Request for hearing.* An employee may request a hearing by filing a written request directly with the Director, Financial Management Division (PM–226F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The request must state the bases upon which the employee disputes the proposed collection of the debt. The request must be signed by the employee and be received by EPA within 15 days of the employee's receipt of the notification of proposed deductions. The employee should submit in writing all facts, evidence and witnesses which support his/her position to the Director, Financial Management Division, within 15 days of the date of the request for a hearing. The Director, Financial Management Division, will arrange for the services of a hearing official not under the control of the Administrator and will provide the hearing official with all documents relating to the claim.

(e) *Requests for hearing made after time expires.* Late requests for a hearing may be accepted if the employee can show that the delay in filing the request for a hearing was due to circumstances beyond the employee's control.

(f) *Form of hearing, written response and final decision.* (1) Normally, a hearing will consist of the hearing official making a decision based upon a review of the claims file and any materials submitted by the debtor. However, in instances where the hearing official determines that the validity of the debt turns on an issue of veracity or credibility which cannot be resolved through review of documentary evidence, the hearing official at his discretion may afford the debtor an opportunity for an oral hearing. Such oral hearings will consist of an informal conference before a hearing official in which the employee and the Agency will be given the opportunity to present evidence, witnesses and argument. If desired, the employee may be represented by an individual of his/her choice. The Agency shall maintain a summary record of oral hearings provided under these procedures.

(2) Written decisions provided after a request for hearing will, at a minimum, state the facts evidencing the nature and origin of the alleged debt; and the hearing official's analysis, findings and conclusions.

(3) The decision of the hearing official is final and binding on the parties.

(g) *Request for waiver.* In certain instances, an employee may have a statutory right to request a waiver of overpayment of pay or allowances, e.g., 5 U.S.C. 5584 or 5 U.S.C. 5724(i). When an employee requests waiver consideration under a right authorized by statute, further collection on the debt will be suspended until a final administrative decision is made on the waiver request. However, where it appears that the Government's ability to recover the debt may be adversely affected because of the employee's resignation, termination or other action, suspension of recovery is not required. During the period of the suspension, interest, penalty charges and administrative costs will not be assessed against the debt. The Agency will not duplicate, for purposes of salary offset, any of the procedures already provided the debtor under a request for waiver.

(h) *Method and source of collection.* A debt will be collected in a lump-sum or by installment deductions at established pay intervals from an employee's current pay account, unless the employee and the Agency agree to alternative arrangements for payment. The alternative payment schedule must be in writing, signed by both the employee and the Administrator and will be documented in the Agency's files.

(i) *Limitation on amount of deduction.* The size and frequency of installment deductions generally will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period may not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payments will be in amounts sufficient to liquidate the debt in three years or less. Installment payments of less than $25 normally will be accepted only in the most unusual circumstances.

(j) *Duration of deduction.* If the employee is financially unable to pay a debt in a lump-sum or the amount of the debt exceeds 15 percent of disposable pay, collection will be made in installments. Installment deductions will be made over

the period of active duty or employment except as provided in paragraph (a)(1) of this section.

(k) *When deductions may begin.* (1) Deductions to liquidate an employee's debt will begin on the date stated in the Agency's notice of intention to collect from the employee's current pay unless the debt has been repaid or the employee has filed a timely request for hearing on issues for which a hearing is appropriate.

(2) If the employee has filed a timely request for hearing with the Agency, deductions will begin after the hearing official has provided the employee with a final written decision indicating the amount owed the Government. Following the decision by the hearing official, the employee will be given 30 days to repay the amount owed prior to collection through salary offset, unless otherwise provided by the hearing official.

(l) *Liquidation from final check.* If the employee retires, resigns, or the period of employment ends before collection of the debt is completed, the remainder of the debt will be offset from subsequent payments of any nature due the employee (e.g., final salary payment, lump-sum leave, etc.).

(m) *Recovery from other payments due a separated employee.* If the debt cannot be liquidated by offset from any final payment due the employee on the date of separation, EPA will liquidate the debt, where appropriate, by administrative offset from later payments of any kind due the former employee (*e.g.*, retirement pay). Such administrative offset will be taken in accordance with the procedures set forth in § 13.20.

(n) *Employees who transfer to another Federal agency.* If an EPA employee transfers to another Federal agency prior to repaying a debt owed to EPA, the following action will be taken:

(1) The appropriate debt-claim form specified by the Office of Personnel Management (OPM) will be completed and certified to the new paying office by EPA. EPA will certify: That the employee owes a debt; the amount and the basis for the debt; the date on which payment is due; the date the Government's rights to collect the debt first accrued; and that EPA's regulations implementing 5 U.S.C. 5514 have been approved by OPM.

(2) The new paying agency will be advised of the amount which has already been collected, the number of installments and the commencement date for the first installment, if other than the next officially established pay period. EPA will also identify to the new paying agency the actions it has taken and the dates of such actions.

(3) EPA will place or will arrange to have placed in the employee's official personnel file the information required by paragraphs (n) (1) and (2) of this section.

(4) Upon receipt of the official personnel file from EPA, the new paying agency will resume collection from the employee's current pay account and will notify both the employee and EPA of the resumption.

(o) *Interest, penalty and administrative cost.* EPA will assess interest and administrative costs on debts collected under these procedures. The following guidelines apply to the assessment of these costs on debts collected by salary offset:

(1) A processing and handling charge will be assessed on debts collected through salary offset under this section. Where offset begun prior to the employee's receipt of the 30-day written notice of the proposed offset, processing and handling costs will only be assessed after the expiration of the 30-day notice period and after the completion of any hearing requested under paragraph (d) of this section or waiver consideration under paragraph (g) of this section.

(2) Interest will be assessed on all debts not collected within 30 days of either the date of the notice where the employee has not requested a hearing within the allotted time, completion of a hearing pursuant to paragraph (d) of this section, or completion of waiver consideration under paragraph (g) of this section, whichever is later. Interest will continue to accrue during the period of the recovery.

(3) Deductions by salary offset normally begin prior to the time for assessment of a penalty. Therefore, a penalty charge will not be assessed unless deductions occur more than 120 days from the date of notice to the debtor and penalty assessments have not been suspended because of waiver consideration by EPA.

(p) *Non-waiver of right by payment.* An employee's payment under protest of all or any portion of a debt does not waive any rights which the employee may have under either these procedures or any other provision of law.

(q) *Refunds.* EPA will promptly refund to the employee amounts paid or deducted pursuant to this section, the recovery of which is subsequently waived or otherwise found not owing to the United States. Refunds do not bear interest unless specifically authorized by law.

(r) *Time limit for commencing recovery by salary setoff.* EPA will not initiate salary offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the right to collect the debt were not known and could not have been known through the exercise of reasonable care by the Government official responsible for discovering and collecting such debts.

§ 13.23 Salary offset when EPA is not the creditor agency.

The requirements below apply when EPA has been requested to collect a debt owed by an EPA employee to another Federal agency.

(a) *Format for the request for recovery.* (1) The creditor agency must complete fully the appropriate claim form specified by OPM.

(2) The creditor agency must certify to EPA on the debt claim form: The fact that the employee owes a debt; the date that the debt first accrued; and that the creditor agency's regulations implementing 5 U.S.C. 5514 have been approved by OPM and send it to the Director, Financial Management Division (PM–226F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(3) If the collection is to be made in installments, the creditor agency must also advise EPA of the number of installments to be collected, the amount of each installment, and the commencement date of the first installment, if a date other than the next established pay period.

(4) Unless the employee has consented in writing to the salary deductions or signed a statement acknowledging receipt of the required procedures and this information is attached to the claim form, the creditor agency must indicate the actions it took under its procedures for salary offset and the dates of such actions.

(b) *Processing of the claim by EPA*—(1) *Incomplete claims.* If EPA receives an improperly completed claim form, the claim form and all accompanying material will be returned to the requesting (creditor) agency with notice that OPM procedures must be followed and a properly completed claim form must be received before any salary offset can be taken. The notice should identify specifically what is needed from the requesting agency for the claim to be processed.

(2) *Complete claims.* If the claim procedures in paragraph (a) of this section have been properly completed, deduction will begin on the next established pay period. EPA will not review the merits of the creditor agency's determinations with respect to the amount or validity of the debt as stated in the debt claim form. EPA will not assess a handling or any other related charge to cover the cost of its processing the claim.

(c) *Employees separating from EPA before a debt to another agency is collected*—(1) *Employees separating from Government service.* If an employee begins separation action before EPA collects the total debt due the creditor agency, the following actions will be taken:

(i) To the extent possible, the balance owed the creditor agency will be liquidated from subsequent payments of any nature due the employee from EPA in accordance with § 13.22(1);

(ii) If the total amount of the debt cannot be recovered, EPA will certify to the creditor agency and the employee the total amount of EPA's collection; and

(iii) If EPA is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments, it will forward a copy of the claim form to the agency responsible for making such payments as notice that a debt is outstanding. EPA will also send a copy of the claim form to the creditor agency so that it can file a certified claim against the payments.

(2) *Employees who transfer to another Federal agency.* If an EPA employee transfers to another Federal agency before EPA collects the total amount due the creditor agency, the following actions will be taken:

(i) EPA will certify the total amount of the collection made on the debt; and

(ii) The employee's official personnel folder will be sent to the new paying agency. (It is the responsibility of the creditor agency to ensure that the collection is resumed by the new paying agency.)

Subpart D—Compromise of Debts

§ 13.24 General.

EPA may compromise claims for money or property where the claim, exclusive of interest, penalty and administrative costs, does not exceed $20,000. Where the claim exceeds $20,000, the authority to accept the compromise rests solely with DOJ. The Administrator may reject an offer of compromise in any amount. Where the claim exceeds $20,000 and EPA recommends acceptance of a compromise offer, it will refer the claim with its recommendation to DOJ for approval. The referral will be in the form of the Claims Collection Litigation Report (CCLR) and will outline the basis for EPA's recommendation. EPA refers compromise offers for claims in excess of $100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530, unless otherwise provided by Department of Justice delegations or procedures. EPA refers offers of compromise for claims of $20,000 to $100,000 to the United States Attorney in whose judicial district the debtor can be found. If the Administrator has a debtor's firm written offer for compromise which is substantial in amount but the Administrator is uncertain as to whether the offer should be accepted, he may refer the offer and the supporting data to DOJ or GAO for action.

§ 13.25 Standards for compromise.

(a) EPA may compromise a claim pursuant to this section if EPA cannot collect the full amount

because the debtor does not have the financial ability to pay the full amount of the debt within a reasonable time, or the debtor refuses to pay the claim in full and the Government does not have the ability to enforce collection in full within a reasonable time by enforced collection proceedings. In evaluating the acceptability of the offer, the Administrator may consider, among other factors, the following:

(1) *Individual debtors.* (i) Age and health of the debtor;

(ii) Present and potential income;

(iii) Inheritance prospects;

(iv) The possibility that assets have been concealed or improperly transferred by the debtor;

(v) The availability of assets or income which may be realized by enforced collection proceedings; or

(vi) The applicable exemptions available to the debtor under State and Federal law in determining the Government's ability to enforce collection.

(2) *Municipal and quasi-municipal debtors.* (i) The size of the municipality or quasi-municipal entity;

(ii) The availability of current and future resources sufficient to pay the debt (*e.g.,* bonding authority, rate adjustment authority, or taxing authority); or

(iii) The ratio of liabilities (both short and long term) to assets.

(3) *Commercial debtors.* (i) Ratio of assets to liabilities;

(ii) Prospects of future income or losses; or

(iii) The availability of assets or income which may be realized by enforced collection proceedings.

(b) EPA may compromise a claim, or recommend acceptance of a compromise to DOJ, where there is substantial doubt concerning the Government's ability to prove its case in court for the full amount of the claim, either because of the legal issues involved or a bona fide dispute as to the facts. The amount accepted in compromise in such cases will fairly reflect the probability of prevailing on the legal issues involved, considering fully the availability of witnesses and other evidentiary data required to support the Government's claim. In determining the litigative risks involved, EPA will give proportionate weight to the likely amount of court costs and attorney fees the Government may incur if it is unsuccessful in litigation.

(c) EPA may compromise a claim, or recommend acceptance of a compromise to DOJ, if the cost of collection does not justify the enforced collection of the full amount of the debt. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigative costs of collection, taking into consideration the time it will take to effect collection. Costs of collection may be a substantial factor in the settlement of small claims, but normally will not carry great weight in the settlement of large claims. In determining whether the cost of collection justifies enforced collection of the full amount, EPA may consider the positive effect that enforced collection of the claim may have on the collection of other similar claims.

(d) Statutory penalties, forfeitures or debts established as an aid to enforcement and to compel compliance may be compromised where the Administrator determines that the Agency's enforcement policy, in terms of deterrence and securing compliance (both present and future), will be adequately served by accepting the offer.

§ 13.26 Payment of compromised claims.

The Administrator normally will not approve a debtor's request to pay a compromised claim in installments. However, where the Administrator determines that payment of a compromise by installments is necessary to effect collection, a debtor's request to pay in installments may be approved. Normally, where installment repayment is approved, the debtor will be required to execute a confess-judgment agreement which accelerates payment of the balance due upon default.

§ 13.27 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one debtor until the other or others pay their proportionate share. The amount of a compromise with one debtor is not precedent in determining compromises from other debtors who have been determined to be jointly and severally liable on the claim.

§ 13.28 Execution of releases.

Upon receipt of full payment of a claim or the amount compromised, EPA will prepare and execute a release on behalf of the United States. The release will include a provision which voids the release if it was procured by fraud, misrepresentation, a false claim or by mutual mistake of fact.

Subpart E—Suspension of Collection Action

§ 13.29 Suspension—general.

The Administrator may suspend the Agency's collection actions on a debt where the outstanding debt principal does not exceed $20,000, the Government cannot presently collect or enforce collection of any significant sum from the debtor, the prospects of future collection justify retention of

the debt for periodic review and there is no risk of expiration of the statute of limitations during the period of suspension. Additionally, the Administrator may waive the assessment of interest, penalty charges and administrative costs during the period of the suspension. Suspension will be for an established time period and generally will be reviewed at least every six months to ensure the continued propriety of the suspension. DOJ approval is required to suspend debts exceeding $20,000. Unless otherwise provided by DOJ delegations or procedures, the Administrator refers requests for suspension of debts of $20,000 to $100,000 to the United States Attorney in whose district the debtor resides. Debts exceeding $100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval.

§ 13.30 Standards for suspension.

(a) *Inability to locate debtor.* The Administrator may suspend collection on a debt where he determines that the debtor cannot be located presently but that there is a reasonable belief that the debtor can be located in the future.

(b) *Financial condition of debtor.* The Administrator may suspend collection action on a claim when the debtor owns no substantial equity in real or personal property and is unable to make payment on the claim or effect a compromise but the debtor's future financial prospects justify retention of the claim for periodic review, provided that:

(1) The applicable statute of limitations will not expire during the period of the suspension, can be tolled or has started running anew;

(2) Future collection can be effected by offset, notwithstanding the 10-year statute of limitations for administrative offsets; or

(3) The debtor agrees to pay interest on the debt and suspension is likely to enhance the debtor's ability to fully pay the principal amount of the debt with interest at a later date.

(c) *Request for waiver or administrative review—mandatory.* The Administrator will suspend collection activity where a statute provides for mandatory waiver consideration or administrative review prior to agency collection of a debt. The Administrator will suspend EPA's collection actions during the period provided for the debtor to request review or waiver and during the period of the Agency's evaluation of the request.

(d) *Request for waiver or administrative review—permissive.* The Administrator may suspend collection activities on debts of $20,000 or less during the pendency of a permissive waiver or administrative review where he determines that:

(1) There is a reasonable possibility that waiver will be granted and the debtor may be found not owing the debt (in whole or in part);

(2) The Government's interest is protected, if suspension is granted, by the reasonable assurance that the debt can be recovered if the debtor does not prevail; or

(3) Collection of the debt will cause undue hardship to the debtor.

(e) *Refund barred by statute or regulation.* The Administrator will ordinarily suspend collection action during the pendency of his consideration of a waiver request or administrative review where statute and regulation preclude refund of amounts collected by the Agency should the debtor prevail. The Administrator may decline to suspend collection where he determines that the request for waiver or administrative review is frivolous or was made primarily to delay collection.

Subpart F—Termination of Debts

§ 13.31 Termination—general.

The Administrator may terminate collection actions and write-off debts, including accrued interest, penalty and administrative costs, where the debt principal does not exceed $20,000. If the debt exceeds $20,000, EPA obtains the approval of DOJ in order to terminate further collection actions. Unless otherwise provided for by DOJ regulations or procedures, requests to terminate collection on debts in excess of $100,000 are referred to the Commercial Litigation Branch, Civil Division, Department of Justice, for approval. Debts in excess of $20,000 but $100,000 or less are referred to the United States Attorney in whose judicial district the debtor can be found.

§ 13.32 Standards for termination.

A debt may be terminated where the Administrator determines that:

(a) The Government cannot collect or enforce collection of any significant sum from the debtor, having due regard for available judicial remedies, the debtor's ability to pay, and the exemptions available to the debtor under State and Federal law;

(b) The debtor cannot be located, there is no security remaining to be liquidated, the applicable statute of limitations has expired, and the prospects of collecting by offset are too remote to justify retention of the claim;

(c) The cost of further collection action is likely to exceed the amount recoverable;

(d) The claim is determined to be legally without merit; or

(e) The evidence necessary to prove the claim cannot be produced or the necessary witnesses are unavailable and efforts to induce voluntary payment have failed.

Subpart G—Referrals

§ 13.33 Referrals to the Department of Justice.

(a) *Prompt referral.* The Administrator refers to DOJ for litigation all claims on which aggressive collection actions have been taken but which could not be collected, compromised, suspended or terminated. Referrals are made as early as possible, consistent with aggressive agency collection action, and within the period for bringing a timely suit against the debtor.

(1) Unless otherwise provided by DOJ regulations or procedures, EPA refers for litigation debts of more than $100,000 to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530.

(2) Unless otherwise provided by DOJ regulations or procedures, EPA refers for litigation debts of $100,000 or less to the United States Attorney in whose judicial district the debtor can be found.

(b) *Claims Collection Litigation Report (CCLR).* Unless an exception has been granted by DOJ, the CCLR is used for referrals of all administratively uncollectible claims to DOJ and is used to refer all offers of compromise.

Supbart H—Referral of Debts to IRS for Tax Refund Offset

Source: 59 FR 651, Jan. 5, 1994, unless otherwise noted.

§ 13.34 Purpose.

This subpart establishes procedures for the Environmental Protection Agency (EPA) to refer past-due debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing debts to EPA. It specifies the Agency procedures and the rights of the debtor applicable to claims for the payment of debts owed to EPA.

§ 13.35 Applicability and scope.

(a) This subpart implements 31 U.S.C. 3720A, which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(2) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Agency against amounts payable to or on behalf of the debtor by or on behalf of the Agency;

(4) With respect to which EPA has given the taxpayer at least 60 days from the date of notification to present evidence that all or part of the debt is not past-due or not legally enforceable, has considered evidence presented by such taxpayer, if any, and has determined that an amount of such debt is past-due and legally enforceable;

(5) Has been disclosed by EPA to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100.00;

(6) With respect to which EPA has notified or has made a reasonable attempt to notify the taxpayer that the debt is past-due and, unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax;

(7) Is at least $25.00; and

(8) All other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations at 26 CFR 301.6402–6 relating to the eligibility of a debt for tax return offset have been satisfied.

§ 13.36 Administrative charges.

In accordance with § 13.11, all administrative charges incurred in connection with the referral of a debt to the IRS shall be assessed on the debt and thus increase the amount of the offset.

§ 13.37 Notice requirement before offset.

A request for reduction of an IRS tax refund will be made only after EPA makes a determination that an amount is owed and past-due and provides the debtor with 60 days written notice. EPA's notice of intention to collect by IRS tax refund offset (Notice of Intent) will state:

(a) The amount of the debt;

(b) That unless the debt is repaid within 60 days from the date of EPA's Notice of Intent, EPA intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as refunds of Federal taxes paid by an amount equal to the amount of the debt and all accumulated interest and other charges;

(c) That the debtor has a right to present evidence that all or part of the debt is not past-due or not legally enforceable; and

(d) A mailing address for forwarding any written correspondence and a contact name and phone number for any questions.

§ 13.38 Review within the Agency.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. To exercise this right, the debtor must:

(1) Send a written request for a review of the evidence to the address provided in the notice;

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable; and

(3) Include in the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the remainder of the 60-day period.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past-due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the notification and evidence within 60 days will result in an automatic referral of the debt to the IRS without further action by EPA.

(c) *Review of the evidence.* EPA will consider all available evidence related to the debt. Within 30 days, if feasible, EPA will notify the debtor whether EPA has sustained, amended, or cancelled its determination that the debt is past-due and legally enforceable.

§ 13.39 Agency determination.

(a) Following review of the evidence, EPA will issue a written decision.

(b) If EPA either sustains or amends its determination, it shall notify the debtor of its intent to refer the debt to the IRS for offset against the debtor's Federal income tax refund. If EPA cancels its original determination, the debt will not be referred to IRS.

§ 13.40 Stay of offset.

If the debtor timely notifies the EPA that he or she is exercising the right described in § 13.38(a) and timely submits evidence in accordance with § 13.38(b), any notice to the IRS will be stayed until the issuance of a written decision which sustains or amends its original determination.

PART 14—EMPLOYEE PERSONAL PROPERTY CLAIMS

Sec.

AUTHORITY: Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 3721).

SOURCE: 51 FR 24146, July 2, 1986, unless otherwise noted.

§ 14.1 Scope and purpose.

This part prescribes regulations for the Military Personnel and Civilian Employees' Claims Act of 1964 (the Act), 31 U.S.C. 3721. The Act allows the Administrator of the U.S. Environmental Protection Agency (EPA) to settle and pay claims of EPA employees for damage to or loss of their personal property which was incident to service. A claim under the Act is allowed only where the claim is substantiated and the Administrator determines that possession of the property was reasonable or proper under the circumstances existing at the time and place of the loss and no part of the loss was caused by any negligent or wrongful act or omission of the employee or his/her agent.

§ 14.2 Definitions.

As used in this part:

(a) *EPA Claims Officer* is the Agency official delegated the responsibility by the Administrator to carry out the provisions of the Act.

(b) *Claim* means a demand for payment by an employee or his/her representative for the value or the repair cost of an item of personal property damaged, lost or destroyed as an incident to government service.

(c) *Employee* means a person appointed to a position with EPA.

(d) *Settle* means the act of considering, ascertaining, adjusting, determining or otherwise resolving a claim.

(e) *Accrual date* means the date of the incident causing the loss or damage or the date on which the loss or damage should have been discovered by the employee through the exercise of reasonable care.

(f) *Depreciation* is the reduction in value of an item caused by the elapse of time between the date of acquisition and the date of loss or damage.

§ 14.3 Incident to service.

In order for a claim to be allowed under this part, the EPA Claims Officer must determine that the item of personal property, at the time of damage or loss, was used by the employee as an incident to government service. An item is incident to service when possession of the item by the employee had substantial relationship to the employee's performance of duty. Whether an item is incident to service is determined by the facts of each claim. The employee has the burden of showing that the item was incident to his/her governmental service.

§ 14.4 Reasonable and proper.

EPA does not insure its employees from every loss or damage to personal property they may sustain. In order for a claim to be allowed, the item must not only have been incident to service, it must also have been reasonable and proper for the employee to possess the item at the time and place of its loss or damage. Generally, the possession of an item is reasonable and proper when the item is of a type and quantity which EPA reasonably expected its employees to possess at the time and place of the loss or damage. Consequently, items which are exceptionally expensive, excessive quantities of otherwise allowable items, personal items which are used in place of items usually provided to employees by EPA or items which are primarily of aesthetic value are not considered reasonable or proper items and are unallowable.

§ 14.5 Who may file a claim.

A claim may be filed by an employee or by his/her authorized agent or legal representative. If a claim is otherwise allowable under this part, a claim can be filed by a surviving spouse, child, parent, brother or sister of a deceased employee.

§ 14.6 Time limits for filing a claim.

A claim under this part is considered by the EPA Claims Officer only if it is in writing and received within two years after the claim accrues. The EPA Claims Officer may consider a claim not filed within this period when the claim accrued during a period of armed conflict and the requirements of 31 U.S.C. 3721(g) are met.

§ 14.7 Where to file a claim.

An employee or his/her representative may file a claim with his/her Administrative Office or the Safety Office for the facility. The employee should complete and submit to the Administrative Office or the Safety Office a completed EPA Form 3370–

1, ''Employee Claim for Loss of or Damage to Personal Property.'' That Office then forwards the form and any other relevant information to the EPA Claims Officer, Office of General Counsel (LE–132G), 401 M Street SW., Washington, DC 20460.

§ 14.8 Investigation of claims.

The EPA Claims Officer investigates claims filed under this part. The EPA Claims Officer may request additional documentation from an employee (e.g., repair estimates and receipts), interview witnesses, and conduct any further investigation he believes is warranted by the facts of the claim.

§ 14.9 Approval and payment of claims.

(a) EPA's approval and payment of a claim is limited by the Act to $25,000. The EPA Claims Officer considers, adjusts, determines, compromises and settles all claims filed under this part. The decision of the EPA Claims Officer is final unless reconsideration under § 14.10 is granted.

(b) The EPA Claims Officer will approve and pay claims filed for a deceased employee by persons specified in § 14.5 in the following order:

(1) The spouse's claim.
(2) A child's claim.
(3) A parent's claim.
(4) A brother's or sister's claim.

§ 14.10 Procedures for reconsideration.

The EPA Claims Officer, at his discretion, may reconsider a decision when the employee establishes that an error was made in the computation of the award or that evidence or material facts were unavailable to the employee at the time of the filing of the claim and the failure to provide the information was not the result of the employee's lack of care. An employee seeking reconsideration of a decision must file, within 30 days of the date of the decision, a written request with the EPA Claims Officer for reconsideration. The request for reconsideration must specify, where applicable, the error, the evidence or material facts not previously considered by the EPA Claims Officer and the reason why the employee believes that the evidence or facts previously were not available.

§ 14.11 Principal types of allowable claims.

(a) *General*. A claim under this part is allowed for tangible personal property of a type and quantity that was reasonable and proper for the employee to possess under the circumstances at the time of the loss or damage. In evaluating whether a claim is allowable, the EPA Claims Officer may consider such factors as: The employee's use of the item; whether EPA generally is aware that such items are used by its employees; or whether the loss was caused by a failure of EPA to provide adequate protection against the loss.

(b) *Examples of claims which are allowable*. Claims which are ordinarily allowed include loss or damage which occurred:

(1) In a place officially designated for storage of property such as a warehouse, office, garage, or other storage place;

(2) In a marine, rail, aircraft, or other common disaster or natural disaster such as a fire, flood, or hurricane;

(3) When the personal property was subjected to an extraordinary risk in the employee's performance of duty, such as in connection with an emergency situation, a civil disturbance, common or natural disaster, or during efforts to save government property or human life;

(4) When the property was used for the benefit of the government at the specific direction of a supervisor;

(5) When the property was money or other valuables deposited with an authorized government agent for safekeeping; and

(6) When the property was a vehicle which was subjected to an extraordinary risk in the employee's performance of duty and the use of the vehicle was at the specific direction of the employee's supervisor.

(c) *Claims for articles of clothing*. Claims for loss or damage to clothing and accessories worn by an employee may be allowed where:

(1) The damage or loss occurred during the employee's performance of official duty in an unusual or extraordinary risk situation;

(2) The loss or damage occurred during the employee's response to an emergency situation, to a natural disaster such as fire, flood, hurricane, or to a man-made disaster such as a chemical spill;

(3) The loss or damage was caused by faulty or defective equipment or furniture maintained by EPA; or

(4) The item was stolen even though the employee took reasonable precautions to protect the item from theft.

(d) *Claims for loss or damage to household items*. (1) Claims for damages to household goods may be allowed where:

(i) The loss or damages occurred while the goods were being shipped pursuant to an EPA authorized change in duty station;

(ii) The employee filed a claim for the damages with the appropriate carrier; and

(iii) The employee substantiates that he/she has suffered a loss in excess of the amount paid by the carrier.

(2) Where a carrier has refused to make an award to an employee because of his/her failure to comply with the carrier's claims procedures, any award by EPA will be reduced by the maximum amount payable for the item by the carrier under its contract of shipment. Where an employee fails to notify the carrier of damages or loss, either at the time of delivery of the household goods or within a reasonable time after discovery, any award by EPA will be reduced by the amount of the carrier's maximum contractual liability for the damage or loss. The employee has the burden of proving his/her entitlement to reimbursement from EPA for amounts in excess of that allowed by the carrier.

§ 14.12 Principal types of unallowable claims.

Claims that ordinarily will not be allowed include:

(a) Loss or damage totaling less than $25;

(b) Money or currency, except when deposited with an authorized government agency for safekeeping;

(c) Loss or damage to an item of extraordinary value or to an antique where the item was shipped with household goods, unless the employee filed a valid appraisal or authentication with the carrier prior to shipment of the item;

(d) Loss of bankbooks, checks, notes, stock certifications, money orders, or travelers checks;

(e) Property owned by the United States unless the employee is financially responsible for it to another government agency;

(f) Claims for loss or damage to a bicycle or a private motor vehicle, unless allowable under § 14.11(b)(6);

(g) Losses of insurers or subrogees;

(h) Losses recoverable from insurers or carriers;

(i) Losses recovered or recoverable pursuant to contract;

(j) Claims for damage or loss caused, in whole or in part, by the negligent or wrongful acts of the employee or his/her agent;

(k) Property used for personal business or profit;

(l) Theft from the possession of the employee unless the employee took reasonable precautions to protect the item from theft;

(m) Property acquired, possessed or transported in violation of law or regulations;

(n) Unserviceable property; or

(o) Damage or loss to an item during shipment of household goods where the damage or loss was caused by the employee's negligence in packing the item.

§ 14.13 Items fraudulently claimed.

Where the EPA Claims Officer determines that an employee has intentionally misrepresented the cost, condition, cost of repair or a material fact concerning a claim, he/she may, at his discretion, deny the entire amount claimed for the item. Further, where the EPA Claims Officer determines that the employee intentionally has materially misrepresented the costs, conditions or nature of repairs of the claim, he will refer it to appropriate officials (e.g., Inspector General, the employee's supervisor, etc.) for action.

§ 14.14 Computation of award.

(a) The amount awarded on any item may not exceed its adjusted cost. Adjusted cost is either the purchase price of the item or its value at the time of acquisition, less appropriate depreciation. The amount normally payable for property damaged beyond economical repair is its depreciated value immediately before the loss or damage, less any salvage value. If the cost of repair is less than the depreciated value, it will be considered to be economically repairable and only the cost of repair will be allowable.

(b) Notwithstanding a contract to the contrary, the representative of an employee is limited by 31 U.S.C. 3721(i) to receipt of not more than 10 percent of the amount of an award under this part for services related to the claim. A person violating this paragraph is subject to a fine of not more than $1,000. 31 U.S.C. 3721(i).

PART 16—IMPLEMENTATION OF PRIVACY ACT OF 1974

Sec.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 40 FR 53582, Nov. 19, 1975, unless otherwise noted.

§ 16.1 Purpose and scope.

(a) This part sets forth the Environmental Protection Agency procedures under the Privacy Act of 1974 as required by 5 U.S.C. 552a(f).

(b) These procedures describe how an individual may request notification of whether EPA maintains a record pertaining to him or her in any of its systems of records, request access to the record or to an accounting of its disclosure, request that the record be amended or corrected, and appeal an initial adverse determination concerning any such request.

(c) These procedures apply only to requests by individuals and only to records maintained by EPA, excluding those systems specifically exempt under §§ 16.13 and 16.14 and those determined as government-wide and published by the Civil Service Commission in 5 CFR parts 293 and 297.

§ 16.2 Definitions.

As used in this part:

(a) The terms *individual, maintain, record, system of records,* and *routine use* shall have the meaning given them by 5 U.S.C. 552a (a)(2), (a)(3), (a)(4), (a)(5) and (a)(7), respectively.

(b) *EPA* means the Environmental Protection Agency.

(c) *Working days* means calendar days excluding Saturdays, Sundays, and legal public holidays.

§ 16.3 Procedures for requests pertaining to individual records in a record system.

Any individual who wishes to have EPA inform him or her whether a system of records maintained by EPA contains any record pertaining to him or her which is retrieved by name or personal identifier, or who wishes to request access to any such record, shall submit a written request in accordance with the instructions set forth in EPA's annual notice of systems for that system of records. This request shall include:

(a) The name of the individual making the request;

(b) The name of the system of records (as set forth in the EPA notice of systems) to which the request relates;

(c) Any other information which the system notice indicates should be included; and

(d) If the request is for access, a statement as to whether a personal inspection or a copy by mail is desired.

§ 16.4 Times, places, and requirements for identification of individuals making requests.

(a) If an individual submitting a request for access under § 16.3 has asked that EPA authorize a personal inspection of records, and EPA has granted the request, he or she may present himself or herself at the time and place specified in EPA's response or arrange another time with the appropriate agency official.

(b) Prior to inspection of records, an individual shall present sufficient identification (e.g., driver's license, employee identification card, social security card, credit card) to establish that he or she is the individual to whom the records pertain. An individual who is unable to provide such identification shall complete and sign, in the presence of an agency official, a statement declaring his or her identity and stipulating that he or she understands it is a misdemeanor punishable by fine up to $5,000 to knowingly and willfully seek or obtain access to records about another individual under false pretenses.

(c) If an individual, having requested personal inspection of his or her records, wishes to have another person accompany him or her during inspection, he or she shall submit a written statement authorizing disclosure in the presence of the other person(s).

(d) An individual who has made a personal inspection of records may then request copies of those records. Such requests may be granted, but fees may be charged in accordance with § 16.11.

(e) If an individual submitting a request under § 16.3 wishes to have copies furnished by mail, he or she must include with the request sufficient

data to allow EPA to verify his or her identity. Should sensitivity of the records warrant it, EPA may require a requester to submit a signed and notarized statement indicating that he or she is the individual to whom the records pertain and that he or she understands it is a misdemeanor punishable by fine up to $5,000 to knowingly and willfully seek or obtain access to records about another individual under false pretenses. Such mail requests may be granted, but fees may be charged in accordance with § 16.11.

(f) No verification of identity will be required where the records sought are publicly available under the Freedom of Information Act, as EPA procedures under 40 CFR part 2 will then apply.

§ 16.5 Disclosure of requested information to individuals.

(a) Each request received will be acted upon promptly.

(b) Within 10 working days of receipt of a request, the system manager shall acknowledge the request. Whenever practicable, the acknowledgment will indicate whether or not access will be granted and, if so, when and where. When access is to be granted, it shall be provided within 30 working days of first receipt. If the agency is unable to meet this deadline, the records system manager shall so inform the requester stating reasons for the delay and an estimate of when access will be granted.

(c) If a request pursuant to § 16.3 for access to a record is in a system of records which is exempted, the records system manager will determine whether the information will nonetheless be made available. If the determination is to deny access, the reason for denial and the appeal procedure will be given to the requester.

(d) Any person whose request is initially denied may appeal that denial to the Privacy Act Officer, who shall make an appeal determination within 10 working days.

(e) If the appeal under paragraph (d) of this section is denied, the requester may bring a civil action under 5 U.S.C. 552a(g) to seek review of the denial.

§ 16.6 Special procedures: Medical records.

Should EPA receive a request for access to medical records (including psychological records) disclosure of which the system manager determines would be harmful to the individual to whom they relate, EPA may refuse to disclose the records directly to the individual and instead offer to transmit them to a physician designated by the individual.

§ 16.7 Request for correction or amendment of record.

(a) An individual may request correction or amendment of any record pertaining to him or her in a system of records maintained by EPA by submitting to the system manager, in writing, the following:

(1) The name of the individual making the request;

(2) The name of the system, as described in the notice of systems;

(3) A description of the nature and substance of the correction or amendment request; and

(4) Any additional information specified in the system notice.

(b) Any person submitting a request under this section shall include sufficient information in support of that request to allow EPA to apply the standards set forth in 5 U.S.C. 552a (e)(1) and (e)(5).

(c) Any person whose request is denied may appeal that denial to the Privacy Act Officer.

(d) In the event that appeal is denied, the requester may bring a civil action to seek review of the denial, under 5 U.S.C. 552a(g).

§ 16.8 Initial determination on request for correction or amendment of record.

(a) Within 10 working days of receipt of a request for amendment or correction, the system manager shall acknowledge the request, and promptly either:

(1) Make any correction, deletion, or addition which the requester believes should be made; or

(2) Inform the requester of his or her refusal to correct or amend the record, the reason for refusal, and the procedures for appeal.

(b) If the system manager is unable to comply with the preceding paragraphs within 30 working days of his or her receipt of a request, he or she will inform the requester of that fact, the reasons, and an estimate of when a determination will be reached.

(c) In conducting the review of the request, the system manager will be guided by the requirements of 5 U.S.C. 552a (e)(1) and (e)(5).

(d) If the system manager determines to grant all or any portion of the request, he or she will:

(1) Advise the individual of that determination;

(2) Make the correction or amendment; and

(3) So inform any person or agency outside EPA to whom the record has been disclosed, and, where an accounting of that disclosure is maintained in accordance with 5 U.S.C. 552a(c), note the occurrence and substance of the correction or amendment in the accounting.

(e) If the system manager determines not to grant all or any portion of a request for correction or amendment, he or she will:

(1) Comply with paragraph (d)(3) of this section (if necessary);

(2) Advise the individual of the determination and its basis;

(3) Inform the individual that an appeal may be made; and

(4) Describe the procedures for making the appeal.

(f) If EPA receives from another Federal agency a notice of correction or amendment of information furnished by that agency and contained in one of EPA's systems of records, the system manager shall advise the individual and make the correction as if EPA had originally made the correction or amendment.

§ 16.9 Appeal of initial adverse agency determination on request for correction or amendment.

(a) Any individual whose request for correction or amendment is initially denied by EPA and who wishes to appeal may do so by letter to the Privacy Act Officer. The appeal shall contain a description of the initial request sufficient to identify it.

(b) The Privacy Act Officer shall make a final determination not later than 30 working days from the date on which the individual requests the review, unless, for good cause shown, the Privacy Act Officer extends the 30-day period and notifies the requester. Such extension will be utilized only in exceptional circumstances.

(c) In conducting the review of an appeal, the Privacy Act Officer will be guided by the requirements of 5 U.S.C. 552a (e)(1) and (e)(5).

(d) If the Privacy Act Officer determines to grant all or any portion of an appeal he or she shall so inform the requester and EPA shall make the correction or amendment and comply with § 16.8(d)(3).

(e) If the Privacy Act Officer determines not to grant all or any portion of an appeal he or she shall inform the requester:

(1) Of the determination and its basis;

(2) Of the requester's right to file a concise statement of reasons for disagreeing with EPA's decision;

(3) Of the procedures for filing such statement of disagreement;

(4) That such statements of disagreements will be made available in subsequent disclosures of the record, together with an agency statement (if deemed appropriate) summarizing its refusal;

(5) That prior recipients of the disputed record will be provided with statements as in paragraph (e)(4) of this section, to the extent that an accounting of disclosures is maintained under 5 U.S.C. 552a(c); and

(6) Of the requester's right to seek judicial review under 5 U.S.C. 552a(g).

§ 16.10 Disclosure of record to person other than the individual to whom it pertains.

EPA shall not disclose any record which is contained in a system of records it maintains except pursuant to a written request by, or with the written consent of, the individual to whom the record pertains, unless the disclosure is authorized by one or more of the provisions of 5 U.S.C. 552a(b).

§ 16.11 Fees.

No fees shall be charged for providing the first copy of a record or any portion to an individual to whom the record pertains. The fee schedule for reproducing other records is the same as that set forth in 40 CFR 2.120.

§ 16.12 Penalties.

The Act provides, in pertinent part:

''Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.'' (5 U.S.C. 552a(i)(3).)

§ 16.13 General exemptions.

(a) *Systems of records affected.*

¶EPA–4 OIG Criminal Investigative Index and Files—EPA/OIG.

¶EPA–17 NEIC Criminal Investigative Index and Files—EPA/NEIC/OCI.

(b) *Authority.* Under 5 U.S.C. 552a(j)(2), the head of any agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the system of records is maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws and which consists of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

(c) *Scope of exemption.* (1) The EPA–4 system of records identified in § 16.13(a) is maintained by the Office of Investigations of the Office of Inspector General (OIG), a component of EPA which performs as its principal function activities pertaining to the enforcement of criminal laws. Authority for the criminal law enforcement activities of the OIG's Office of Investigations is the Inspector General Act of 1978, 5 U.S.C. app.

(2) The EPA–17 system of records identified in § 16.13(a) is maintained by the Office of Criminal Investigations (OCI) of the National Enforcement Investigations Center (NEIC), a component of EPA which performs as its principal function activities pertaining to the enforcement of criminal laws. Authority for the criminal law enforcement activities of the NEIC's Office of Criminal Investigations is 28 U.S.C. 533, with appointment letter from Benjamin Civiletti, Attorney General, to Douglas Costle, Administrator, EPA, dated January 16, 1981.

(3) The systems of records identified in § 16.13(a) are exempted from the following provisions of the Privacy Act of 1974: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8); (f); and (g).

(4) To the extent that the exemption claimed under 5 U.S.C. 552a(j)(2) is held to be invalid for the systems of records identified in § 16.13(a), then an exemption under 5 U.S.C. 552a(k)(2) is claimed for these systems of records.

(d) *Reasons for exemption.* The systems of records identified in § 16.13(a) are exempted from the above provisions of the Privacy Act of 1974 for the following reasons:

(1) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(2) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act. Since EPA is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, this section is inapplicable and is exempted to the extent that these systems of records are exempted from subsection (d) of the Act.

(3) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting access to records in these systems of records could inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, security-sensitive, or confidential business information and could constitute an unwarranted invasion of the personal privacy of others.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. The application of this provision could impair investigations and law enforcement, because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, the investigator may obtain information concerning the violation of laws other than those which are within the scope of his jurisdiction. In the interest of effective law enforcement, the EPA investigators should retain this information, since it can aid in establishing patterns of

criminal activity and can provide valuable leads for other law enforcement agencies.

(5) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision could impair investigations and law enforcement by alerting the subject of an investigation of the existence of the investigation, enabling the subject to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, in certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

(6) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purposes for which the information is intended to be used; of the routine uses which may be made of the information; and of the effects on the person, if any, of not providing all or any part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation, which could interfere with the investigation. Moreover, providing such a notice to the subject of an investigation could seriously impede or compromise on undercover investigation by revealing its existence and could endanger the physical safety of confidential sources, witnesses, and investigators by revealing their identities.

(7) 5 U.S.C. 552a(e)(4)(G) and (H) require an agency to publish a FEDERAL REGISTER notice concerning its procedures for notifying an individual at his request if the system of records contains a record pertaining to him, how he can gain access to such a record, and how he can contest its content. Since EPA is claiming that these systems of records are exempt from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable and are exempted to the extent that these systems of records are exempted from subsections (f) and (d) of the Act. Although EPA is claiming exemption from these requirements, EPA has published such a notice concerning its notification, access, and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of his records in these systems of records.

(8) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a FEDERAL REGISTER notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses, and to avoid the disclosure of investigative techniques and procedures. Although EPA is claiming exemption from this requirement, EPA has published such a notice in broad generic terms in the belief that this is all subsection (e)(4)(I) of the Act requires.

(9) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Since the Act defines *maintain* to include the collection of information, complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In collecting information for criminal law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. Facts are first gathered and then placed into a logical order to prove or disprove objectively the criminal behavior of an individual. Material which may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as the investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, thereby impeding effective law enforcement.

(10) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. Complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(11) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby on an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him. The application of this provision could impede or compromise an investigation or prosecution if the subject of an investigation was able to use such rules to learn of the existence of an investigation before it could be completed. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an in-

vestigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since EPA is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempted to the extent that these systems of records are exempted from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsection (f) of the Act, EPA has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his records in these systems of records. These procedures are described elsewhere in this part.

(12) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d)(1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any other provision of the Act, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Since EPA is claiming that these systems of records are exempt from subsections (c)(3) and (4), (d), (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8), and (f) of the Act, the provisions of subsection (g) of the Act are inapplicable and are exempted to the extent that these systems of records are exempted from those subsections of the Act.

(e) *Exempt records provided by another agency.* Individuals may not have access to records maintained by the EPA if such records were provided by another agency which has determined by regulation that such records are subject to general exemption under 5 U.S.C. 552a(j). If an individual requests access to such exempt records, EPA will consult with the source agency.

(f) *Exempt records included in a nonexempt system of records.* All records obtained from a system of records which has been determined by regulation to be subject to general exemption under 5 U.S.C. 552a(j) retain their exempt status even if such records are also included in a system of records for which a general exemption has not been claimed.

[51 FR 24146, July 2, 1986]

§ 16.14 Specific exemptions.

(a) *Exemptions under 5 U.S.C. 552a(k)(2)*—(1) *Systems of records affected.*

¶EPA–2 General Personnel Records—EPA.

¶EPA–4 OIG Criminal Investigative Index and Files—EPA/OIG.

¶EPA–5 OIG Personnel Security Files—EPA/OIG.

¶EPA–17 NEIC Criminal Investigative Index and Files— EPA/NEIC/OCI.

¶EPA–30 OIG Hotline Allegation System—EPA/OIG.

(2) *Authority.* Under 5 U.S.C. 552a(k)(2), the head of any agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the system of records is investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2).

(3) *Scope of exemption.* (i) The systems of records identified in § 16.14(a)(1) are exempted from the following provisions of the Privacy Act of 1974, subject to the limitations set forth in 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a (c)(3); (d); (e)(1), (4)(G), (H), and (I); and (f).

(ii) An individual is *denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material,* only if the Agency actually uses the material in denying or proposing to deny such right, privilege, or benefit.

(iii) To the extent that records contained in the systems of records identified in § 16.14(a)(1) are maintained by the Office of Investigations of the OIG or by the Office of Criminal Investigations of the NEIC, components of EPA which perform as their principal function activities pertaining to the enforcement of criminal laws, then an exemption under 5 U.S.C. 552a(j)(2) is claimed for these records.

(4) *Reasons for exemption.* The systems of records identified in § 16.14(a)(1) are exempted from the above provisions of the Privacy Act of 1974 for the following reasons:

(i) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting for each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(ii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him, to request amendment to such records, to request a review of an agency decision not to

amend such records, and to contest the information contained in such records. Granting access to records in these systems of records could inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his activities, of the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, security-sensitive, or confidential business information and could constitute an unwarranted invasion of the personal privacy of others.

(iii) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. The application of this provision could impair investigations and law enforcement, because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, the investigator may obtain information concerning the violation of laws other than those which are within the scope of his jurisdiction. In the interest of effective law enforcement, EPA investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

(iv) 5 U.S.C. 552a(e)(4)(G) and (H) require an agency to publish a FEDERAL REGISTER notice concerning its procedures for notifying an individual at his request if the system of records contains a record pertaining to him, how he can gain access to such a record, and how he can contest its content. Since EPA is claiming that these systems of records are exempt from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable and are exempted to the extent that these systems of records are exempted from subsections (f) and (d) of the Act. Although EPA is claiming exemption from these requirements, EPA has published such a notice concerning its notification, access, and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of his records in these systems of records.

(v) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a FEDERAL REGISTER notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses, and to avoid the disclosure of investigative techniques and procedures. Although EPA is claiming exemption from this requirement, EPA has published such a notice in broad generic terms in the belief that this is all subsection (e)(4)(I) of the Act requires.

(vi) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him. The application of this provision could impede or compromise an investigation or prosecution if the subject of an investigation was able to use such rules to learn of the existence of an investigation before it could be completed. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since EPA is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempted to the extent that these systems of records are exempted from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsection (f), EPA has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his records in these systems of records. These procedures are described elsewhere in this part.

(b) *Exemption under 5 U.S.C. 552a(k)(5)*—(1) *Systems of records affected.*

¶EPA–2 General Personnel Records—EPA.

¶EPA–4 OIG Criminal Investigative Index and Files—EPA/OIG.

¶EPA–5 OIG Personnel Security Files—EPA/OIG.

(2) *Authority.* Under 5 U.S.C. 552a(k)(5), the head of any agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the system of records is investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity would be held in confidence.

(3) *Scope of exemption.* (i) The systems of records identified in § 16.14(b)(1) are exempted from the following provisions of the Privacy Act of 1974, subject to the limitations of 5 U.S.C. 552a(k)(5): 5 U.S.C. 552a (c)(3); (d); (e)(1), (4)(H) and (I); and (f)(2) through (5).

(ii) To the extent that records contained in the systems of records identified in § 16.14(b)(1) reveal a violation or potential violation of law, then an exemption under 5 U.S.C. 552a(k)(2) is also claimed for these records.

(4) *Reasons for exemption.* The systems of records identified in § 16.14(b)(1) are exempted from the above provisions of the Privacy Act of 1974 for the following reasons:

(i) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Making such an accounting could cause the identity of a confidential source to be revealed, endangering the physical safety of the confidential source, and could impair the future ability of the EPA to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information.

(ii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting such access could cause the identity of a confidential source to be revealed, endangering the physical safety of the confidential source, and could impair the future ability of the EPA to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information.

(iii) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. The application of this provision could impair investigations, because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(iv) 5 U.S.C. 552a(e)(4)(H) requires an agency to publish a FEDERAL REGISTER notice concerning its procedures for notifying an individual at his request how he can gain access to any record pertaining to him and how he can contest its content. Since EPA is claiming that these systems of records are exempt from subsections (f)(2) through (5) of the Act, concerning agency rules, and subsection (b) of the Act, concerning access to records, these requirements are inapplicable and are exempted to the extent that these systems of records are exempted from subsections (f)(2) through (5) and (d) of the Act. Although EPA is claiming exemption from these requirements, EPA has published such a notice concerning its access and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of his records in these systems of records.

(v) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a FEDERAL REGISTER notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources, and to avoid the disclosure of investigative techniques and procedures. Although EPA is claiming exemption from this requirement, EPA has published such a notice in broad generic terms in the belief that this is all subsection (e)(4)(I) of the Act requires.

(vi) 5 U.S.C. 552a(f)(2) through (5) require an agency to promulgate rules for obtaining access to records. Since EPA is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempted to the extent that this system of records is exempted from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsections (f)(2) through (5) of the Act, EPA has promulgated rules which establish Agency proce-

dures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his records in this system of records. These procedures are described elsewhere in this part.

(c) *Exemption under 5 U.S.C. 552a(k)(1)*—(1) *System of records affected.*

¶EPA–5 OIG Personnel Security Files—EPA/OIG.

(2) *Authority.* Under 5 U.S.C. 552a(k)(1), the head of any agency may by rule exempt any system of records within the agency from certain provisions of the Privacy Act of 1974, if the system of records is subject to the provisions of 5 U.S.C. 552(b)(1). A system of records is subject to the provisions of 5 U.S.C. 552(b)(1) if it contains records that are specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order. Executive Order 12356 establishes criteria for classifying records which are to be kept secret in the interest of national defense or foreign policy.

(3) *Scope of exemption.* To the extent that the system of records identified in § 16.14(c)(1) contains records provided by other Federal agencies that are specifically authorized under criteria established by Executive Order 12356 to be kept secret in the interest of national defense or foreign policy and are in fact properly classified by other Federal agencies pursuant to that Executive order, the system of records is exempted from the following provisions of the Privacy Act of 1974: 5 U.S.C. 552a (c)(3); (d); (e)(1), (4)(G), (H), and (I); and (f).

(4) *Reasons for exemption.* The system of records identified in § 16.14(c)(1) is exempted from the above provisions of the Privacy Act of 1974 for the following reasons:

(i) 5 U.S.C. 552a(c)(3) requires an agency to make the accounting of each disclosure of records available to the individual named in the record at his request. These accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Making such an accounting could result in the release of properly classified information, which would compromise the national defense or disrupt foreign policy.

(ii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him, to request amendment to such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting such access could cause the release of properly classified information, which would compromise the national defense or disrupt foreign policy.

(iii) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. The application of this provision could impair personnel security investigations which use properly classified information, because it is not always possible to know the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(iv) 5 U.S.C. 552a(e)(4)(G) and (H) require an agency to publish a FEDERAL REGISTER notice concerning its procedures for notifying an individual at his request if the system of records contains a record pertaining to him, how he can gain access to such a record, and how he can contest its content. Since EPA is claiming that this system of records is exempt from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable and are exempted to the extent that this system of records is exempted from subsections (f) and (d) of the Act. Although EPA is claiming exemption from these requirements, EPA has published such a notice concerning its notification, access, and contest procedures because, under certain circumstances, EPA might decide it is appropriate for an individual to have access to all or a portion of his records in this system of records.

(v) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a FEDERAL REGISTER notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to prevent the release of properly classified information, which would compromise the national defense or disrupt foreign policy. Although EPA is claiming exemption from this requirement, EPA has published such a notice in broad generic terms in the belief that this is all subsection (e)(4)(I) of the Act requires.

(vi) 5 U.S.C. 552(a)(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him. The application of this provision could result in the release of properly classified information, which would compromise the national defense or disrupt foreign policy. Since EPA is claiming that this system of records is exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f)(2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are ex-

empted to the extent that this system of records is exempted from subsection (d) of the Act. Although EPA is claiming exemption from the requirements of subsection (f) of the Act, EPA has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his records in this system of records. These procedures are described elsewhere in this part.

(d) *Exempt records provided by another agency.* Individuals may not have access to records maintained by the EPA if such records were provided by another agency which has determined by regulation that such records are subject to general exemption under 5 U.S.C. 552a(j) or specific exemption under 5 U.S.C. 552a(k). If an individual requests access to such exempt records, EPA will consult with the source agency.

(e) *Exempt records included in a nonexempt system of records.* All records obtained from a system of records which has been determined by regulation to be subject to specific exemption under 5 U.S.C. 552a(k) retain their exempt status even if such records are also included in a system of records for which a specific exemption has not been claimed.

[51 FR 24147, July 2, 1986, as amended at 59 FR 17485, Apr. 13, 1994]

PART 17—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN EPA ADMINISTRATIVE PROCEEDINGS

Subpart A—General Provisions

Subpart B—Information Required From Applicants

Subpart C—Procedures for Considering Applications

AUTHORITY: Section 504, Title 5 U.S.C., as amended by sec. 203(a)(1), Equal Access to Justice Act (Title 2 of Pub. L. 96–481, 94 Stat. 2323).

SOURCE: 48 FR 39936, Sept. 2, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 17.1 Purpose of these rules.

These rules are adopted by EPA pursuant to section 504 of title 5 U.S.C., as added by section 203(a)(1) of the Equal Access to Justice Act, Public Law No. 96–481. Under the Act, an eligible party may receive an award for attorney's fees and other expenses when it prevails over EPA in an adversary adjudication before EPA unless EPA's position as a party to the proceeding was substantially justified or special circumstances make an award unjust. The purpose of these rules is to establish procedures for the submission and consideration of applications for awards against EPA when the underlying decision is not reviewed by a court.

§ 17.2 Definitions.

As used in this part:

(a) *The Act* means section 504 of title 5 U.S.C., as amended by section 203(a)(1) of the Equal Access to Justice Act, Public Law No. 96–481.

(b) *Administrator* means the Administrator of the Environmental Protection Agency.

(c) *Adversary adjudication* means an adjudication required by statute to be held pursuant to 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of granting or renewing a license.

(d) *EPA* means the Environmental Protection Agency, an Agency of the United States.

(e) *Presiding officer* means the official, without regard to whether he is designated as an administrative law judge or a hearing officer or examiner, who presides at the adversary adjudication.

(f) *Proceeding* means an adversary adjudication as defined in § 17.2(b).

§ 17.3 Proceedings covered.

(a) These rules apply to adversary adjudications required by statute to be conducted by EPA under 5 U.S.C. 554. To the extent that they are adversary adjudications, the proceedings conducted by EPA to which these rules apply include:

(1) A hearing to consider the assessment of a noncompliance penalty under section 120 of the Clean Air Act as amended (42 U.S.C. 7420);

(2) A hearing to consider the termination of an individual National Pollution Discharge Elimination System permit under section 402 of the Clean Water Act as amended (33 U.S.C. 1342);

(3) A hearing to consider the assessment of any civil penalty under section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a));

(4) A hearing to consider ordering a manufacturer of hazardous chemical substances or mixtures to take actions under section 6(b) of the Toxic Substances Control Act (15 U.S.C. 2605(b)), to decrease the unreasonable risk posed by a chemical substance or mixture;

(5) A hearing to consider the assessment of any civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 1361);

(6) A hearing to consider suspension of a registrant for failure to take appropriate steps in the development of registration data under section 3(c)(2)(B) of the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. 136a);

(7) A hearing to consider the suspension or cancellation of a registration under section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136d);

(8) A hearing to consider the assessment of any civil penalty or the revocation or suspension of

any permit under section 105(a) or 105(f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a), 33 U.S.C. 1415(f));

(9) A hearing to consider the issuance of a compliance order or the assessment of any civil penalty conducted under section 3008 of the Resource Conservation and Recovery Act as amended (42 U.S.C. 6928);

(10) A hearing to consider the issuance of a compliance order under section 11(d) of the Noise Control Act as amended (42 U.S.C. 4910(d)).

(b) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 17.4 Applicability to EPA proceedings.

The Act applies to an adversary adjudication pending before EPA at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final EPA action has not been taken before that date, and proceedings pending on September 30, 1984.

§ 17.5 Eligibility of applicants.

(a) To be eligible for an award of attorney's fees and other expenses under the Act, the applicant must be a prevailing party in the adversary adjudication for which it seeks an award. The term *party* is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business which has a net worth of not more than $5 million and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 114j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date of adversary adjudication was initiated.

(d) An applicant who owns an unincorporated business will be considered as an *individual* rather than a *sole owner of an unincorporated business* if the issues on which the applicant prevails are related primarily to personal interests rather than to business interest.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant under the applicant's direction and control. Part-time employees shall be included.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. An individual or group of individuals, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares of another business' board of directors, trustees, or other persons exercising similar functions, shall be considered an affiliate of that business for purposes of this part. In addition, the Presiding Officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant is not eligible if it has participated in the proceeding on behalf of other persons or entities that are ineligible.

§ 17.6 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding unless the position of the EPA as a party to the proceeding was substantially justified or unless special circumstances make the award sought unjust. No presumption arises that the agency's position was not substantially justified simply because the agency did not prevail.

(b) An award shall be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding.

§ 17.7 Allowable fees and other expenses.

(a) The following fees and other expenses are allowable under the Act:

(1) Reasonable expenses of expert witnesses;

(2) The reasonable cost of any study, analysis, engineering report, test, or project which EPA finds necessary for the preparation of the party's case;

(3) Reasonable attorney or agent fees;

(b) The amount of fees awarded will be based upon the prevailing market rates for the kind and quality of services furnished, except that:

(1) Compensation for an expert witness will not exceed $24.09 per hour; and

(2) Attorney or agent fees will not be in excess of $75 per hour.

(c) In determining the reasonableness of the fee sought, the Presiding Officer shall consider the following:

(1) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(2) The time actually spent in the representation of the applicant;

(3) The difficulty or complexity of the issues raised by the application;

(4) Any necessary and reasonable expenses incurred;

(5) Such other factors as may bear on the value of the services performed.

§ 17.8 Delegation of authority.

The Administrator delegates to the Environmental Appeals Board authority to take final action relating to the Equal Access to Justice Act. The Environmental Appeals Board is described at 40 CFR 1.25(e). This delegation does not preclude the Environmental Appeals Board from referring any matter related to the Equal Access to Justice Act to the Administrator when the Environmental Appeals Board deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

[57 FR 5323, Feb 13, 1992]

Subpart B—Information Required From Applicants

§ 17.11 Contents of application.

(a) An application for award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of EPA in the proceeding that the applicant alleges was not substantially justified.

(b) The application shall include a statement that the applicant's net worth as of the time the proceeding was initiated did not exceed $1 million if the applicant is an individual (other than a sole owner of an unincorporated business seeking an award in that capacity) or $5 million in the case of all other applicants. An applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) and is exempt from taxation under section 501(a) of the Code or, in the case of such an organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under section 501(c)(3) of the Code; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 114j(a)).

(c) If the applicant is a partnership, corporation, association, or organization, or a sole owner of an unincorporated business, the application shall state that the applicant did not have more than 500 employees at the time the proceeding was initiated, giving the number of its employees and describing briefly the type and purpose of its organization or business.

(d) The application shall itemize the amount of fees and expenses sought.

(e) The application may include any other matters that the applicant believes should be considered in determining whether and in what amount an award should be made.

(f) The application shall be signed by the applicant with respect to the eligibility of the applicant and by the attorney of the applicant with respect to fees and expenses sought. The application shall contain or be accompanied by a written verification under oath or affirmation or under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the signer's information and belief.

(Approved by the Office of Management and Budget under control number 2000–0403)

§ 17.12 Net worth exhibit.

(a) Each applicant except a qualified tax exempt organization or a qualified cooperative must submit with its application a detailed exhibit showing its net worth at the time the proceeding was initiated. If any individual, corporation, or other entity directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or if the applicant directly or indirectly owns or controls a majority of the voting shares or other interest of any corporation or other entity, the exhibit must include a showing of the net worth of all such affiliates or of the applicant including the affiliates. The exhibit may be in any form that provides full disclosure of assets and liabilities of the applicant and any affiliates and is sufficient to determine whether the applicant qualifies under the standards of 5 U.S.C. 504(b)(1)(B)(i). The Presiding Officer may require an applicant to file additional information to determine the applicant's eligibility for an award.

(b) The net worth exhibit shall describe any transfers of assets from, or obligations incurred by, the applicant or any affiliate occurring in the one-year period prior to the date on which the proceeding was initiated that reduced the net worth of the applicant and its affiliates below the applicable

net worth ceiling. If there were no such transactions, the applicant shall so state.

(c) The net worth exhibit shall be included in the public record of the proceeding.

(Approved by the Office of Management and Budget under control number 2000–0430)

§ 17.13 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of fees and expenses, including the cost of any study, engineering report, test, or project, for which an award is sought.

(b) The documentation shall include an affidavit from any attorney, agent, or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed and describing the specific services performed.

(1) The affidavit shall itemize in detail the services performed by the date, number of hours per date, and the services performed during those hours. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide affidavits from two attorneys or agents with similar experience, who perform similar work, stating the hourly rate which they bill and are paid by the majority of their clients during a comparable time period.

(c) The documentation shall also include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The Presiding Officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

(Approved by the Office of Management and Budget under control number 2000–0430)

§ 17.14 Time for submission of application.

(a) An application must be filed no later than 30 days after final disposition of the proceeding. If agency review or reconsideration is sought or taken of a decision in which an applicant believes it has prevailed, action on the award of fees shall be stayed pending final agency disposition of the underlying controversy.

(b) Final disposition means the later of: (1) The date on which the Agency decision becomes final, either through disposition by the Environmental Appeals Board of a pending appeal or through an initial decision becoming final due to lack of an appeal or (2) the date of final resolution of the proceeding, such as settlement or voluntary dismissal, which is not subject to a petition for rehearing or reconsideration.

(c) If judicial review is sought or taken of the final agency disposition of the underlying controversy, then agency proceedings for the award of fees will be stayed pending completion of judicial review. If, upon completion of review, the court decides what fees to award, if any, then EPA shall have no authority to award fees.

[48 FR 39936, Sept. 2, 1983, as amended at 57 FR 5323, Feb. 13, 1992]

Subpart C—Procedures for Considering Applications

§ 17.21 Filing and service of documents

An application for an award and any other pleading or document related to the application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding.

§ 17.22 Answer to application.

(a) Within 30 calendar days after service of the application, EPA counsel shall file an answer.

(b) If EPA counsel and the applicant believe that they can reach a settlement concerning the award, EPA counsel may file a statement of intent to negotiate. The filing of such a statement shall extend the time for filing an answer an additional 30 days.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on to support the objection. If the answer is based on any alleged facts not already reflected in the record of the proceeding, EPA counsel shall include with the answer either a supporting affidavit or affidavits or request for further proceedings under § 17.25.

§ 17.23 Comments by other parties.

Any party to a proceeding other than the applicant and EPA counsel may file comments on an application within 30 calendar days after it is served or on an answer within 15 calendar days after it is served.

§ 17.24 Settlement.

A prevailing party and EPA counsel may agree on a proposed settlement of an award before final action on the application, either in connection with a settlement of the underlying proceeding or after the underlying proceeding has been concluded. If the party and EPA counsel agree on a proposed settlement of an award before an application has

been filed, the application shall be filed with the proposed settlement.

§ 17.25 Extensions of time and further proceedings.

(a) The Presiding Officer may, on motion and for good cause shown, grant extensions of time, other than for filing an application for fees and expenses, after final disposition in the adversary adjudication.

(b) Ordinarily, the determination of an award will be made on the basis of the written record of the underlying proceeding and the filings required or permitted by the foregoing sections of these rules. However, the adjudicative officer may *sua sponte* or on motion of any party to the proceedings require or permit further filings or other action, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further action shall be allowed only when necessary for full and fair resolution of the issues arising from the application and shall take place as promptly as possible. A motion for further filings or other action shall specifically identify the information sought on the disputed issues and shall explain why the further filings or other action is necessary to resolve the issues.

(c) In the event that an evidentiary hearing is required or permitted by the adjudicative officer, such hearing and any related filings or other action required or permitted shall be conducted pursuant to the procedural rules governing the underlying adversary adjudication.

§ 17.26 Decision on application.

The Presiding Officer shall issue a recommended decision on the application which shall include proposed written findings and conclusions on such of the following as are relevant to the decision: (a) The applicant's status as a prevailing party; (b) the applicant's qualification as a ''party'' under 5 U.S.C. 504(b)(1)(B); (c) whether EPA's position as a party to the proceeding was substantially justified; (d) whether the special cirumstances make an award unjust; (e) whether the applicant during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; and (f) the amounts, if any, awarded for fees and other expenses, explaining any difference between the amount requested and the amount awarded.

§ 17.27 Agency review.

The recommended decision of the Presiding Officer will be reviewed by EPA in accordance with EPA's procedures for the type of substantive proceeding involved.

§ 17.28 Judicial review.

Judicial review of final EPA decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 17.29 Payment of award.

An applicant seeking payment of an award shall submit a copy of the final decision granting the award to the Office of Financial Management for Processing. A statement that review of the underlying decision is not being sought in the United States courts or that the process for seeking review of the award has been completed must also be included.

PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION

Sec.
19.1 Applicability.
19.2 Effective date.
19.3 [Reserved]
19.4 Penalty Adjustment and Table.

AUTHORITY: Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note; Pub. L. 104–134, 110 Stat. 1321, 31 U.S.C. 3701 note.

SOURCE: 61 FR 69364, Dec. 31, 1996, unless otherwise noted.

§ 19.1 Applicability.

This part applies to each statutory provision under the laws administered by the Environmental Protection Agency concerning the maximum civil monetary penalty which may be assessed in either civil judicial or administrative proceedings.

§ 19.2 Effective date.

The increased penalty amounts set forth in this part apply to all violations under the applicable statutes and regulations which occur after January 30, 1997; except for violations subject to penalty under 42 U.S.C. 4852d(b)(5) and 42 U.S.C. 4910(a)(2), which are subject to the new penalty amounts for any violations after July 28, 1997.

[62 FR 35039, June 27, 1997]

EFFECTIVE DATE NOTE: At 62 FR 35039, June 27, 1997, § 19.2 was revised, effective July 28, 1997.

§ 19.3 [Reserved]

§ 19.4 Penalty Adjustment and Table.

The adjusted statutory penalty provisions and their maximum applicable amounts are set out in Table 1. The last column in the table provides the newly effective maximum penalty amounts.

TABLE 1 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount
7 U.S.C. 1361.(a)(1)	FEDERAL INSECTICIDE, FUNGICIDE, . RODENTICIDE ACT CIVIL PENALTY—GENERAL—COMMERCIAL APPLICATORS, ETC.	$5,500
7 U.S.C. 1361.(a)(2)	FEDERAL INSECTICIDE, FUNGICIDE, & RODENTICIDE ACT CIVIL PENALTY—PRIVATE APPLICATORS—FIRST AND SUBSEQUENT OFFENSES OR VIOLATIONS.	$550/$1,000
15 U.S.C. 2615(a)	TOXIC SUBSTANCES CONTROL ACT CIVIL PENALTY	$27,500
15 U.S.C. 2647(a)	ASBESTOS HAZARD EMERGENCY RESPONSE ACT CIVIL PENALTY	$5,500
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE CLAIM.	$5,500
31 U.S.C. 3802(a)(2)	PROGRAM FRAUD CIVIL REMEDIES ACT/VIOLATION INVOLVING FALSE STATEMENT.	$5,500
33 U.S.C. 1319(d)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY	$27,500
33 U.S.C. 1319(g)(2)(A)	CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	$11,000/$27,500
33 U.S.C. 1319(g)(2)(B)	CLEAN WATER ACT VIOLATION/ADMINISTRATIVE PENALTY PER VIOLATION AND MAXIMUM.	$11,000/$137,500
33 U.S.C. 1321(b)(6)(B)(I)	CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(b)(3)&(j) PER VIOLATION AND MAXIMUM.	$11,000/$27,500
33 U.S.C. 1321(b)(6)(B)(ii)	CLEAN WATER ACT VIOLATION/ADMIN PENALTY OF SEC 311(b)(3)&(j) PER VIOLATION AND MAXIMUM.	$11,000/$137,500
33 U.S.C. 1321(b)(7)(A)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION PER DAY OR PER BARREL OR UNIT.	$27,500 or $1,100 per barrel or unit
33 U.S.C. 1321(b)(7)(B)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(c)&(e)(1)(B).	$27,500
33 U.S.C. 1321(b)(7)(C)	CLEAN WATER ACT VIOLATION/CIVIL JUDICIAL PENALTY OF SEC 311(j).	$27,500
33 U.S.C. 1321(b)(7)(D)	CLEAN WATER ACT VIOLATION/MINIMUM CIVIL JUDICIAL PENALTY OF SEC 311(b)(3)—PER VIOLATION OR PER BARREL/UNIT.	$110,000 or $3,300 per barrel or unit
33 U.S.C. 1414b(d)	MARINE PROTECTION, RESEARCH & SANCTUARIES ACT VIOL SEC 104b(d).	$660
33 U.S.C. 1415(a)	MARINE PROTECTION RESEARCH AND SANCTUARIES ACT VIOLATIONS—FIRST & SUBSEQUENT VIOLATIONS.	$55,000/$137,500
42 U.S.C. 300g–3(b)	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(b).	$27,500
42 U.S.C. 300g–3(c)	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(c).	$27,500
42 U.S.C. 300g–3(g)(3)(A)	SAFE DRINKING WATER ACT/CIVIL JUDICIAL PENALTY OF SEC 1414(g)(3)(a).	$27,500
42 U.S.C. 300g–3(g)(3)(B)	SAFE DRINKING WATER ACT/MAXIMUM ADMINISTRATIVE PENALTIES PER SEC 1414(g)(3)(B).	$5,000/$25,000
42 U.S.C. 300g–3(g)(3)(C)	SAFE DRINKING WATER ACT/THRESHOLD REQUIRING CIVIL JUDICIAL ACTION PER SEC 1414(g)(3)(C).	$25,000

TABLE 1 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount
42 U.S.C. 300h–2(b)(1)	SDWA/CIVIL JUDICIAL PENALTY/VIOLATIONS OF REQS—UNDERGROUND INJECTION CONTROL (UIC).	$27,500
42 U.S.C. 300h–2(c)(1)	SDWA/CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.	$11,000/$137,500.
42 U.S.C. 300h–2(c)(2)	SDWA/CIVIL ADMIN PENALTY/VIOLATIONS OF UIC REQS—PER VIOLATION AND MAXIMUM.	$5,500/$137,500
42 U.S.C. 300h–3(c)(1)	SDWA/VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL.	$5,500
42 U.S.C. 300h–3(c)(2)	SDWA/WILLFUL VIOLATION/OPERATION OF NEW UNDERGROUND INJECTION WELL.	$11,000
42 U.S.C. 300i(b)	SDWA/FAILURE TO COMPLY WITH IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER.	$15,000.
42 U.S.C. 300i–1(c)	SDWA/ATTEMPTING TO OR TAMPERING WITH PUBLIC WATER SYSTEM/CIVIL JUDICIAL PENALTY.	$22,000/$55,000
42 U.S.C. 300j(e)(2)	SDWA/FAILURE TO COMPLY W/ORDER ISSUED UNDER SEC. 1441(c)(1).	$2,750
42 U.S.C. 300j–4(c)	SDWA/REFUSAL TO COMPLY WITH REQS. OF SEC. 1445(a) OR (b)	$27,500
42 U.S.C. 300j–6(b)(2)	SDWA/FAILURE TO COMPLY WITH ADMIN. ORDER ISSUED TO FEDERAL FACILITY.	$25,000
42 U.S.C. 300j–23(d)	SDWA/VIOLATIONS/SECTION 1463(b)—FIRST OFFENSE/REPEAT OFFENSE.	$5,500/$55,000
42 U.S.C. 4852d(b)(5)	RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992, SEC 1018—CIVIL PENALTY.	$11,000
42 U.S.C. 4910(a)(2)	NOISE CONTROL ACT OF 1972—CIVIL PENALTY	$11,000
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C ASSESSED PER ORDER.	$27,500
42 U.S.C. 6928(c)	RES. CONS. & REC. ACT/CONTINUED NONCOMPLIANCE OF COMPLIANCE ORDER.	$27,500
42 U.S.C. 6928(g)	RESOURCE CONSERVATION & RECOVERY ACT/VIOLATION SUBTITLE C.	$27,500
42 U.S.C. 6928(h)(2)	RES. CONS. & REC. ACT/NONCOMPLIANCE OF CORRECTIVE ACTION ORDER.	$27,500
42 U.S.C. 6934(e)	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH SECTION 3013 ORDER.	$5,500
42 U.S.C. 6973(b)	RES. CONS. & REC. ACT/VIOLATIONS OF ADMINISTRATIVE ORDER	$5,500
42 U.S.C. 6991e(a)(3)	RES. CONS. & REC. ACT/NONCOMPLIANCE WITH UST ADMINISTRATIVE ORDER.	$27,500
42 U.S.C. 6991e(d)(1)	RES. CONS. & REC. ACT/FAILURE TO NOTIFY OR FOR SUBMITTING FALSE INFORMATION.	$11,000
42 U.S.C. 6991e(d)(2)	RCRA/VIOLATIONS OF SPECIFIED UST REGULATORY REQUIREMENTS.	$11,000
42 U.S.C. 6992d(a)(2)	RCRA/NONCOMPLIANCE W/MEDICAL WASTE TRACKING ACT ASSESSED THRU ADMIN ORDER.	$27,500
42 U.S.C. 6992d(a)(4)	RCRA/NONCOMPLIANCE W/MEDICAL WASTE TRACKING ACT ADMINISTRATIVE ORDER.	$27,500
42 U.S.C. 6992d(d)	RCRA/VIOLATIONS OF MEDICAL WASTE TRACKING ACT—JUDICIAL PENALTIES.	$27,500
42 U.S.C. 7413(b)	CLEAN AIR ACT/VIOLATION/OWNERS & OPERATORS OF STATIONARY AIR POLLUTION SOURCES—JUDICIAL PENALTIES.	$27,500
42 U.S.C. 7413(d)(1)	CLEAN AIR ACT/VIOLATION/OWNERS & OPERATORS OF STATIONARY AIR POLLUTION SOURCES-ADMINISTRATIVE PENALTIES PER VIOLATION & MAX.	$27,500/$220,000
42 U.S.C. 7413(d)(3)	CLEAN AIR ACT/MINOR VIOLATIONS/STATIONARY AIR POLLUTION SOURCES—FIELD CITATIONS.	$5,500.
42 U.S.C. 7524(a)	TAMPERING OR MANUFACTURE/SALE OF DEFEAT DEVICES IN VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY PERSONS.	$2,750
42 U.S.C. 7524(a)	VIOLATION OF 7522(a)(3)(A) OR (a)(3)(B)—BY MANUFACTURERS OR DEALERS; ALL VIOLATIONS OF 7522(a)(1),(2), (4),&(5) BY ANYONE.	$27,500
42 U.S.C. 7524(c)	ADMINISTRATIVE PENALTIES AS SET IN 7524(a) & 7545(d) WITH A MAXIMUM ADMINISTRATIVE PENALTY.	$220,000
42 U.S.C. 7545(d)	VIOLATIONS OF FUELS REGULATIONS	$27,500
42 U.S.C. 9604(e)(5)(B)	SUPERFUND AMEND. & REAUTHORIZATION ACT/NONCOMPLIANCE W/REQUEST FOR INFO OR ACCESS.	$27,500
42 U.S.C. 9606(b)(1)	SUPERFUND/WORK NOT PERFORMED W/IMMINENT, SUBSTANTIAL ENDANGERMENT.	$27,500
42 U.S.C. 9609 (a) & (b)	SUPERFUND/ADMIN. PENALTY VIOLATIONS UNDER 42 U.S.C. SECT. 9603, 9608, OR 9622.	$27,500.
42 U.S.C. 9609(b)	SUPERFUND/ADMIN. PENALTY VIOLATIONS—SUBSEQUENT	$82,500
42 U.S.C. 9609(c)	SUPERFUND/CIVIL JUDICIAL PENALTY/VIOLATIONS OF SECT. 9603, 9608, 9622.	$27,500

TABLE 1 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code citation	Civil monetary penalty description	New maximum penalty amount
42 U.S.C. 9609(c)	SUPERFUND/CIVIL JUDICIAL PENALTY/SUBSEQUENT VIOLATIONS OF SECT. 9603, 9608, 9622.	$82,500
42 U.S.C. 11045 (a) & (b) (1), (2) & (3).	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES.	$27,500
42 U.S.C. 11045(b) (2) & (3)	EPCRA CLASS I & II ADMINISTRATIVE AND CIVIL PENALTIES—SUBSEQUENT VIOLATIONS.	$82,500
42 U.S.C. 11045(c)(1)	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11022 OR 11023.	$27,500
42 U.S.C. 11045(c)(2)	EPCRA CIVIL AND ADMINISTRATIVE REPORTING PENALTIES FOR VIOLATIONS OF SECTIONS 11021 OR 11043(b).	$11,000
42 U.S.C. 11045(d)(1)	EPCRA—FRIVOLOUS TRADE SECRET CLAIMS—CIVIL AND ADMINISTRATIVE PENALTIES.	$27,500

[61 FR 69364, Dec. 31, 1996; 62 FR 13515, Mar. 20, 1997; 62 FR 35039, June 27, 1997]

EFFECTIVE DATE NOTE: At 62 FR 35039, June 27, 1997, table 1 of § 19.4 was amended by adding two entries, effective July 28, 1997.

PART 20—CERTIFICATION OF FACILITIES

AUTHORITY: Secs. 301, 704, 80 Stat. 379, 83 Stat. 667; 5 U.S.C. 301, 26 U.S.C. 169.

SOURCE: 36 FR 22382, Nov. 25, 1971, unless otherwise noted.

§ 20.1 Applicability.

The regulations of this part apply to certifications by the Administrator of water or air pollution control facilities for purposes of section 169 of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 169, as to which the amortization period began after December 31, 1975. Certification of air or water pollution control facilities as to which the amortization period began before January 1, 1976, will continue to be governed by Environmental Protection Agency regulations published November 25, 1971, at 36 FR 22382. Applicable regulations of the Department of Treasury are at 26 CFR 1.169 *et seq.*

[43 FR 1340, Jan. 9, 1978]

§ 20.2 Definitions.

As used in this part, the following terms shall have the meaning indicated below:

(a) *Act* means, when used in connection with water pollution control facilities, the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*) or, when used in connection with air pollution control facilities, the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*).

(b) *State certifying authority* means:

(1) For water pollution control facilities, the State pollution control agency as defined in section 502 of the Act.

(2) For air pollution control facilities, the air pollution control agency designated pursuant to section 302(b)(1) of the Act; or

(3) For both air and water pollution control facilities, any interstate agency authorized to act in place of the certifying agency of a State.

(c) *Applicant* means any person who files an application with the Administrator for certification that a facility is in compliance with the applicable regulations of Federal agencies and in furtherance of the general policies of the United States for cooperation with the States in the prevention and abatement of water or air pollution under the Act.

(d) *Administrator* means the Administrator, Environmental Protection Agency.

(e) *Regional Administrator* means the Regional designee appointed by the Administrator to certify facilities under this part.

(f) *Facility* means property comprising any new identifiable treatment facility which removes, alters, disposes of, stores, or prevents the creation of pollutants, contaminants, wastes, or heat.

(g) *State* means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

[36 FR 22382, Nov. 25, 1971, as amended at 43 FR 1340, Jan. 9, 1978]

§ 20.3 General provisions.

(a) An applicant shall file an application in accordance with this part for each separate facility for which certification is sought; *Provided,* That one application shall suffice in the case of substantially identical facilities which the applicant has installed or plans to install in connection with substantially identical properties; *Provided further,* That an application may incorporate by reference material contained in an application previously submitted by the applicant under this part and pertaining to substantially identical facilities.

(b) The applicant shall, at the time of application to the State certifying authority, submit an application in the form prescribed by the Administrator to the Regional Administrator for the region in which the facility is located.

(c) Applications will be considered complete and will be processed when the Regional Administrator receives the completed State certification.

(d) Applications may be filed prior or subsequent to the commencement of construction, acquisition, installation, or operation of the facility.

(e) An amendment to an application shall be submitted in the same manner as the original application and shall be considered a part of the original application.

(f) If the facility is certified by the Regional Administrator, notice of certification will be issued to the Secretary of the Treasury or his delegate, and a copy of the notice shall be forwarded to the applicant and to the State certifying authority. If the facility is denied certification, the Regional Administrator will advise the applicant and State certifying authority in writing of the reasons therefor.

(g) No certification will be made by the Regional Administrator for any facility prior to the

time it is placed in operation and the application, or amended application, in connection with such facility so states.

(h) An applicant may appeal any decision of the Regional Administrator which:

(1) Denies certification;

(2) Disapproves the applicant's suggested method of allocating costs pursuant to § 20.8(e); or

(3) Revokes a certification pursuant to § 20.10.

Any such appeal may be taken by filing with the Administrator within 30 days from the date of the decision of the Regional Administrator a written statement of objections to the decision appealed from. Within 60 days after receipt of such appeal the Administrator shall affirm, modify, or revoke the decision of the Regional Administrator, stating in writing his reasons therefor.

[36 FR 22382, Nov. 25, 1971, as amended at 43 FR 1340, Jan. 9, 1978]

§ 20.4 Notice of intent to certify.

(a) On the basis of applications submitted prior to the construction, reconstruction, erection, acquisition, or operation of a facility, the Regional Administrator may notify applicants that such facility will be certified if:

(1) The Regional Administrator determines that such facility, if constructed, reconstructed, erected, acquired, installed, and operated in accordance with such application will be in compliance with requirements identified in § 20.8; and if

(2) The application is accompanied by a statement from the State certifying authority that such facility, if constructed, reconstructed, acquired, erected, installed, and operated in accordance with such application, will be in conformity with the State program or requirements for abatement or control of water or air pollution.

(b) Notice of actions taken under this section will be given to the appropriate State certifying authority.

§ 20.5 Applications.

Applications for certification under this part shall be submitted in such manner as the Administrator may prescribe, shall be signed by the applicant or agent thereof, and shall include the following information:

(a) Name, address, and Internal Revenue Service identifying number of the applicant;

(b) Type and narrative description of the new identifiable facility for which certification is (or will be) sought, including a copy of schematic or engineering drawings, and a description of the function and operation of such facility;

(c) Address (or proposed address) of facility location;

(d) A general description of the operation in connection with which the facility is (or will be) used and a description of the specific process or processes resulting in discharges or emissions which are (or will be) controlled or prevented by the facility.

(e) If the facility is (or will be) used in connection with more than one plant or other property, one or more of which were not in operation before January 1, 1976, a description of the operations of the facility in respect to each plant or other property, including a reasonable allocation of the costs of the facility among the plants being serviced, and a description of the reasoning and accounting method or methods used to arrive at these allocations.

(f) A description of the effect of the facility in terms of type and quantity of pollutants, contaminants, wastes, or heat, removed, altered, stored, disposed of, or prevented by the facility.

(g) If the facility performs a function other than removal, alteration, storage, prevention, or disposal of pollutants, contaminants, wastes, or heat, a description of all functions performed by the facility, including a reasonable identification of the costs of the facility allocable to removal, alteration, storage, prevention, or disposal of pollutants, contaminants, wastes, or heat and a description of the reasoning and accounting method or methods used to arrive at the allocation.

(h) Date when such construction, reconstruction, or erection will be completed or when such facility was (or will be) acquired;

(i) Date when such facility is placed (or is intended to be placed) in operation;

(j) Identification of the applicable State and local water or air pollution control requirements and standards, if any;

(k) Expected useful life of facility;

(l) Cost of construction, acquisition, installation, operation, and maintenance of the facility;

(m) Estimated profits reasonably expected to be derived through the recovery of wastes or otherwise in the operation of the facility over the period referred to in paragraph (a)(6) of 26 CFR 1.169–2;

(n) The percentage (if any, and if the taxpayer claims that the percentage is 5 percent or less) by which the facility (1) increases the output or capacity, (2) extends the useful life, or (3) reduces the total operating costs of the operating unit of the plant or other property most directly associated with the pollution control facility and a description of the reasoning and accounting method or methods used to arrive at this percentage.

(o) Such other information as the Administrator deems necessary for certification.

[36 FR 22382, Nov. 25, 1971, as amended at 43 FR 1340, Jan. 9, 1978]

§ 20.6 State certification.

The State certification shall be by the State certifying authority having jurisdiction with respect to the facility in accordance with 26 U.S.C. 169(d)(1)(A) and (d)(2). The certification shall state that the facility described in the application has been constructed, reconstructed, erected, or acquired in conformity with the State program or requirements for abatement or control of water or air pollution. It shall be executed by an agent or officer authorized to act on behalf of the State certifying authority.

§ 20.7 General policies.

(a) The general policies of the United States for cooperation with the States in the prevention and abatement of water pollution are: To enhance the quality and value of our water resources; to eliminate or reduce the pollution of the nation's waters and tributaries thereof; to improve the sanitary condition of surface and underground waters; and to conserve such waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses.

(b) The general policy of the United States for cooperation with the States in the prevention and abatement of air pollution is to cooperate with and to assist the States and local governments in protecting and enhancing the quality of the Nation's air resources by the prevention and abatement of conditions which cause or contribute to air pollution which endangers the public health or welfare.

§ 20.8 Requirements for certification.

(a) Subject to § 20.9, the Regional Administrator will certify a facility if he makes the following determinations:

(1) It has been certified by the State certifying authority.

(2) That the facility: (i) Removes, alters, disposes of, stores, or prevents the creation of pollutants, contaminants, wastes, or heat, which, but for the facility, would be released into the environment;

(ii) Does not by a factor or more than 5 percent: (A) Increase the output or capacity, (B) extend the useful life, or (C) reduce the total operating costs of the operating unit (of the plant or other property) most directly associated with the pollution control facility; and

(iii) Does not significantly alter the nature of the manufacturing or production process or facility.

(3) The applicant is in compliance with all regulations of Federal agencies applicable to use of the facility, including conditions specified in any NPDES permit issued to the applicant under section 402 of the Act.

(4) The facility furthers the general policies of the United States and the States in the prevention and abatement of pollution.

(5) The applicant has complied with all the other requirements of this part and has submitted all requested information.

(b) In determining whether use of a facility furthers the general policies of the United States and the States in the prevention and abatement of water pollution, the Regional Administrator shall consider whether such facility is consistent with the following, insofar as they are applicable to the waters which will be affected by the facility:

(1) All applicable water quality standards, including water quality criteria and plans of implementation and enforcement established pursuant to section 303 of the Act or State laws or regulations;

(2) Decisions issued pursuant to section 310 of the Act;

(3) Water pollution control programs required pursuant to any one or more of the following sections of the Act: Section 306, section 307, section 311, section 318, or section 405; or in order to be consistent with a plan under section 208.

(c) In determining whether use of a facility furthers the general policies of the United States and the States in the prevention and abatement of air pollution, the Regional Administrator shall consider whether such facility is consistent with and meets the following requirements, insofar as they are applicable to the air which will be affected by the facility;

(1) Plans for the implementation, maintenance, and enforcement of ambient air quality standards adopted or promulgated pursuant to section 110 of the Act;

(2) Recommendations issued pursuant to sections 103(e) and 115 of the Act which are applicable to facilities of the same type and located in the area to which the recommendations are directed;

(3) Local government requirements for control of air pollution, including emission standards;

(4) Standards promulgated by the Administrator pursuant to the Act.

(d) A facility that removes elements or compounds from fuels that would be released as pollutants when such fuels are burned is eligible for certification if the facility is—

(1) Used in connection with a plant or other property in operation before January 1, 1976 (whether located and used at a particular plant or as a centralized facility for one or more plants), and

(2) Is otherwise eligible for certification.

(e) Where a facility is used in connection with more than one plant or other property, one or more of which were not in operation before January 1, 1976, or where a facility will perform a

function other than the removal, alteration, storage, disposal, or prevention of pollutants, contaminants, wastes, or heat, the Regional Administrator will so indicate on the notice of certification and will approve or disapprove the applicant's suggested method of allocating costs. If the Regional Administrator disapproves the applicant's suggested method, he shall identify the proportion of costs allocable to each such plant, or to the removal, alteration, storage, disposal, or prevention of pollutants, contaminants, wastes, or heat.

[36 FR 22382, Nov. 25, 1971, as amended at 43 FR 1341, Jan. 9, 1978]

§ 20.9 Cost recovery.

Where it appears that, by reason of estimated profits to be derived through the recovery of wastes, through separate charges for use of the facility in question, or otherwise in the operation of such facility, all or a portion of its costs may be recovered over the period referred to in paragraph (a)(6) of 26 CFR 1.169–2, the Regional Administrator shall so signify in the notice of certification. Determinations as to the meaning of the term *estimated profits* and as to the percentage of the cost of a certified facility which will be recovered over such period shall be made by the Secretary of the Treasury, or his delegate: *Provided,* That in no event shall estimated profits be deemed to arise from the use or reuse by the applicant of recovered waste.

§ 20.10 Revocation.

Certification hereunder may be revoked by the Regional Administrator on 30 days written notice to the applicant, served by certified mail, whenever the Regional Administrator shall determine that the facility in question is no longer being operated consistent with the § 20.8(b) and (c) criteria in effect at the time the facility was placed in service. Within such 30-day period, the applicant may submit to the Regional Administrator such evidence, data or other written materials as the applicant may deem appropriate to show why the certification hereunder should not be revoked. Notification of a revocation under this section shall be given to the Secretary of the Treasury or his delegate. See 26 CFR 1.169–4(b)(1).

APPENDIX A—GUIDELINES FOR CERTIFICATION

1. General.
2. Air Pollution Control Facilities.
a. Pollution control or treatment facilities normally eligible for certification.
b. Air pollution control facility boundaries.
c. Examples of eligibility limits.
d. Replacement of manufacturing process by another nonpolluting process.
3. Water Pollution Control Facilities.
a. Pollution control or treatment facilities normally eligible for certification.
b. Examples of eligibility limits.
4. Multiple-purpose facilities.
5. Facilities serving both old and new plants.
6. State certification.
7. Dispersal of pollutants.
8. Profit-making facilities.
9. Multiple applications.

1. *General.* Section 2112 of the Tax Reform Act of 1976 (Pub. L. 94–455, October 4, 1976) amended section 169 of the Internal Revenue Code of 1954, ''Amortization of Pollution Control Facilities.'' The amendment made permanent the rapid amortization provisions of section 704 of the Tax Reform Act of 1969 (Pub. L. 91–172, December 30, 1969) and redefined eligibility limits to allow certification of facilities which prevent the creation or emission of pollutants.

The law defines a *certified pollution control facility* as *a new identifiable treatment facility* which is:

(a) Used in connection with a plant or other property in operation before January 1, 1976, to abate or control air or water pollution by removing, altering, disposing of, storing, or preventing the creation or emission of pollutants, contaminants, wastes, or heat;

(b) Constructed, reconstructed, erected or (if purchased) first placed in service by the taxpayer after December 31, 1975;

(c) Not to *significantly* increase the output or capacity, extend the useful life, alter the nature of the manufacturing or production process or facility or reduce the total operating costs of the operating unit of the plant or other property most directly associated with the pollution control facility (as suggested by the legislative history, EPA regulations define the term *significant* as any increase, reduction or extension greater than 5%); and

(d) Certified by both State and Federal authorities, as provided in section 169(d)(1) (A) and (B) of the Internal Revenue Code.

If the facility is a building, the statute requires that it be exclusively devoted to pollution control. Most questions as to whether a facility is a *building* and, if so, whether it is *exclusively* devoted to pollution control are resolved by § 1.169–2(b)(2) of the Treasury Department regulations.

Since a treatment facility is eligible only if it furthers the general policies of the United States under the Clean Air Act and the Clean Water Act, a facility will be certified only if its purpose is to improve the quality of the air or water outside the plant. Facilities to protect the health or safety of employees inside the plant are not eligible.

Facilities installed before January 1, 1976, in plants placed in operation after December 31, 1968, are ineligible for certification under the statute. 26 U.S.C. 169.

2. *Air pollution control facilities.*

a. *Pollution control or treatment facilities normally eligible for certification.* The following devices are illustrative of facilities for removal, alteration, disposal, storage or preventing the creation or emission of air pollution:

(1) Inertial separators (cyclones, etc.).
(2) Wet collection devices (scrubbers).
(3) Electrostatic precipitators.
(4) Cloth filter collectors (baghouses).
(5) Director fired afterburners.

(6) Catalytic afterburners.
(7) Gas absorption equipment.
(8) Vapor condensers.
(9) Vapor recovery systems.
(10) Floating roofs for storage tanks.
(11) Fuel cleaning equipment.
(12) Combinations of the above.

(b) *Air Pollution control facility boundaries.* Most facilities are systems consisting of several parts. A facility need not start at the point where the gaseous effluent leaves the last unit of the processing equipment, nor will it always extend to the point where the effluent is emitted to the atmosphere or existing stack, breeching, ductwork or vent. It includes all the auxiliary equipment used to operate the control system, such as fans, blowers, ductwork, valves, dampers and electrical equipment. It also includes all equipment used to handle, store, transport or dispose of the collected pollutants.

(c) *Examples of eligibility limits.* The amortization deduction is limited to new identifiable treatment facilities which remove, alter, destroy, dispose of, store, or prevent the creation or emission of pollutants, contaminants or wastes. It is not available for all expenditures for air pollution control and is limited to devices which are installed for the purpose of pollution control and which actually remove, alter, destroy, dispose of, store or prevent the creation or emission of pollutants by removing potential pollutants at any stage of the production process.

(1) *Boiler modifications or replacements.* Modifications of boilers to accommodate *cleaner* fuels are not eligible for rapid amortization: e.g., removal of stokers from a coal-fired boiler and the addition of gas or oil burners. The purpose of the burners is to produce heat, and they are not identifiable as treatment facilities nor do they prevent the creation or emission of pollutants by removing potential pollutants. A new gas or oil-fired boiler that replaces a coal-fired boiler would also be ineligible for certification.

(2) *Fuel processing.* Eligible air pollution control facilities include preprocessing equipment which removes potential air pollutants from fuels before they are burned. A desulfurization facility would thus be eligible provided it is used in connection with the plant where the desulfurized coal will be burned or is used as a centralized facility for one or more plants. However, fluidized bed facilities would generally not be eligible for rapid amortization. Such facilities would almost certainly increase output or capacity, reduce total operating costs, or extend the useful life of the plant or other property by more than 5%, since the boiler itself would be the operating unit of the plant most closely associated with the pollution control facility. Where the Regional Office and the taxpayer disagree as to the applicability of the 5% rule, the Regional office should nonetheless certify the facility if it is otherwise eligible and leave the ultimate determination to the Treasury Department. The certification should alert Treasury to the possibility that the facility is ineligible for rapid amortization.

(3) *Incinerators.* The addition of an afterburner, secondary combustion chamber or particulate collector would be eligible as would any device added to effect more efficient combustion.

(4) *Collection devices used to collect products or process material.* In some manufacturing operations, devices are used to collect product or process material, as in the case of the manufacture of carbon black. The baghouse would be eligible for certification, but the certification should notify the Treasury Department of the profitable waste recovery involved. (See paragraph 8 below.)

(5) *Intermittent control systems.* Measuring devices which inform the taxpayer that ambient air quality standards are being exceeded are not eligible for certification since they do not physically remove, alter, destroy, dispose of, store or prevent the creation or emission of pollutants, but merely act as a signal to curtail operations. Of course, measuring devices used in connection with an eligible pollution control facility would be eligible.

d. *Replacement of manufacturing process by another, nonpolluting process.* An installation does not qualify for certification where it uses a process known to be *cleaner* than an alternative, but which does not actually remove, alter, destroy, dispose of, store or prevent the creation or emission of pollutants by removing potential pollutants at any stage in the production process. For example, a minimally polluting electric induction furnace to melt cast iron which replaces, or is installed instead of, a heavily polluting iron cupola furnace would be ineligible for this reason and because it is not an identifiable treatment facility. However, if the replacement equipment has an air pollution control device added to it, the control device would be eligible even though the process equipment would not. For example, where a primary copper smelting reverberatory furnace is replaced by a flash smelting furnace, followed by the installation of a contact sulfuric acid plant, the acid plant would qualify since it is a control device not necessary to the production process. The flash smelting furnace would not qualify because its purpose is to produce copper matte.

3. *Water Pollution Control Facilities.*

a. *Pollution control or treatment facilities normally eligible for certification.* The following types of equipment are illustrative of facilities to remove, alter, destroy, store or prevent the creation of water pollution:

(1) Pretreatment facilities which neutralize or stabilize industrial or sanitary wastes, or both, from a point immediately preceding the point of such treatment to the point of disposal to, and acceptance by, a publicly-owned treatment works. The necessary pumping and transmitting facilities are also eligible.

(2) Treatment facilities which neutralize or stabilize industrial or sanitary wastes, or both, to comply with Federal, State or local effluent or water quality standards, from a point immediately preceding the point of such treatment to the point of disposal, including necessary pumping and transmitting facilities, including those for recycle or segregation of wastewater.

(3) Ancillary devices and facilities such as lagoons, ponds and structures for storage, recycle, segregation or treatment, or any combination of these, of wastewaters or wastes from a plant or other property.

(4) Devices, equipment or facilities constructed or installed for the primary purpose of recovering a by-product of the operation (saleable or otherwise) previously lost either to the atmosphere or to the waste effluent. Examples are:

(A) A facility to concentrate and recover vaporous by-products from a process stream for reuse as raw feedstock or for resale, unless the estimated profits from resale exceed the cost of the facility (see paragraph 8 below).

(B) A facility to concentrate or remove *gunk* or similar *tars* or polymerized tar-like materials from the process waste effluent previously discharged in the plant effluents. Removal may occur at any stage of the production process.

(C) A device used to extract or remove insoluble constitutents from a solid or liquid by use of a selective solvent; an open or closed tank or vessel in which such extraction or removal occurs; a diffusion battery of tanks or vessels for countercurrent decantation, extraction, or leaching, etc.

(D) A skimmer or similar device for removing grease, oils and fat-like materials from the process or effluent stream.

(b) *Examples of eligibility limits.*

(1) In-plant process changes which may result in the reduction or elimination of pollution but which do not themselves remove, alter, destroy, dispose of, store or prevent the creation of pollutants by removing potential pollutants at some point in the process stream are not eligible for certification.

(2) A device, piece of equipment or facility is not eligible if it is associated with or included in a stream for subsurface injection of untreated or inadequately treated industrial or sanitary waste.

4. *Multiple-purpose facilities.* A facility can qualify for rapid amortization if it serves a function other than the abatement of pollution (unless it is a building). Otherwise, the effect might be to discourage installation of sensible pollution abatement facilities in favor of less efficient single-function facilities.

The regulations require applicants to state what percentage of the cost of a facility is properly allocable to its abatement function and to justify the allocation. The Regional Office will review these allocations, and the certification will inform the Treasury Department if the allocation appears to be incorrect. Although not generally necessary or desireable, site inspections may be appropriate in cases involving large sums of money or unusual types of equipment.

5. *Facilities serving both old and new plants.* The statute provides that pollution control facilities must be used in connection with a plant or other property in operation before January 1, 1976. When a facility is used in connection with both pre-1976 and newer property, it may qualify for rapid amortization to the extent it is used in connection with pre-1976 property.

Again, the applicant will submit a theory of allocation for review by the Regional Office. The usual method of allocation is to compare the effluent capacity of the pre-1976 plant to the treatment capacity of the control facility. For example, if the old plant has a capacity of 80 units of effluent (but an average output of 60 units), the new plant has a capacity of 40 units (but an average output of 20 units), and the control facility has a capacity of 150 units, then $^{80}/_{150}$ of the cost of the control facility would be eligible for rapid amortization.

If a taxpayer presents a seemingly reasonable method of allocation different from the foregoing, Regional Office personnel should consult with the Office of Air Quality Planning and Standards or the Office of Water Planning and Standards, and with the Office of General Counsel.

6. *State certification.* To qualify for rapid amortization under section 169, a facility must first be certified by the State as having been installed ''in conformity with the State program or requirements for abatement or control of water or atmospheric pollution or contamination.'' Significantly, the statute does not say that the State must require that a facility be installed. If use of a facility will not actually contravene a State requirement, the State may certify. However, since State certification is a prerequisite to EPA certification, EPA may not certify if the State has denied certification for whatever reason.

It should be noted that certification of a facility does not constitute the personal warranty of the certifying official that the conditions of the statute have been met. EPA certification is binding on the Government only to the extent the submitted facts are accurate and complete.

7. *Dispersal of pollutants.* Section 169 applies to facilities which remove, alter, destroy, dispose of, store or prevent the creation or emission of pollutants—including heat. Facilities which merely disperse pollutants (such as tall stacks) do not qualify. However, there is no way to *dispose of* heat other than by transferring B.t.u.'s to the environment. A cooling tower is therefore eligible for certification provided it is used in connection with a pre-1976 plant. A cooling pond or an addition to an outfall structure which results in a decrease in the amount by which the temperature of the receiving water is raised and which meets applicable State standards is likewise eligible.

8. *Profit-making facilities.* The statute denies rapid amortization where the cost of pollution control facilities will be recovered from profits derived through the recovery or wastes *or otherwise.*

If a facility recovers marketable wastes, estimated profits on which are not sufficient to recover the entire cost of the facility, the amortization basis of the facility will be reduced in accordance with Treasury Department regulations. The responsibility of the Regional Offices is merely to identify for the Treasury Department those cases in which estimated profits will arise. The Treasury Department will determine the amount of such profits and the extent to which they can be expected to result in cost recovery, but the EPA certification should inform the Treasury whether cost recovery is possible.

The phrase *or otherwise* also includes situations where the taxpayer is in the business of renting the facility for a fee or charging for the treatment of waste. In such cases, the facility may theoretically qualify for EPA certification. The decision as to the extent of its profitability is for the Treasury Department. Situations may also arise where use of a facility is furnished at no additional charge to a number of users, or to the public, as part of a package of other services. In such cases, no profits will be deemed to arise from operation of the facility unless the other services included in the package are merely ancillary to use of the facility. Of course, the cost recovery provision does not apply where a taxpayer merely recovers the cost of a facility through general revenues; otherwise no profitable firm would ever be eligible for rapid amortization.

It should be noted that § 20.9 of the EPA regulation is not meant to affect general principles of Federal income tax law. An individual other than the title holder of a piece of property may be entitled to take depreciation deductions on it if the arrangements by which such individual has use of the property may, for all practical purposes, be viewed as a purchase. In any such case, the facility could qualify for full rapid amortization, notwithstanding the fact that the title holder charges a separate fee for the use of the facility, so long as the taxpayer—in such a case, the user—does not charge a separate fee for use of the facility.

9. *Multiple applications.* Under EPA regulations, a multiple application may be submitted by a taxpayer who applies for certification of substantially identical pollution abatement facilities used in connection with substantially

identical properties. It is not contemplated that the multiple application option will be used with respect to facilities in different States, since each such facility would require a separate application for certification to the State involved. EPA regulations also permit an applicant to incorporate by reference in an application material contained in an application previously filed. The purpose of this provision is to avoid the burden of furnishing detailed information (which may in some cases include portions of catalogs or process flow diagrams) which the certifying official has previously received. Accordingly, material filed with a Regional Office of EPA may be incorporated by reference only in an application subsequently filed with the same Regional Office.

[47 FR 38319, Aug. 31, 1982]

PART 21—SMALL BUSINESS

AUTHORITY: 15 U.S.C. 636, as amended by Pub. L. 92–500.

SOURCE: 42 FR 8083, Feb. 8, 1977, unless otherwise noted.

§ 21.1 Scope.

This part establishes procedures for the issuance by EPA of the statements, referred to in section 7(g) of the Small Business Act and section 8 of the Federal Water Pollution Control Act Amendments of 1972, to the effect that additions to or alterations in the equipment, facilities (including the construction of pretreatment facilities and interceptor sewers), or methods of operations of small business concerns are necessary and adequate to comply with requirements established under the Federal Water Pollution Control Act, 33 U.S.C. 1151, *et seq.*

§ 21.2 Definitions.

(a) *Small business concern* means a concern defined by section 2[3] of the Small Business Act, 15 U.S.C. 632, 13 CFR part 121, and regulations of the Small Business Administration promulgated thereunder.

(b) For purposes of paragraph 7(g)(2) of the Small Business Act, *necessary and adequate* refers to additions, alterations, or methods of operation in the absence of which a small business concern could not comply with one or more applicable standards. This can be determined with reference to design specifications provided by manufacturers, suppliers, or consulting engineers; including, without limitations, additions, alterations, or methods of operation the design specifications of which will provide a measure of treatment or abatement of pollution in excess of that required by the applicable standard.

(c) *Applicable Standard* means any requirement, not subject to an exception under § 21.6, relating to the quality of water containing or potentially containing pollutants, if such requirement is imposed by:

(1) The Act;

(2) EPA regulations promulgated thereunder or permits issued by EPA or a State thereunder;

(3) Regulations by any other Federal Agency promulgated thereunder;

(4) Any State standard or requirement as applicable under section 510 of the Act;

(5) Any requirements necessary to comply with an areawide management plan approved pursuant to section 208(b) of the Act;

(6) Any requirements necessary to comply with a facilities plan developed under section 201 of the Act (see 35 CFR, subpart E);

(7) Any State regulations or laws controlling the disposal of aqueous pollutants that may affect groundwater.

(d) *Regional Administrator* means the Regional Administrator of EPA for the region including the State in which the facility or method of operation is located, or his designee.

(e) *Act* means the Federal Water Pollution Control Act, 33 U.S.C. 1151, *et seq.*

(f) *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. For the purposes of this section, the term also means sewage from vessels within the meaning of section 312 of the Act.

(g) *Permit* means any permit issued by either EPA or a State under the authority of section 402 of the Act; or by the Corps of Engineers under section 404 of the Act.

(h) *State* means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

Comment: As the SBA does not extend its programs to the Canal Zone, the listing of the Canal Zone as a State for the purposes of meeting a requirement imposed by section 311 or 312 of the Act is not effective in this regulation.

(i) *Statement* means a written approval by EPA, or if appropriate, a State, of the application.

(j) *Facility* means any building, structure, installation or vessel, or portion thereof.

(k) *Construction* means the erection, building, acquisition, alteration, remodeling, modification, improvement, or extension of any facility; *Provided,* That it does not mean preparation or undertaking of: Plans to determine feasibility; engineering, architectural, legal, fiscal, or economic investigations or studies; surveys, designs, plans, writings, drawings, specifications or procedures.

Comment: This provision would not later preclude SBA financial assistance being utilized for any planning or design effort conducted previous to construction.

(l) The term *additions and alterations* means the act of undertaking construction of any facility.

(m) The term *methods of operation* means the installation, emplacement, or introduction of materials, including those involved in construction, to achieve a process or procedure to control: Surface water pollution from non-point sources—that is, agricultural, forest practices, mining, construction; ground or surface water pollution from well, subsurface, or surface disposal operations; activities resulting in salt water intrusion; or changes in the movement, flow, or circulation of navigable or ground waters.

(n) The term *vessel* means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters of the United States other than a vessel owned or operated by the United States or a State or a political subdivision thereof, or a foreign nation; and is used for commercial purposes by a small business concern.

(o) *EPA* means the Environmental Protection Agency.

(p) *SBA* means the Small Business Administration.

(q) *Areawide agency* means an areawide management agency designated under section 208(c)(1) of the Act.

(r) *Lateral sewer* means a sewer which connects the collector sewer to the interceptor sewer.

(s) *Interceptor sewer* means a sewer whose primary purpose is to transport wastewaters from collector sewers to a treatment facility.

§ 21.3 Submission of applications.

(a) Applications for the statement described in § 21.5 of this part shall be made to the EPA Regional Office for the region covering the State in which the additions, alterations, or methods of operation covered by the application are located. A listing of EPA Regional Offices, with their mailing addresses, and setting forth the States within each region is as follows:

Region	Address	State
I	Regional Administrator, region I, EPA, John F. Kennedy Federal Bldg., room 2303, Boston, MA 02203.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
II	Regional Administrator, region II, EPA, 26 Federal Plaza, room 908, New York, NY 10007.	New Jersey, New York, Virgin Islands, and Puerto Rico.
III	Regional Administrator, region III, EPA, Curtis Bldg., 6th and Walnut Sts., Philadelphia, PA 19106.	Delaware, District of Columbia, Pennsylvania, Maryland, Virginia, and West Virginia.
IV	Regional Administrator, region IV, EPA, 345 Courtland St. NE., Atlanta, GA 30308.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
V	Regional Administrator, region V, EPA, 77 West Jackson Boulevard, Chicago, IL 60604.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
VI	Regional Administrator, region VI, EPA, 1201 Elm St., 27th floor, First International Bldg., 70 Dallas, TX 75201.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
VII	Regional Administrator, region VII, EPA, 1735 Baltimore Ave., Kansas City, MO 64108.	Iowa, Kansas, Missouri, and Nebraska.
VIII	Regional Administrator, region VIII, EPA, 1860 Lincoln St., Suite 900, Denver, CO 80203.	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
IX	Regional Administrator, region IX, EPA, 100 California St., San Francisco, CA 94111.	Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Trust Territory of the Pacific Islands.
X	Regional Administrator, region X, EPA, 1200 6th Ave., Seattle, WA 98101.	Alaska, Idaho, Oregon, and Washington.

(b) An application described in paragraph (1) of § 21.3(c) may be submitted directly to the appropriate State, where a State has assumed responsibility for issuing the statement. Information on whether EPA has retained responsibility for certification or whether it has been assumed by the State may be obtained from either the appropriate Regional Administrator or the State Water Pollution Control Authority in which the facility is located.

(c) An application need be in no particular form, but it must be in writing and must include the following:

(1) Name of applicant (including business name, if different) and mailing address. Address of the affected facility or operation, if different, should also be included.

(2) Signature of the owner, partner, or principal executive officer requesting the statement.

(3) The Standard Industrial Classification number for the business for which an application is being submitted. Such SIC number shall be obtained from the Standard Industrial Classification Manual, 1972 edition. If the applicant does not know the SIC for the business, a brief description of the type of business activity being conducted should be provided.

(4) A description of the process or activity generating the pollution to be abated by the additions,

alterations, or methods of operation covered by the application, accompanied by a schematic diagram of the major equipment and process, where practicable.

(5) A specific description of the additions, alterations, or methods of operation covered by the application. Where appropriate, such description will include a summary of the facility construction to be undertaken; a listing of the major equipment to be purchased or utilized in the operation of the facility; the purchase of any land or easements necessary to the operation of the facility; and any other items that the applicant deems pertinent. Any information that the applicant considers to be a trade secret shall be identified as such.

(6) A declaration of the requirement, or requirements, for compliance with which the alterations, additions, or methods of operation are claimed to be necessary and adequate.

(i) If the requirement results from a permit issued by EPA or a State under section 402 of the Act, the permit number shall be included.

(ii) If the requirement results from a permit issued by EPA or a State for a publicly-owned treatment works, the municipal permit number shall be included along with a written declaration from the authorized agent for the publicly owned treatment works that received the permit detailing the specific pretreatment requirements being placed upon the applicant.

(iii) If the requirement initiates from a plan to include the applicant's effluent in an existing municipal sewer system through the construction of lateral or interceptor sewers, a written declaration from the authorized agent for the publicly owned treatment works shall be included noting that the sewer construction is consistent with the integrity of the system; will not result in the capacity of the publicly owned treatment works being exceeded; and where applicable, is consistent with a facilities plan developed under section 201 of the Act (see 35 CFR part 917).

(iv) If the requirement results from a State order, regulation, or other enforceable authority controlling pollution from a vessel as provided by section 312(f)(3) of the Act, a written declaration from the authorized agent of the State specifying the control measures being required of the applicant shall be included.

(v) If the requirement is a result of a permit issued by the Corps of Engineers related to permits for dredged or fill material as provided by section 404 of the Act, a copy of the permit as issued shall be included.

(vi) If the requirement results from a standard of performance for control of sewage from vessels as promulgated by the Coast Guard under section 312(b) of the Act, the vessel registration number or documentation number shall be included.

(vii) If the requirement results from a plan to control or prevent the discharge or spill of pollutants as identified in section 311 of the Act, the title and date of that plan shall be included.

(viii) If the requirement is the result of an order by a State or an areawide management agency controlling the disposal of aqueous pollutants so as to protect groundwater, a copy of the order as issued shall be included.

(7) Additionally, if the applicant has received from a State Water Pollution Control Agency a permit issued by the State within the preceding two years, and if such permit was not issued under the authorities of section 402 of the Act, and where the permit directly relates to abatement of the discharge for which a statement is sought, a copy of that permit shall also be included.

Comment: Some States under State permit programs, separate and distinct from the NPDES permit program under the Act, conduct an engineering review of the facilities or equipment that would be used to control pollution. The results of such a review would be materially helpful in determining the necessity and adequacy of any alterations or additions.

(8) Any written information from a manufacturer, supplier, or consulting engineer, or similar independent source, concerning the design capabilities of the additions or alterations covered by the application, including any warranty limitations or certifications obtained from or provided by such sources which would bear upon these design or performance capabilities. The Regional Administrator may waive the requirement for this paragraph if it appears that there is no independent source for the information described herein; as, for example, when the applicant has designed and constructed the additions or alterations with in-house capability.

(9) An estimated schedule for the construction or implementation of the alterations, additions, or methods of operation.

(10) An estimated cost of the alterations, additions, or methods of operation, and where practicable, the individual costs of major elements of the construction to be undertaken.

(11) Information on previously received loan assistance under this section for the facility or method of operation, including a description and dates of the activity funded.

(d) A separate application must be submitted for every addition, alteration, or method of operation that is at a separate geographical location from the initial application.

Comment: As an example, a chain has four dry cleaning establishments scattered through a community. A separate application would have to be filed for each.

(e) No statement shall be approved for any application that has not included the information or

declaration requirements imposed by paragraph (c)(6) of § 21.3.

(f) All applications are to be submitted in duplicate.

(g) All applications are subject to the provisions of 18 U.S.C. 1001 regarding prosecution for the making of false statements or the concealing of material facts.

(h) Instructional guidelines to assist in the submission of applications for EPA certification are available from EPA or a certifying State.

[42 FR 8083, Feb. 8, 1977, as amended at 62 FR 1833, Jan. 14, 1997]

§ 21.4 Review of application.

(a) The Regional Administrator or his designee will conduct a review of the application. This review will consist of a general assessment of the adequacy of the proposed alterations, additions, or methods of operation. The review will corroborate that the proposed alterations, additions, or methods of operation are required by an applicable standard. The review will identify any proposed alterations, additions, or methods of operation that are not required by an applicable standard, or that are extraneous to the achievement of an applicable standard.

(b) The assessment of adequacy will be conducted to ensure that the proposed additions, alterations, or methods of operation are sufficient to meet one or more applicable standards whether alone or in conjunction with other plans. The assessment will not generally examine whether other alternatives exist or would be more meritorious from a cost-effective, efficiency, or technological standpoint.

(c) An application which proposes additions, alterations, or methods of operation whose design, in anticipation of a future requirement, will achieve a level of performance above the requirements imposed by a presently applicable standard shall be reviewed and approved by EPA or a State without prejudice. The amount of financial assistance for such an application will be determined by SBA.

(d) The Regional Administrator shall retain one copy of the application and a summary of the action taken on it. Upon completion of his review, the Regional Administrator shall return the original application along with any other supporting documents or information provided to the applicant along with a copy to the appropriate SBA district office for processing.

§ 21.5 Issuance of statements.

(a) Upon application by a small business concern pursuant to § 21.3 the Regional Administrator will, if he finds that the additions, alterations, or methods of operation covered by the application are adequate and necessary to comply with an applicable standard, issue a written statement to the applicant to that effect, within 45 working days following receipt of the application, or within 45 working days following receipt of all information required to be submitted pursuant to § 21.3(c), whichever is later. Such a written statement shall be classified as a full approval. If an application is deficient in any respect, with regard to the specifications for submission listed in § 21.3(c), the Regional Administrator shall promptly, but in no event later than 30 working days following receipt of the application, notify the applicant of such deficiency.

(b) (1) If an application contains proposed alterations, additions, or methods of operation that are adequate and necessary to comply with an applicable standard but also contains proposed alterations, additions, or methods of operation that are not necessary to comply with an applicable standard, the Regional Administrator shall conditionally approve the application within the time limit specified in paragraph (a) of this section, and shall also identify in the approval those alterations, additions, or methods of operation that he determines are not necessary.

(2) Conditional approvals as contained in a statement will satisfy the requirements for approval by EPA for those alterations, additions, or methods of operation determined to be necessary and adequate. Such conditional approvals may be submitted to SBA in satisfaction of the requirements of section 7(g)(2)(B) of the Small Business Act.

(3) Conditional approvals will not satisfy the requirements for approval by EPA for those alterations, additions, or methods of operation included in the application that are determined not to be necessary. Unnecessary alterations, additions, or methods of operation are those which are extraneous to the achievement of an applicable standard.

(4) Conditional approvals may be appealed to the Deputy Administrator by an applicant in accordance with the procedures identified in § 21.8.

(c) If the Regional Administrator determines that the additions, alterations, or methods of operation covered by an application are not necessary and adequate to comply with an applicable standard, he shall disapprove the application and shall so advise the applicant of such determination within the time limit specified in paragraph (a) of this section, and shall state in writing the reasons for his determination.

(d) Any application shall be disapproved if the Regional Administrator determines that the proposed addition, alteration, or method of operation would result in the violation of any other requirement of this Act, or of any other Federal or State

law or regulation with respect to the protection of the environment.

(e) An applicant need not demonstrate that its facility or method of operation will meet all applicable requirements established under the Act. The applicant need only demonstrate that the additions, alterations, or methods of operation will assist in ensuring compliance with one or more of the applicable standards for which financial assistance is being requested.

Comment: As an example, a small business has two discharge pipes—one for process water, the other for cooling water. The application for loan assistance is to control pollution from the process water discharge. However, EPA or a State may review the applicant's situation and identify for SBA that the applicant is subject to other requirements for which the applicant has not sought assistance.

(f) An application should not include major alternative designs significantly differing in scope, concept, or capability. It is expected that the applicant at the time of submission will have selected the most appropriate or suitable design for the addition, alteration, or method of operation.

(g) EPA will not provide assistance in the form of engineering, design, planning or other technical services to any applicant in the preparation of his application.

(h) An applicant may be issued a certification for additions, alterations, or methods of operation constructed or undertaken before loan assistance was applied for by the applicant. Any such applications would be reviewed by SBA for eligibility under SBA criteria, including refinancing and loan exposure.

§ 21.6 Exclusions.

(a) Statements shall not be issued for applications in the following areas:

(1) *Local requirements.* Applications for statements for additions, alterations, or methods of operation that result from requirements imposed by municipalities, counties or other forms of local or regional authorities and governments, except for areawide management agencies designated and approved under section 208 of the Act, shall not be approved; except for those requirements resulting from the application of pretreatment requirements under section 307(b) of the Act; or those resulting from an approved project for facilities plans, and developed under section 201 of the Act. (See 35 CFR, subpart E); or under a delegation of authority under the Act.

(2) *Cost recovery and user charges.* Applications for statements involving a request for financial assistance in meeting revenue and service charges imposed upon a small business by a municipality conforming to regulations governing a user charge or capital cost system under section 204(b)(2) of the Act (see 35 CFR 925–11 and 925–12) shall not be approved.

(3) *New facility sewer construction.* Applications for statements involving projects that involve the construction of a lateral, collection, or interceptor sewer, at a facility that was not in existence on October 18, 1972, shall not be approved. Applications for additions, alterations, or methods of operation for new facilities that do not involve sewer construction are not affected by this preclusion. Further, if an applicant is compelled to move as a result of a relocation requirement but operated at the facility prior to October 18, 1972, the cost of construction for a lateral, collection, or interceptor sewer can be approved for the new, relocated site. For the purpose of this exclusion lateral, collection, or interceptor sewer is determined as any sewer transporting waste from a facility or site to any publicly owned sewer.

(4) Other non-water related pollution abatement additions, alterations, or methods of operation which are not integral to meeting the requirements of the Act, although they may be achieving the requirements of another Federal or State law or regulation.

Comment: An example would be where stack emission controls were required on equipment that operated the water pollution control facility. This emission control equipment as an integral part of the water pollution control systems would be approvable. However, emission control equipment for a general purpose incinerator that only incidentally burned sewage sludge would not be approvable. The general purpose incinerator might also receive loan assistance but under separate procedures than those set out for water pollution control.

(5) *Privately owned treatment facility service or user costs.* Applications for statements involving financial assistance in meeting user cost or fee schedules related to participating in a privately owned treatment facility not under the ownership or control of the applicant shall not be approved.

(6) *Operation and maintenance charges.* Applications for statements containing a request for financial assistance in meeting the operations and maintenance costs of operating the applicant's additions, alterations, or methods of operation shall not be approved for any elements relating to such areas of cost.

(7) *Evidence of financial responsibility.* Applications for statements containing a request for financial assistance in meeting any requirements relating to evidence of financial responsibility as provided in section 311(p) of the Act shall not be approved.

§ 21.7 [Reserved]

Comment: Applications for a statement resulting from a requirement to control pollution from non-point sources

as identified in section 304(e)(2)(A–F) of the Act and described in § 21.2(m) will not presently be issued a statement under § 21.5 unless the requirement is established through a permit under section 402. There is no requirement under the current Act that the Federal government control pollution from such sources, and the nature and scope of State or areawide management agency proposals or programs to control such sources cannot be determined at this time. As State and areawide plans for control of nonpoint sources being prepared under section 208 of the Act, will not be completed for several years, this section is being reserved pending a future determination on the eligibility of applications relating to non-profit sources to receive a statement under this part.

§ 21.8 Resubmission of application.

(a) A small business concern whose application is disapproved may submit an amended or corrected application to the Regional Administrator at any time. The applicant shall provide the date of any previous application.

§ 21.9 Appeals.

(a) An applicant aggrieved by a determination of a Regional Administrator under § 21.5 may appeal in writing to the Deputy Administrator of the Environmental Protection Agency, within 30 days of the date of the determination from which an appeal is taken; *Provided,* That the Deputy Administrator may, on good cause shown, accept an appeal at a later time.

(b) The applicant in requesting such an appeal shall submit to the Deputy Administrator a copy of the complete application as reviewed by the Regional Administrator.

(c) The applicant should also provide information as to why it believes the determination made by the Regional Administrator to be in error.

(d) The Deputy Administrator shall act upon such appeal within 60 days of receipt of any complete application for a review of the determination.

(e) Where a State has been delegated certification authority, the procedure for appeals shall be established in the State submission required in § 21.12.

§ 21.10 Utilization of the statement.

(a) Statements issued by the Regional Administrator will be mailed to the small business applicant and to the district office of the Small Business Administration serving the geographic area where the business is located. It is the responsibility of the applicant to also forward the statement to SBA as part of the application for a loan.

(b) Any statement or determination issued under § 21.5 shall not be altered, modified, changed, or destroyed by any applicant in the course of providing such statement to SBA. To do so can result in the revocation of any approval contained in the statement and subject the applicant to the penalties provided in 18 U.S.C. 1001.

(c) If an application for which a statement is issued under § 21.5 is substantively changed in scope, concept, design, or capability prior to the approval by SBA of the financial assistance requested, the statement as issued shall be revoked. The applicant must resubmit a revised application under § 21.3 and a new review must be conducted. Failure to meet the requirements of this paragraph could subject the applicant to the penalties specified in 18 U.S.C. 1001 and 18 U.S.C. 286. A substantive change is one which materially affects the performance or capability of the proposed addition, alteration, or method of operation.

(d) An agency, Regional Administrator, or State issuing a statement under § 21.5 shall retain a complete copy of the application for a period of five years after the date of issuance of the statement. The application shall be made available upon request for inspection or use at any time by any agency of the Federal Government.

(e) No application for a statement or for financial assistance under this section or statement issued under this section shall constitute or be construed as suspending, modifying, revising, abrogating or otherwise changing the requirements imposed on the applicant by the terms, conditions, limitations or schedules of compliance contained in an applicable standard, permit, or other provision established or authorized under the Act or any State or local statute, ordinance or code.

(f) No statement as issued and reviewed shall be construed as a waiver to the applicants fulfilling the requirements of any State or local law, statute, ordinance, or code (including building, health, or zoning codes).

(g) An amended application need not be submitted if the facility, property, or operation for which the statement is issued is sold, leased, rented, or transferred by the applicant to another party prior to approval by SBA of the financial assistance: *Provided,* That there is or will be no substantive change in the scope, concept, design, capability, or conduct of the facility or operation.

Comment: However, eligibility for financial assistance would be reexamined by SBA with regard to any such sale, lease, rental or transfer.

(h) The Regional Administrator may include in any statement a date of expiration, after which date the approval by the Regional Administrator contained in the statement shall no longer apply. The date of expiration shall not become effective if the applicant has submitted the statement to the SBA, prior to the date of expiration, as part of the application for financial assistance.

§ 21.11 Public participation.

(a) Applications shall not generally be subject to public notice, public comment, or public hearings. Applications during the period of review as stated in § 21.5, or during the period of appeal as provided in § 21.8, shall be available for public inspection. Approved applications as provided in § 21.10(d) shall be available for public inspection at all times during the five year period.

(b) The Regional Administrator, if he believes that the addition, alteration, or method of operation may adversely and significantly affect an interest of the public, shall provide for a public notice and/or public hearing on the application. The public notice and/or public hearing shall be conducted in accordance with the procedures specified for a permit under 40 CFR 125.32 and 125.34(b).

(c) Where the applicant is able to demonstrate to the satisfaction of the Regional Administrator that disclosure of certain information or parts thereof as provided in § 21.3(c)(5) would result in the divulging of methods or processes entitled to protection as trade secrets, the Regional Administrator shall treat the information or the particular part as confidential in accordance with the purposes of section 1905 of Title 18 of the United States Code and not release it to any unauthorized person. *Provided, however,* That if access to such information is subsequently requested by any person, there will be compliance with the procedures specified in 40 CFR part 2. Such information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out the Act or when relevant in any proceeding under the Act.

§ 21.12 State issued statements.

(a) Any State after the effective date of these regulations may submit to the Regional Administrator for his approval an application to conduct a program for issuing statements under this section.

(1) A State submission shall specify the organizational, legal, financial, and administrative resources and procedures that it believes will enable it to conduct the program.

(2) The State program shall constitute an equivalent effort to that required of EPA under this section.

(3) The State organization responsible for conducting the program should be the State water pollution control agency, as defined in section 502 of the Act.

(4) The State submission shall propose a procedure for adjudicating applicant appeals as provided under § 21.9.

(5) The State submission shall identify any existing or potential conflicts of interest on the part of any personnel who will or may review or approve applications.

(i) A conflict of interest shall exist where the reviewing official is the spouse of or dependent (as defined in the Tax Code, 26 U.S.C. 152) of an owner, partner, or principal officer of the small business, or where he has or is receiving from the small business concern applicant 10 percent of gross personal income for a calendar year, except that it shall mean 50 percent gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to retirement, pension, or similar arrangements.

(ii) If the State is unable to provide alternative parties to review or approve any application subject to conflict of interest, the Regional Administrator shall review and approve the application.

(b) The Regional Administrator, within 60 days after such application, shall approve any State program that conforms to the requirements of this section. Any such approval shall be after sufficient notice has been provided to the Regional Director of SBA.

(c) If the Regional Administrator disapproves the application, he shall notify the State, in writing, of any deficiency in its application. A State may resubmit an amended application at any later time.

(d) Upon approval of a State submission, EPA will suspend all review of applications and issuance of statements for small businesses in that State, pending transferral. *Provided, however,* That in the event of a State conflict of interest as identified in § 21.12(a)(4) of this section, EPA shall review the application and issue the statement.

(e) Any applications shall, if received by an EPA Regional Office, be forwarded promptly to the appropriate State for action pursuant to section 7(g)(2) of the Small Business Act and these regulations.

(f) (1) EPA will generally not review or approve individual statements issued by a State. However, SBA, upon receipt and review of a State approved statement may request the Regional Administrator of EPA to review the statement. The Regional Administrator, upon such request can further approve or disapprove the State issued statement, in accordance with the requirements of § 21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with § 21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in § 21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§ 21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION OR SUSPENSION OF PERMITS

Subpart A—General

Subpart B—Parties and Appearances

Subpart C—Prehearing Procedures

Subpart D—Hearing Procedure

Subpart E—Initial Decision and Motion to Reopen a Hearing

Subpart F—Appeals and Administrative Review

Subpart G—Final Order on Appeal

Subpart H—Supplemental Rules

AUTHORITY: 15 U.S.C. 2615; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547(d), 7601 and 7607(a); 7 U.S.C. 136(l) and (m); 33 U.S.C. 1319, 1415 and 1418; 42 U.S.C. 6912, 6928 and 6991(e); 42 U.S.C. 9609; 42 U.S.C. 11045.

SOURCE: 45 FR 24363, Apr. 9, 1980, unless otherwise noted.

Subpart A—General

§ 22.01 Scope of these rules.

(a) These rules of practice govern all adjudicatory proceedings for:

(1) The assessment of any civil penalty conducted under section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. 1361(a));

(2) The assessment of any administrative penalty under sections 113(d)(1), 205(c), 211(d) and 213(d) of the Clean Air Act, as amended (CAA) (42 U.S.C. 7413(d)(1), 7524(c), 7545(d) and 7547(d)).

(3) The assessment of any civil penalty or for the revocation or suspension of any permit conducted under section 105 (a) and (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a));

(4) The issuance of a compliance order or the issuance of a corrective action order, the suspension or revocation of authority to operate pursuant to section 3005(e) of the Solid Waste Disposal Act, or the assessment of any civil penalty under sections 3008, 9006 and 11005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6928, 6991(e) and 6992(d)), except as provided in 40 CFR parts 24 and 124.

(5) The assessment of any civil penalty conducted under section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a));

(6) The assessment of any Class II penalty under section 309(g) of the Clean Water Act (33 U.S.C. 1319(g));

(7) The assessment of any administrative penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609);

(8) The assessment of any administrative penalty under section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA) (42 U.S.C. 11045).

(9) The assessment of any civil penalty conducted under section 1414(g)(3)(B) of the Safe Drinking Water Act as amended (42 U.S.C. 300g–3(g)(3)(B)).

(b) The Supplemental rules of practice set forth in subpart H establish rules governing those aspects of the proceeding in question which are not covered in subparts A through G, and also specify procedures which supersede any conflicting procedures set forth in those subparts.

(c) Questions arising at any stage of the proceeding which are not addressed in these rules or in the relevant supplementary procedures shall be resolved at the discretion of the Administrator, Regional Administrator, or Presiding Officer, as appropriate.

[45 FR 24363, Apr. 9, 1980, as amended at 52 FR 30673, Aug. 17, 1987; 53 FR 12263, Apr. 13, 1988; 54 FR 12371, Mar. 24, 1989; 54 FR 21176, May 16, 1989; 56 FR 3757, Jan. 30, 1991; 57 FR 4318, Feb. 4, 1992]

§ 22.02 Use of number and gender.

As used in these rules of practice, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 22.03 Definitions.

(a) The following definitions apply to part 22:

Act means the particular statute authorizing the institution of the proceeding at issue.

Administrative Law Judge means an Administrative Law Judge appointed under 5 U.S.C. 3105 (see also Pub. L. 95–251, 92 Stat. 183).

Administrator means the Administrator of the U.S. Environmental Protection Agency or his delegate.

Agency means the United States Environmental Protection Agency.

Complainant means any person authorized to issue a complaint on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be a member of the Environmental Appeals Board, the Regional Judicial Officer, or any other person who will participate or advise in the decision.

Complaint means a written communication, alleging one or more violations of specific provisions of the Act, or regulations or a permit promulgated thereunder, issued by the complainant to a person under §§ 22.13 and 22.14.

Consent Agreement means any written document, signed by the parties, containing stipulations or conclusions of fact or law and a proposed penalty or proposed revocation or suspension acceptable to both complainant and respondent.

Environmental Appeals Board means the Board within the Agency described in § 1.25 of this title, located at U.S. Environmental Protection Agency, A–110, 401 M St. SW., Washington, DC 20460.

Final Order means (a) an order issued by the Administrator after an appeal of an initial decision, accelerated decision, decision to dismiss, or default order, disposing of a matter in controversy between the parties, or (b) an initial decision which becomes a final order under § 22.27(c).

Hearing means a hearing on the record open to the public and conducted under these rules of practice.

Hearing Clerk means the Hearing Clerk, A–110, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Initial Decision means the decision issued by the Presiding Officer based upon the record of the proceedings out of which it arises.

Party means any person that participates in a hearing as complainant, respondent, or intervenor.

Permit means a permit issued under section 102 of the Marine Protection, Research, and Sanctuaries Act.

Person includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of

any State or local unit of government, or of any foreign government.

Presiding Officer means the Administrative Law Judge designated by the Chief Administrative Law Judge to serve as Presiding Officer, unless otherwise specified by any supplemental rules.

Regional Administrator means the Administrator of any Regional Office of the Agency or any officer or employee thereof to whom his authority is duly delegated. Where the Regional Administrator has authorized the Regional Judicial Officer to act, the term *Regional Administrator* shall include the Regional Judicial Officer. In a case where the complainant is the Assistant Administrator for Enforcement or his delegate, the term *Regional Administrator* as used in these rules shall mean the Administrator.

Regional Hearing Clerk means an individual duly authorized by the Regional Administrator to serve as hearing clerk for a given region. Correspondence may be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency (address of Regional Office—see appendix). In a case where the complainant is the Assistant Administrator for Enforcement or his delegate, the term *Regional Hearing Clerk* as used in these rules shall mean the Hearing Clerk.

Regional Judicial Officer means a person designated by the Regional Administrator under § 22.04(b) to serve as a Regional Judicial Officer.

Respondent means any person proceeded against in the complaint.

(b) Terms defined in the Act and not defined in these rules of practice are used consistent with the meanings given in the Act.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5323, Feb. 13, 1992]

§ 22.04 Powers and duties of the Environmental Appeals Board, the Regional Administrator, the Regional Judicial Officer, and the Presiding Officer; disqualification.

(a) *Environmental Appeals Board.* The Administrator delegates authority under the Act to the Environmental Appeals Board to perform the functions assigned to it in these rules of practice. An appeal or motion under this part directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring any case or motion governed by this part to the Administrator when the Environmental Appeals Board, in its direction, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator. If a case or motion is referred to the Administrator by the Environmental Appeals Board, the Administrator may consult with any EPA employee concerning the matter, provided such consultation does not violate the ex parte rules set forth in § 22.08.

(b) *Regional Administrator.* The Regional Administrator shall exercise all powers and duties as prescribed or delegated under the Act and these rules of practice.

(1) *Delegation to Regional Judicial Officer.* One or more Regional Judicial Officers may be designated by the Regional Administrator to perform, within the region of their designation, the functions described below. The Regional Administrator may delegate his or her authority to a Regional Judicial Officer to act in a given proceeding. This delegation will not prevent the Regional Judicial Officer from referring any motion or case to the Regional Administrator. The Regional Judicial Officer shall exercise all powers and duties prescribed or delegated under the Act or these rules of practice.

(2) *Qualifications of Regional Judicial Officer.* A Regional Judicial Officer shall be an attorney who is a permanent or temporary employee of the Agency or some other Federal agency and who may perform other duties within the Agency. A Regional Judicial Officer shall not be employed by the Region's Enforcement Division or by the Regional Division directly associated with the type of violation at issue in the proceeding. A Regional Judicial Officer shall not have performed prosecutorial or investigative functions in connection with any hearing in which he serves as a Regional Judicial Officer or with any factually related hearing.

(c) *Presiding Officer.* The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The Presiding Officer shall have authority to:

(1) Conduct administrative hearings under these rules of practice;

(2) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine witnesses and receive documentary or other evidence;

(5) For good cause, upon motion or sua sponte, order a party, or an officer or agent thereof, to produce testimony, documents, or other nonprivileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;

(6) Admit or exclude evidence;

(7) Hear and decide questions of facts, law, or discretion;

(8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings;

(9) Issue subpoenas authorized by the Act; and

(10) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules.

(d) *Disqualification; withdrawal.* (1) The Administrator, the Regional Administrator, the members of the Environmental Appeals Board, the Regional Judicial Officer, or the Presiding Officer may not perform functions provided for in these rules of practice regarding any matter in which they (i) have a financial interest or (ii) have any relationship with a party or with the subject matter which would make it inappropriate for them to act. Any party may at any time by motion made to the Regional Administrator request that the Regional Judicial Officer be disqualified from the proceeding. Any party may at any time by motion to the Administrator request that the Regional Administrator, a member of the Environmental Appeals Board, or the Presiding Officer be disqualified or request that the Administrator disqualify himself or herself from the proceeding. The Administrator, the Regional Administrator, a member of the Environmental Appeals Board, the Regional Judicial Officer, or the Presiding Officer may at any time withdraw from any proceeding in which they deem themselves disqualified or unable to act for any reason.

(2) If the Administrator, the Regional Administrator, the Regional Judicial Officer, or the Presiding Officer is disqualified or withdraws from the proceeding, a qualified individual who has none of the infirmities listed in paragraph (d)(1) of this section shall be assigned to replace him. Assignment of a replacement for Regional Administrator or for the Regional Judicial Officer shall be made by the Administrator or the Regional Administrator, respectively. The Administrator, should he or she withdraw or disqualify himself or herself, shall assign the Regional Administrator from the Region where the case originated to replace him or her. If that Regional Administrator would be disqualified, the Administrator shall assign a Regional Administrator from another region to replace the Administrator. The Regional Administrator shall assign a new Presiding Officer if the original Presiding Officer was not an Administrative Law Judge. The Chief Administrative Law Judge shall assign a new Presiding Officer from among available Administrative Law Judges if the original Presiding Officer was an Administrative Law Judge.

(3) The Chief Administrative Law Judge, at any stage in the proceeding, may reassign the case to an Administrative Law Judge other than the one originally assigned in the event of the unavailability of the Administrative Law Judge or where reassignment will result in efficiency in the scheduling of hearings and would not prejudice the parties.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5324, Feb. 13, 1992; 57 FR 60129, Dec. 18, 1992]

§ 22.05 Filing, service, and form of pleadings and documents.

(a) *Filing of pleadings and documents.* (1) Except as otherwise provided, the original and one copy of the complaint, and the original of the answer and of all other documents served in the proceeding shall be filed with the Regional Hearing Clerk.

(2) A certificate of service shall accompany each document filed or served. Except as otherwise provided, a party filing documents with the Regional Hearing Clerk, after the filing of the answer, shall serve copies thereof upon all other parties and the Presiding Officer. The Presiding Officer shall maintain a duplicate file during the course of the proceeding.

(3) When the Presiding Officer corresponds directly with the parties, the original of the correspondence shall be sent to the Regional Hearing Clerk, a copy shall be maintained by the Presiding Officer in the duplicate file, and a copy shall be sent to all parties. Parties who correspond directly with the Presiding Officer shall in addition to serving all other parties send a copy of all such correspondence to the Regional Hearing Clerk. A certificate of service shall accompany each document served under this subsection.

(b) *Service of pleadings and documents*—(1) *Service of complaint.* (i) Service of a copy of the signed original of the complaint, together with a copy of these rules of practice, may be made personally or by certified mail, return receipt requested, on the respondent (or his representative).

(ii) Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name shall be made by personal service or certified mail, as prescribed by paragraph (b)(1)(i) of this section, directed to an officer, partner, a managing or general agent, or to any other person authorized by appointment or by Federal or State law to receive service of process.

(iii) Service upon an officer or agency of the United States shall be made by delivering a copy of the complaint to the officer or agency, or in any

manner prescribed for service by applicable regulations. If the agency is a corporation, the complaint shall be served as prescribed in paragraph (b)(1)(ii) of this section.

(iv) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the complaint in the manner prescribed by the law of the State for the service of process on any such persons, or:

(A) If upon a State or local unit of government, or a State or local department, agency, corporation or other instrumentality, by delivering a copy of the complaint to the chief executive officer thereof;

(B) If upon a State or local officer by delivering a copy to such officer.

(v) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed return receipt. Such proof of service shall be filed with the complaint immediately upon completion of service.

(2) *Service of documents other than complaint, rulings, orders, and decisions.* All documents other than the complaint, rulings, orders, and decisions, may be served personally or by certified or first class mail.

(c) *Form of pleadings and documents.* (1) Except as provided herein, or by order of the Presiding Officer or of the Environmental Appeals Board, there are no specific requirements as to the form of documents.

(2) The first page of every pleading, letter, or other document shall contain a caption identifying the respondent and the docket number which is exhibited on the complaint.

(3) The original of any pleading, letter or other document (other than exhibits) shall be signed by the party filing or by his counsel or other representative. The signature constitutes a representation by the signer that he has read the pleading, letter or other document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The initial document filed by any person shall contain his name, address and telephone number. Any changes in this information shall be communicated promptly to the Regional Hearing Clerk, Presiding Officer, and all parties to the proceeding. A party who fails to furnish such information and any changes thereto shall be deemed to have waived his right to notice and service under these rules.

(5) The Environmental Appeals Board, the Regional Administrator, the Presiding Officer, or the Regional Hearing Clerk may refuse to file any document which does not comply with this paragraph. Written notice of such refusal, stating the reasons therefor, shall be promptly given to the person submitting the document. Such person may amend and resubmit any document refused for filing upon motion granted by the Environmental Appeals Board, the Regional Administrator, or the Presiding Officer, as appropriate.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5324, Feb. 13, 1992]

§ 22.06 Filing and service of rulings, orders, and decisions.

All rulings, orders, decisions, and other documents issued by the Regional Administrator, Regional Judicial Officer, or Presiding Officer, as appropriate, shall be filed with the Regional Hearing Clerk. All such documents issued by the Environmental Appeals Board shall be filed with the Clerk of the Environmental Appeals Board. Copies of such rulings, orders, decisions, or other documents shall be served personally, or by certified mail, return receipt requested, upon all parties by the Environmental Appeals Board, the Regional Administrator, the Regional Judicial Officer, or the Presiding Officer, as appropriate.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5324, Feb. 13, 1992]

§ 22.07 Computation and extension of time.

(a) *Computation.* In computing any period of time prescribed or allowed in these rules of practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday or legal holiday, the stated time period shall be extended to include the next business day.

(b) *Extensions of time.* The Environmental Appeals Board, the Regional Administrator, or the Presiding Officer, as appropriate, may grant an extension of time for the filing of any pleading, document, or motion (1) upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties, or (2) upon its or his own motion. Such a motion by a party may only be made after notice to all other parties, unless the movant can show good cause why serving notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.

(c) *Service by mail.* Service of the complaint is complete when the return receipt is signed. Service of all other pleadings and documents is complete upon mailing. Where a pleading or document is served by mail, five (5) days shall be added to the

time allowed by these rules for the filing of a responsive pleading or document.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5324, Feb. 13, 1992]

§ 22.08 Ex parte discussion of proceeding.

At no time after the issuance of the complaint shall the Administrator, the members of the Environmental Appeals Board, the Regional Administrator, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these officials in the decision on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication addressed to the Administrator, the Regional Administrator, the Environmental Appeals Board, the Regional Judicial Officer, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5325, Feb. 13, 1992]

§ 22.09 Examination of documents filed.

(a) Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during Agency business hours, inspect and copy any document filed in any proceeding. Such documents shall be made available by the Regional Hearing Clerk, the Hearing Clerk, or the Environmental Appeals Board, as appropriate.

(b) The cost of duplicating documents filed in any proceeding shall be borne by the person seeking copies of such documents. The Agency may waive this cost in appropriate cases.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5325, Feb. 13, 1992]

Subpart B—Parties and Appearances

§ 22.10 Appearances.

Any party may appear in person or by counsel or other representative. A partner may appear on behalf of a partnership and an officer may appear on behalf of a corporation. Persons who appear as counsel or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

§ 22.11 Intervention.

(a) *Motion.* A motion for leave to intervene in any proceeding conducted under these rules of practice must set forth the grounds for the proposed intervention, the position and interest of the movant and the likely impact that intervention will have on the expeditious progress of the proceeding. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the foregoing sentence and paragraph (c) of this section, within ten (10) days after service of the motion for leave to intervene.

(b) *When filed.* A motion for leave to intervene in a proceeding must ordinarily be filed before the first prehearing conference or, in the absence of a prehearing conference, before the initiation of correspondence under § 22.19(e), or if there is no such correspondence, prior to the setting of a time and place for a hearing. Any motion filed after that time must include, in addition to the information set forth in paragraph (a) of this section, a statement of good cause for the failure to file in a timely manner. The intervenor shall be bound by any agreements, arrangements and other matters previously made in the proceeding.

(c) *Disposition.* Leave to intervene may be granted only if the movant demonstrates that (1) his presence in the proceeding would not unduly prolong or otherwise prejudice the adjudication of the rights of the original parties; (2) the movant will be adversely affected by a final order; and (3) the interests of the movant are not being adequately represented by the original parties. The intervenor shall become a full party to the proceeding upon the granting of leave to intervene.

(d) *Amicus curiae.* The motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Administrator shall issue an order setting the time for filing such brief. If the motion is granted, the Presiding Officer or the Environmental Appeals Board shall issue an order setting the time for filing such brief.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5325, Feb. 13, 1992]

§ 22.12 Consolidation and severance.

(a) *Consolidation.* The Presiding Officer may, by motion or sua sponte, consolidate any or all matters at issue in two or more proceedings docketed under these rules of practice where (1) there exists common parties or common questions of fact or law, (2) consolidation would expedite and

simplify consideration of the issues, and (3) consolidation would not adversely affect the rights of parties engaged in otherwise separate proceedings.

(b) *Severance.* The Presiding Officer may, by motion or sua sponte, for good cause shown order any proceedings severed with respect to any or all parties or issues.

Subpart C—Prehearing Procedures

§ 22.13 Issuance of complaint.

If the complainant has reason to believe that a person has violated any provision of the Act, or regulations promulgated or a permit issued under the Act, he may institute a proceeding for the assessment of a civil penalty by issuing a complaint under the Act and these rules of practice. If the complainant has reason to believe that

(a) A permittee violated any term or condition of the permit, or

(b) A permittee misrepresented or inaccurately described any material fact in the permit application or failed to disclose all relevant facts in the permit application, or

(c) Other good cause exists for such action, he may institute a proceeding for the revocation or suspension of a permit by issuing a complaint under the Act and these rules of practice. A complaint may be for the suspension or revocation of a permit in addition to the assessment of a civil penalty.

§ 22.14 Content and amendment of the complaint.

(a) *Complaint for the assessment of a civil penalty.* Each complaint for the assessment of a civil penalty shall include:

(1) A statement reciting the section(s) of the Act authorizing the issuance of the complaint;

(2) Specific reference to each provision of the Act and implementing regulations which respondent is alleged to have violated;

(3) A concise statement of the factual basis for alleging the violation;

(4) The amount of the civil penalty which is proposed to be assessed;

(5) A statement explaining the reasoning behind the proposed penalty;

(6) Notice of respondent's right to request a hearing on any material fact contained in the complaint, or on the appropriateness of the amount of the proposed penalty.

A copy of these rules of practice shall accompany each complaint served.

(b) *Complaint for the revocation or suspension of a permit.* Each complaint for the revocation or suspension of a permit shall include:

(1) A statement reciting the section(s) of the Act, regulations, and/or permit authorizing the issuance of the complaint;

(2) Specific reference to each term or condition of the permit which the respondent is alleged to have violated, to each alleged inaccuracy or misrepresentation in respondent's permit application, to each fact which the respondent allegedly failed to disclose in his permit application, or to other reasons which form the basis for the complaint;

(3) A concise statement of the factual basis for such allegations;

(4) A request for an order to either revoke or suspend the permit and a statement of the terms and conditions of any proposed partial suspension or revocation;

(5) A statement indicating the basis for recommending the revocation, rather than the suspension, of the permit, or vice versa, as the case may be;

(6) Notice of the respondent's right to request a hearing on any material fact contained in the complaint, or on the appropriateness of the proposed revocation or suspension.

A copy of these rules of practice shall accompany each complaint served.

(c) *Derivation of proposed civil penalty.* The dollar amount of the proposed civil penalty shall be determined in accordance with any criteria set forth in the Act relating to the proper amount of a civil penalty and with any civil penalty guidelines issued under the Act.

(d) *Amendment of the complaint.* The complainant may amend the complaint once as a matter of right at any time before the answer is filed. Otherwise the complainant may amend the complaint only upon motion granted by the Presiding Officer or Regional Administrator, as appropriate. Respondent shall have twenty (20) additional days from the date of service of the amended complaint to file his answer.

(e) *Withdrawal of the complaint.* The complainant may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the complainant may withdraw the complaint, or any part thereof, without prejudice, only upon motion granted by the Presiding Officer or Regional Administrator, as appropriate.

§ 22.15 Answer to the complaint.

(a) *General.* Where respondent: (1) Contests any material fact upon which the complaint is based; (2) contends that the amount of the penalty proposed in the complaint or the proposed revocation or suspension, as the case may be, is inappropriate; or (3) contends that he is entitled to judgment as a matter of law, he shall file a written answer

to the complaint with the Regional Hearing Clerk. Any such answer to the complaint must be filed with the Regional Hearing Clerk within twenty (20) days after service of the complaint.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge. Where respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The answer shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense, (2) the facts which respondent intends to place at issue, and (3) whether a hearing is requested.

(c) *Request for hearing.* A hearing upon the issues raised by the complaint and answer shall be held upon request of respondent in the answer. In addition, a hearing may be held at the discretion of the Presiding Officer, sua sponte, if issues appropriate for adjudication are raised in the answer.

(d) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

(e) *Amendment of the answer.* The respondent may amend the answer to the complaint upon motion granted by the Presiding Officer.

§ 22.16 Motions.

(a) *General.* All motions, except those made orally on the record during a hearing, shall (1) be in writing; (2) state the grounds therefor with particularity; (3) set forth the relief or order sought; and (4) be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Such motions shall be served as provided by § 22.05(b)(2).

(b) *Response to motions.* A party's response to any written motion must be filed within ten (10) days after service of such motion, unless additional time is allowed for such response. The response shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. If no response is filed within the designated period, the parties may be deemed to have waived any objection to the granting of the motion. The Presiding Officer, the Regional Administrator, or the Environmental Appeals Board, as appropriate, may set a shorter time for response, or make such orders concerning the disposition of motions as they deem appropriate.

(c) *Decision.* Except as provided in § 22.04(d)(1) and § 22.28(a), the Regional Administrator shall rule on all motions filed or made before an answer to the complaint is filed. The Environmental Appeals Board shall rule on all motions filed or made after service of the initial decision upon the parties. The Administrator shall rule on all motions filed or made after service of the initial decision upon the parties. The Presiding Officer shall rule on all other motions. Oral argument on motions will be permitted where the Presiding Officer, the Regional Administrator, or the Environmental Appeals Board considers it necessary or desirable.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5325, Feb. 13, 1992; 57 FR 60129, Dec. 18, 1992]

§ 22.17 Default order.

(a) *Default.* A party may be found to be in default (1) after motion, upon failure to file a timely answer to the complaint; (2) after motion or sua sponte, upon failure to comply with a prehearing or hearing order of the Presiding Officer; or (3) after motion or sua sponte, upon failure to appear at a conference or hearing without good cause being shown. No finding of default on the basis of a failure to appear at a hearing shall be made against the respondent unless the complainant presents sufficient evidence to the Presiding Officer to establish a prima facie case against the respondent. Any motion for a default order shall include a proposed default order and shall be served upon all parties. The alleged defaulting party shall have twenty (20) days from service to reply to the motion. Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations. If the complaint is for the assessment of a civil penalty, the penalty proposed in the complaint shall become due and payable by respondent without further proceedings sixty (60) days after a final order issued upon default. If the complaint is for the revocation or suspension of a permit, the conditions of revocation or suspension proposed in the complaint shall become effective without further proceedings on the date designated by the Administrator in his final order issued upon default. Default by the complainant shall result in the dismissal of the complaint with prejudice.

(b) *Procedures upon default.* When Regional Administrator or Presiding Officer finds a default has occurred, he shall issue a default order against the defaulting party. This order shall constitute the initial decision, and shall be filed with the Regional Hearing Clerk.

(c) *Contents of a default order.* A default order shall include findings of fact showing the grounds for the order, conclusions regarding all material issues of law or discretion, and the penalty which is recommended to be assessed or the terms and conditions of permit revocation or suspension, as appropriate.

(d) For good cause shown the Regional Administrator or the Presiding Officer, as appropriate, may set aside a default order.

§ 22.18 Informal settlement; consent agreement and order.

(a) *Settlement policy.* The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The respondent may confer with complainant concerning settlement whether or not the respondent requests a hearing. Settlement conferences shall not affect the respondent's obligation to file a timely answer under § 22.16.

(b) *Consent agreement.* The parties shall forward a written consent agreement and a proposed consent order to the Regional Administrator whenever settlement or compromise is proposed. The consent agreement shall state that, for the purpose of this proceeding, respondent (1) admits the jurisdictional allegations of the complaint; (2) admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; and (3) consents to the assessment of a stated civil penalty or to the stated permit revocation or suspension, as the case may be. The consent agreement shall include any and all terms of the agreement, and shall be signed by all parties or their counsel or representatives.

(c) *Consent order.* No settlement or consent agreement shall dispose of any proceeding under these rules of practice without a consent order from the Regional Administrator. In preparing such an order, the Regional Administrator may require that the parties to the settlement appear before him to answer inquiries relating to the consent agreement or order.

§ 22.19 Prehearing conference.

(a) *Purpose of prehearing conference.* Unless a conference appears unnecessary, the Presiding Officer, at any time before the hearing begins, shall direct the parties and their counsel or other representatives to appear at a conference before him to consider:

(1) The settlement of the case;

(2) The simplification of issues and stipulation of facts not in dispute;

(3) The necessity or desirability of amendments to pleadings;

(4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;

(5) The limitation of the number of expert or other witnesses;

(6) Setting a time and place for the hearing; and

(7) Any other matters which may expedite the disposition of the proceeding.

(b) *Exchange of witness lists and documents.* Unless otherwise ordered by the Presiding Officer, each party at the prehearing conference shall make available to all other parties (1) The names of the expert and other witnesses he intends to call, together with a brief narrative summary of their expected testimony, and (2) copies of all documents and exhibits which each party intends to introduce into evidence. Documents and exhibits shall be marked for identification as ordered by the Presiding Officer. Documents that have not been exchanged and witnesses whose names have not been exchanged shall not be introduced into evidence or allowed to testify without permission of the Presiding Officer. The Presiding Officer shall allow the parties reasonable opportunity to review new evidence.

(c) *Record of the prehearing conference.* No transcript of a prehearing conference relating to settlement shall be made. With respect to other prehearing conferences, no transcript of any prehearing conferences shall be made unless ordered by the Presiding Officer upon motion of a party or sua sponte. The Presiding Officer shall prepare and file for the record a written summary of the action taken at the conference. The summary shall incorporate any written stipulations or agreements of the parties and all rulings and appropriate orders containing directions to the parties.

(d) *Location of prehearing conference.* The prehearing conference shall be held in the county where the respondent resides or conducts the business which the hearing concerns, in the city in which the relevant Environmental Protection Agency Regional Office is located, or in Washington, DC, unless (1) the Presiding Officer determines that there is good cause to hold it at another location in a region or by telephone, or (2) the Supplemental rules of practice provide otherwise.

(e) *Unavailability of a prehearing conference.* If a prehearing conference is unnecessary or impracticable, the Presiding Officer, on motion or sua sponte, may direct the parties to correspond with him to accomplish any of the objectives set forth in this section.

(f) *Other discovery.* (1) Except as provided by paragraph (b) of this section, further discovery, under this section, shall be permitted only upon determination by the Presiding Officer:

(i) That such discovery will not in any way unreasonably delay the proceeding;

(ii) That the information to be obtained is not otherwise obtainable; and

(iii) That such information has significant probative value.

(2) The Presiding Officer shall order depositions upon oral questions only upon a showing of good cause and upon a finding that:

(i) The information sought cannot be obtained by alternative methods; or

(ii) There is a substantial reason to believe that relevant and probative evidence may otherwise not

be preserved for presentation by a witness at the hearing.

(3) Any party to the proceeding desiring an order of discovery shall make a motion therefor. Such a motion shall set forth;

(i) The circumstances warranting the taking of the discovery;

(ii) The nature of the information expected to be discovered; and

(iii) The proposed time and place where it will be taken. If the Presiding Officer determines that the motion should be granted, he shall issue an order for the taking of such discovery together with the conditions and terms thereof.

(4) When the information sought to be obtained is within the control of one of the parties, failure to comply with an order issued pursuant to this paragraph may lead to (i) the inference that the information to be discovered would be adverse to the party from whom the information was sought, or (ii) the issuance of a default order under § 22.17(a).

§ 22.20 Accelerated decision; decision to dismiss.

(a) *General.* The Presiding Officer, upon motion of any party or sua sponte, may at any time render an accelerated decision in favor of the complainant or the respondent as to all or any part of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law, as to all or any part of the proceeding. In addition, the Presiding Officer, upon motion of the respondent, may at any time dismiss an action without further hearing or upon such limited additional evidence as he requires, on the basis of failure to establish a prima facie case or other grounds which show no right to relief on the part of the complainant.

(b) *Effect.* (1) If an accelerated decision or a decision to dismiss is issued as to all the issues and claims in the proceeding, the decision constitutes an initial decision of the Presiding Officer, and shall be filed with the Regional Hearing Clerk.

(2) If an accelerated decision or a decision to dismiss is rendered on less than all issues or claims in the proceeding, the Presiding Officer shall determine what material facts exist without substantial controversy and what material facts remain controverted in good faith. He shall thereupon issue an interlocutory order specifying the facts which appear substantially uncontroverted, and the issues and claims upon which the hearing will proceed.

Subpart D—Hearing Procedure

§ 22.21 Scheduling the hearing.

(a) When an answer is filed, the Regional Hearing Clerk shall forward the complaint, the answer, and any other documents filed thus far in the proceeding to the Chief Administrative Law Judge who shall assign himself or another Administrative Law Judge as Presiding Officer, unless otherwise provided in the Supplemental rules of practice. The Presiding Officer shall then obtain the case file from the Chief Administrative Law Judge and notify the parties of his assignment.

(b) *Notice of hearing.* If the respondent requests a hearing in his answer, or one is ordered by the Presiding Officer under § 22.15(c), the Presiding Officer shall serve upon the parties a notice of hearing setting forth a time and place for the hearing. The Presiding Officer may issue the notice of hearing at any appropriate time, but not later than twenty (20) days prior to the date set for the hearing.

(c) *Postponement of hearing.* No request for postponement of a hearing shall be granted except upon motion and for good cause shown.

(d) *Location of the hearing.* The location of the hearing shall be determined in accordance with the method for determining the location of a prehearing conference under § 22.19(d).

§ 22.22 Evidence.

(a) *General.* The Presiding Officer shall admit all evidence which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value, except that evidence relating to settlement which would be excluded in the federal courts under Rule 408 of the Federal Rules of Evidence is not admissible. In the presentation, admission, disposition, and use of evidence, the Presiding Officer shall preserve the confidentiality of trade secrets and other commercial and financial information. The confidential or trade secret status of any information shall not, however, preclude its being introduced into evidence. The Presiding Officer may make such orders as may be necessary to consider such evidence *in camera*, including the preparation of a supplemental initial decision to address questions of law, fact, or discretion which arise out of that portion of the evidence which is confidential or which includes trade secrets.

(b) *Examination of witnesses.* Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in these rules of practice or by the Presiding Officer. Parties shall have the right to cross-examine a witness who appears at the hearing provided that such cross-examination is not unduly repetitious.

(c) *Verified statements.* The Presiding Officer may admit an insert into the record as evidence,

in lieu of oral testimony, statements of fact or opinion prepared by a witness. The admissibility of the evidence contained in the statement shall be subject to the same rules as if the testimony were produced under oral examination. Before any such statement is read or admitted into evidence, the witness shall deliver a copy of the statement to the Presiding Officer, the reporter, and opposing counsel. The witness presenting the statement shall swear to or affirm the statement and shall be subject to appropriate oral cross-examination upon the contents thereof.

(d) *Admission of affidavits where the witness is unavailable.* The Presiding Officer may admit into evidence affidavits of witnesses who are unavailable. The term ''unavailable'' shall have the meaning accorded to it by Rule 804(a) of the Federal Rules of Evidence.

(e) *Exhibits.* Where practicable, an original and one copy of each exhibit shall be filed with the Presiding Officer for the record and a copy shall be furnished to each party. A true copy of any exhibit may be substituted for the original.

(f) *Official notice.* Official notice may be taken of any matter judicially noticed in the Federal courts and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show that such facts are erroneously noticed.

§ 22.23 Objections and offers of proof.

(a) *Objection.* Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Presiding Officer on any objection and the reasons given for it shall be part of the record. An exception to each objection overruled shall be automatic and is not waived by further participation in the hearing.

(b) *Offer of proof.* Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded. Where the Environmental Appeals Board decides that the ruling of the Presiding Officer in excluding the evidence was both erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5325, Feb. 13, 1992]

§ 22.24 Burden of presentation; burden of persuasion.

The complainant has the burden of going forward with and of proving that the violation occurred as set forth in the complaint and that the proposed civil penalty, revocation, or suspension, as the case may be, is appropriate. Following the establishment of a prima facie case, respondent shall have the burden of presenting and of going forward with any defense to the allegations set forth in the complaint. Each matter of controversy shall be determined by the Presiding Officer upon a preponderance of the evidence.

§ 22.25 Filing the transcript.

The hearing shall be transcribed verbatim. Promptly following the taking of the last evidence, the reporter shall transmit to the Regional Hearing Clerk the original and as many copies of the transcript of testimony as are called for in the reporter's contract with the Agency, and also shall transmit to the Presiding Officer a copy of the transcript. A certificate of service shall accompany each copy of the transcript. The Regional Hearing Clerk shall notify all parties of the availability of the transcript and shall furnish the parties with a copy of the transcript upon payment of the cost of reproduction, unless a party can show that the cost is unduly burdensome. Any person not a party to the proceeding may receive a copy of the transcript upon payment of the reproduction fee, except for those parts of the transcript order to be kept confidential by the Presiding Officer.

§ 22.26 Proposed findings, conclusions, and order.

Within twenty (20) days after the parties are notified of the availability of the transcript, or within such longer time as may be fixed by the Presiding Officer, any party may submit for the consideration of the Presiding Officer, proposed findings of fact, conclusions of law, and a proposed order, together with briefs in support thereof. The Presiding Officer shall set a time by which reply briefs must be submitted. All submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on.

Subpart E—Initial Decision and Motion To Reopen a Hearing

§ 22.27 Initial decision.

(a) *Filing and contents.* The Presiding Officer shall issue and file with the Regional Hearing Clerk his initial decision as soon as practicable after the period for filing reply briefs under § 22.26 has expired. The Presiding Officer shall

retain a copy of the complaint in the duplicate file. The initial decision shall contain his findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefor, a recommended civil penalty assessment, if appropriate, and a proposed final order. Upon receipt of an initial decision, the Regional Hearing Clerk shall forward a copy to all parties, and shall send the original, along with the record of the proceeding, to the Hearing Clerk. The Hearing Clerk shall forward a copy of the initial decision to the Environmental Appeals Board.

(b) *Amount of civil penalty.* If the Presiding Officer determines that a violation has occurred, the Presiding Officer shall determine the dollar amount of the recommended civil penalty to be assessed in the initial decision in accordance with any criteria set forth in the Act relating to the proper amount of a civil penalty, and must consider any civil penalty guidelines issued under the Act. If the Presiding Officer decides to assess a penalty different in amount from the penalty recommended to be assessed in the complaint, the Presiding Officer shall set forth in the initial decision the specific reasons for the increase or decrease. The Presiding Officer shall not raise a penalty from that recommended to be assessed in the complaint if the respondent has defaulted.

(c) *Effect of initial decision.* The initial decision of the Presiding Officer shall become the final order of the Environmental Appeals Board within forty-five (45) days after its service upon the parties and without further proceedings unless (1) an appeal to the Environmental Appeals Board is taken from it by a party to the proceedings, or (2) the Environmental Appeals Board elects, sua sponte, to review the initial decision.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5325, Feb. 13, 1992]

§ 22.28 Motion to reopen a hearing.

(a) *Filing and content.* A motion to reopen a hearing to take further evidence must be made no later than twenty (20) days after service of the initial decision on the parties and shall (1) state the specific grounds upon which relief is sought, (2) state briefly the nature and purpose of the evidence to be adduced, (3) show that such evidence is not cumulative, and (4) show good cause why such evidence was not adduced at the hearing. The motion shall be made to the Presiding Officer and filed with the Regional Hearing Clerk.

(b) *Disposition of motion to reopen a hearing.* Within ten (10) days following the service of a motion to reopen a hearing, any other party to the proceeding may file with the Regional Hearing Clerk and serve on all other parties an answer thereto. The Presiding Officer shall announce his intent to grant or deny such motion as soon as practicable thereafter. The conduct of any proceeding which may be required as a result of the granting of any motion allowed in this section shall be governed by the provisions of the applicable sections of these rules. The filing of a motion to reopen a hearing shall automatically stay the running of all time periods specified under these Rules until such time as the motion is denied or the reopened hearing is concluded.

Subpart F—Appeals and Administrative Review

§ 22.29 Appeal from or review of interlocutory orders or rulings.

(a) *Request for interlocutory appeal.* Except as provided in this section, appeals to the Environmental Appeals Board shall obtain as a matter of right only from a default order, an accelerated decision or decision to dismiss issued under § 22.20(b)(1), or an initial decision rendered after an evidentiary hearing. Appeals from other orders or rulings shall lie only if the Presiding Officer or Regional Administrator, as appropriate, upon motion of a party, certifies such orders or rulings to the Environmental Appeals Board on appeal. Requests for such certification shall be filed in writing within six (6) days of notice of the ruling or service of the order, and shall state briefly the grounds to be relied upon on appeal.

(b) *Availability of interlocutory appeal.* The Presiding Officer may certify any ruling for appeal to the Environmental Appeals Board when (1) the order or ruling involves an important question of law or policy concerning which there is substantial grounds for difference of opinion, and (2) either (i) an immediate appeal from the order or ruling will materially advance the ultimate termination of the proceeding, or (ii) review after the final order is issued will be inadequate or ineffective.

(c) *Decision.* If the Environmental Appeals Board determines that certification was improvidently granted, or if the Environmental Appeals Board takes no action within thirty (30) days of the certification, the appeal is dismissed. When the Presiding Officer declines to certify an order or ruling to the Environmental Appeals Board on interlocutory appeal, it may be reviewed by the Environmental Appeals Board only upon appeal from the initial decision, except when the Environmental Appeals Board determines, upon motion of a party and in exceptional circumstances, that to delay review would be contrary to the public interest. Such motion shall be made within six (6) days of service of an order of the Presiding Officer refusing to certify a ruling for interlocutory appeal to the Environmental Appeals Board. Ordinarily, the interlocutory appeal will be decided on the basis of the submissions made by the Presiding

Officer. The Environmental Appeals Board may, however, allow further briefs and oral argument.

(d) *Stay of proceedings.* The Presiding Officer may stay the proceedings pending a decision by the Environmental Appeals Board upon an order or ruling certified by the Presiding Officer for an interlocutory appeal. Proceedings will not be stayed except in extraordinary circumstances. Where the Presiding Officer grants a stay of more than thirty (30) days, such stay must be separately approved by the Environmental Appeals Board.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5325, Feb. 13, 1992]

§ 22.30 Appeal from or review of initial decision.

(a) *Notice of appeal.* (1) Any party may appeal an adverse ruling or order of the Presiding Officer by filing a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board and upon all other parties and amicus curiae within twenty (20) days after the initial decision is served upon the parties. The notice of appeal shall set forth alternative findings of fact, alternative conclusions regarding issues of law or discretion, and a proposed order together with relevant references to the record and the initial decision. The appellant's brief shall contain a statement of the issues presented for review, a statement of the nature of the case and the facts relevant to the issues presented for review, argument on the issues presented, and a short conclusion stating the precise relief sought, together with appropriate references to the record.

(2) Within fifteen (15) days of the service of notices of appeal and briefs under paragraph (a)(1) of this section, any other party or amicus curiae may file and serve with the Environmental Appeals Board a reply brief responding to argument raised by the appellant, together with references to the relevant portions of the record, initial decision, or opposing brief. Reply briefs shall be limited to the scope of the appeal brief. Further briefs shall be filed only with the permission of the Environmental Appeals Board.

(b) *Sua sponte review by the Environmental Appeals Board.* Whenever the Environmental Appeals Board determines sua sponte to review an initial decision, the Environmental Appeals Board shall serve notice of such intention on the parties within forty-five (45) days after the initial decision is served upon the parties. The notice shall include a statement of issues to be briefed by the parties and a time schedule for the service and filing of briefs.

(c) *Scope of appeal or review.* If the Environmental Appeals Board determines that issues raised, but not appealed by the parties, should be argued, it shall give counsel for the parties reasonable written notice of such determination to permit preparation of adequate argument. Nothing herein shall prohibit the Environmental Appeals Board from remanding the case to the Presiding Officer for further proceedings.

(d) *Argument before the Environmental Appeals Board.* The Environmental Appeals Board may, upon request of a party or sua sponte, assign a time and place for oral argument after giving consideration to the convenience of the parties.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5325, Feb. 13, 1992]

Subpart G—Final Order on Appeal

§ 22.31 Final order on appeal.

(a) *Contents of the final order.* When an appeal has been taken or the Environmental Appeals Board issues a notice of intent to conduct a review sua sponte, the Environmental Appeals Board shall issue a final order as soon as practicable after the filing of all appellate briefs or oral argument, whichever is later. The Environmental Appeals Board shall adopt, modify, or set aside the findings and conclusions contained in the decision or order being reviewed and shall set forth in the final order the reasons for its actions. The Environmental Appeals Board may, in its discretion, increase or decrease the assessed penalty from the amount recommended to be assessed in the decision or order being reviewed, except that if the order being reviewed is a default order, the Environmental Appeals Board may not increase the amount of the penalty.

(b) *Payment of a civil penalty.* The respondent shall pay the full amount of the civil penalty assessed in the final order within sixty (60) days after receipt of the final order unless otherwise agreed by the parties. Payment shall be made by forwarding to the Regional Hearing Clerk a cashier's check or certified check in the amount of the penalty assessed in the final order, payable to the Treasurer, United States of America.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5326, Feb. 13, 1992]

§ 22.32 Motion to reconsider a final order.

Motions to reconsider a final order shall be filed within ten (10) days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that

the Environmental Appeals Board has referred to the Administrator pursuant to § 22.04(a) and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless specifically so ordered by the Environmental Appeals Board.

[57 FR 5326, Feb. 13, 1992]

Subpart H—Supplemental Rules

§ 22.33 Supplemental rules of practice governing the administrative assessment of civil penalties under the Toxic Substances Control Act.

(a) *Scope of these Supplemental rules.* These Supplemental rules of practice shall govern, in conjunction with the preceding consolidated rules of practice (40 CFR part 22), all formal adjudications for the assessment of any civil penalty conducted under section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a)). Where inconsistencies exist between these Supplemental rules and the Consolidated rules, (§§ 22.01 through 22.32), these Supplemental rules shall apply.

(b) *Subpoenas.* (1) The attendance of witnesses or the production of documentary evidence may be required by subpoena. The Presiding Officer may grant a request for a subpoena upon a showing of (i) the grounds and necessity therefor, and (ii) the materiality and relevancy of the evidence to be adduced. Requests for the production of documents shall describe the evidence sought as specifically as practicable.

(2) Subpoenas shall be served in accordance with § 22.05(b)(1) of the Consolidated Rules of Practice.

(3) Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by the agency.

§ 22.34 Supplemental rules of practice governing the administrative assessment of civil penalties under title II of the Clean Air Act.

(a) *Scope of these Supplemental rules.* These Supplemental rules shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR part 22), all proceedings to assess a civil penalty conducted under sections 205(c), 211(d), and 213(d) of the Clean Air Act, as amended (42 U.S.C. 7524(c), 7545(d), and 7547(d)). Where inconsistencies exist between these Supplemental rules and the Consolidated Rules (§§ 22.01 through 22.32), these Supplemental rules shall apply.

(b) *Issuance of notice.* (1) Prior to the issuance of an administrative penalty order assessing a civil penalty, the person to whom the order is to be issued shall be given written notice of the proposed issuance of the order. Such notice shall be provided by the issuance of a complaint pursuant to § 22.13 of the Consolidated Rules of Practice.

(2) Notwithstanding § 22.15(a), any answer to the complaint must be filed with the Hearing Clerk within thirty (30) days after service of the complaint.

(c) *Subpoenas.* (1) The attendance of witnesses or the production of documentary evidence may be required by subpoena. The Presiding Officer may grant a request for a subpoena upon a showing of;

(i) The grounds and necessity therefor, and

(ii) The materiality and relevancy of the evidence to be adduced.

Requests for the production of documents shall describe with specificity the documents sought.

(2) Subpoenas shall be served in accordance with § 22.05(b)(1) of the Consolidated Rules of Practice.

(3) Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by EPA.

[57 FR 4318, Feb. 4, 1992]

§ 22.35 Supplemental rules of practice governing the administrative assessment of civil penalties under the Federal Insecticide, Fungicide, and Rodenticide Act.

(a) *Scope of these Supplemental rules.* These Supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR part 22), all formal adjudications for the assessment of any civil penalty conducted under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 1261(a)). Where inconsistencies exist between these Supplemental rules and the Consolidated rules, (§§ 22.01 through 22.32), these Supplemental rules shall apply.

(b) *Venue.* The prehearing conference and the hearing shall be held in the county, parish, or incorporated city of the residence of the person charged, unless otherwise agreed in writing by all parties.

(c) *Evaluation of proposed civil penalty.* In determining the dollar amount of the recommended civil penalty assessed in the initial decision, the Presiding Officer shall consider, in addition to the criteria listed in section 14(a)(3) of the Act, (1) respondent's history of compliance with the Act or

its predecessor statute and (2) any evidence of good faith or lack thereof. The Presiding Officer must also consider the guidelines for the Assessment of Civil Penalties published in the FEDERAL REGISTER (39 FR 27711), and any amendments or supplements thereto.

§ 22.36 Supplemental rules of practice governing the administrative assessment of civil penalties and the revocation or suspension of permits under the Marine Protection, Research, and Sanctuaries Act.

(a) *Scope of these Supplemental rules.* These Supplemental rules shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR part 22), all formal adjudications conducted under section 105(a) or (f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a) and (f)). Where inconsistencies exist between these Supplemental rules and the Consolidated Rules, (§§ 22.01 through 22.32), these Supplemental rules shall apply.

(b) *Additional criterion for the issuance of a complaint for the revocation or suspension of a permit.* In addition to the three criteria listed in 40 CFR 22.13 for issuing a complaint for the revocation or suspension of a permit, complaints may be issued on the basis of a person's failure to keep records and notify appropriate officials of dumping activities, as required by 40 CFR 224.1 and 223.2.

§ 22.37 Supplemental rules of practice governing the administrative assessment of civil penalties under the Solid Waste Disposal Act.

(a) *Scope of these Supplemental rules.* These Supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR part 22), all proceedings to assess a civil penalty conducted under section 3008 of the Solid Waste Disposal Act (42 U.S.C. 6928) (the ''Act''). Where inconsistencies exist between these Supplemental rules and the Consolidated Rules, (§§ 22.01 through 22.32), these Supplemental rules shall apply.

(b) *Issuance of notice.* Whenever, on the basis of any information, the Administrator determines that any person is in violation of (1) any requirement of subtitle C of the Act, (2) any regulation promulgated pursuant to subtitle C of the Act, or (3) a term or condition of a permit issued pursuant to subtitle C of the Act, the Administrator shall issue notice to the alleged violator of his failure to comply with such requirement, regulation or permit.

(c) *Content of notice.* Each notice of violation shall include:

(1) A specific reference to each provision of the Act, regulation, or permit term or condition which the alleged violator is alleged to have violated; and

(2) A concise statement of the factual basis for alleging such violation.

(d) *Service of notice.* Service of notice shall be made in accordance with § 22.05(b)(2) of the Consolidated Rules of Practice.

(e) *Issuance of the complaint.* (1) Except as provided in paragraph (e)(3) of this section, the complainant may issue a complaint whenever he has reason to believe that any violation extends beyond the thirtieth day after service of the notice of violation.

(2) The complaint shall include, in addition to the elements stated in § 22.14 of the Consolidated Rules, an order requiring compliance within a specified time period. The complaint shall be equivalent to the compliance order referred to in section 3008 of the Act.

(3) Whenever a violation is of a non-continuous or intermittent nature, the Administrator may issue a complaint, without any prior notice to the violator, pursuant to § 22.14 of the Consolidated Rules of Practice which may also require the violator to take any and all measures necessary to offset all adverse effects to health and the environment created, directly or indirectly, as a result of the violation.

(4) Notwithstanding § 22.15(a), any answer to the complaint must be filed with the Regional Hearing Clerk within thirty (30) days after the filing of the complaint.

(f) *Subpoenas.* (1) The attendance of witnesses or the production of documentary evidence may be required by subpoena. The Presiding Officer may grant a request for a subpoena upon a showing of (i) the grounds and necessity therefor, and (ii) the materiality and relevancy of the evidence to be adduced. Requests for the production of documents shall describe with specificity the documents sought.

(2) Subpoenas shall be served in accordance with § 22.05(b)(1) of the Consolidated Rules of Practice.

(3) Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by the Agency.

(g) *Final Orders to Federal Agencies on Appeal.* (1) In the case of an administrative order or decision issued to a department, agency, or instrumentality of the United States, such order or decision shall become the final order for purposes of the Federal Facility Compliance Act, 42 U.S.C.

6961(b), in accordance with §§ 22.27(c) and 22.31 except as provided in paragraph (g)(2) of this section.

(2) In the case of an administrative order or decision issued by the Environmental Appeals Board, if the head of the affected department, agency, or instrumentality requests a conference with the Administrator in writing and serves a copy of the request on the parties of record within thirty days of the Environmental Appeals Board's service of the order or decision, a decision by the Administrator (rather than the Environmental Appeals Board) shall be the final order for the purposes of the Federal Facility Compliance Act.

(3) In the event the department, agency, or instrumentality of the United States files a motion for reconsideration with the Environmental Appeals Board in accordance with § 22.32, filing such motion for reconsideration shall not toll the thirty-day period for filing the request with the Administrator for a conference unless specifically so ordered by the Environmental Appeals Board.

(42 U.S.C. 6901, *et seq.*)

[45 FR 24363, Apr. 9, 1980, as amended at 61 FR 11092, Mar. 18, 1996]

EFFECTIVE DATE NOTE: At 45 FR 79808, Dec. 2, 1980, paragraphs (b), (c), (d), (e)(1) and (3) of § 22.37 were suspended until further notice, effective Dec. 2, 1980.

§ 22.38 Supplemental rules of practice governing the administrative assessment of Class II penalties under the Clean Water Act.

(a) *Scope of these supplemental rules.* These supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR part 22), administrative proceedings for the assessment of any Class II civil penalty under section 309(g) of the Clean Water Act (33 U.S.C. 1319(g)).

(b) *Consultation with states.* The Administrator will consult with the state in which the alleged violation occurs before issuing a final order assessing a Class II civil penalty.

(c) *Public notice.* Before issuing a final order assessing a Class II civil penalty, the Administrator will provide public notice of the complaint.

(d) *Comment by a person who is not a party.* A person not a party to the Class II proceeding who wishes to comment upon a complaint must file written comments with the Regional Hearing Clerk within 30 days after public notice of the complaint and serve a copy of the comments upon each party. For good cause shown the Administrator, the Regional Administrator, or the Presiding Officer, as appropriate, may accept late comments. The Administrator will give any person who comments on a complaint notice of any hearing and notice of the final order assessing a penalty. Although commenters may be heard and present evidence at any hearing held under section 309(g) of the Act, commenters shall not be accorded party status with right of cross examination unless they formally move to intervene and are granted party status under § 22.11.

(e) *Administrative procedure and judicial review.* Action of the Administrator for which review could have been obtained under section 509(b)(1) of the Act shall not be subject to review in an administrative proceeding for the assessment of Class II civil penalty under section 309(g).

(f) *Petitions to set aside an order and to provide a hearing.* If no hearing on the complaint is held before issuance of an order assessing a Class II civil penalty, any person who commented on the complaint may petition the Administrator, within 30 days after issuance of the order, to set aside the order and to provide a hearing on the complaint. If the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order, the Administrator will immediately set aside the order and provide a hearing in accordance with the Consolidated Rules of Practice and these supplemental rules of practice. If the Administrator denies a hearing under section 309(g)(4)(C) of the Act, the Administrator will provide to the petitioner, and publish in the FEDERAL REGISTER, notice of and the reasons for the denial.

[55 FR 23840, June 12, 1990]

§ 22.39 Supplemental rules of practice governing the administrative assessment of administrative penalties under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(a) *Scope of these Supplemental rules.* These Supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR part 22), administrative proceedings for the assessment of any civil penalty under section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9609). Where inconsistencies exist between these Supplemental rules and the Consolidated Rules (§§ 22.01 through 22.32), these Supplemental rules shall apply.

(b) *Subpoenas.* (1) The attendance and testimony of witnesses or the production of relevant papers, books, and documents may be required by subpoena. The Presiding Officer may grant a request for a subpoena upon a showing of—

(i) The grounds and necessity therefor, and

(ii) The materiality and relevancy of the evidence to be adduced.

Requests for the production of documents shall describe the evidence sought as specifically as practicable.

(2) Subpoenas shall be served in accordance with § 22.05(b)(1) of the Consolidated Rules of Practice.

(3) Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by the Agency.

(c) *Judicial review.* Any person who requested a hearing with respect to a Class II civil penalty under section 109 of CERCLA and who is the recipient of a final order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia or for any other circuit in which such person resides or transacts business. Any person who requested a hearing with respect to a Class I civil penalty under section 109 of CERCLA and who is the recipient of a final order assessing the civil penalty may file a petition for judicial review of such order with the appropriate district court of the United States. All petitions must be filed within 30 days of the date the order making the assessment was issued.

(d) *Payment of civil penalty assessed.* Payment of civil penalties finally assessed by the Regional Administrator shall be made by forwarding a cashier's check, payable to the ''EPA, Hazardous Substances Superfund,'' in the amount assessed, and noting the case title and docket number, to the appropriate regional Superfund Lockbox Depository. Notice of payment must be sent by Respondent to the Hearing Clerk for inclusion as part of the administrative record for the proceeding in which the civil penalty was assessed. Interest on overdue payments shall be collected pursuant to the Debt Collection Act, 37 U.S.C. 3717.

[54 FR 21176, May 16, 1989]

§ 22.40 Supplemental rules of practice governing the administrative assessment of administrative penalties under section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA).

(a) *Scope of these Supplemental Rules.* These Supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR part 22), administrative proceedings for the assessment of any civil penalty under section 325 for violations of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA). Where inconsistencies exist between these Supplemental rules and the Consolidated Rules, (§§ 22.01 through 22.32) these Supplemental rules shall apply.

(b) *Subpoenas.* (1) The attendance and testimony of witnesses or the production of relevant papers, books, and documents may be required by subpoena. The Presiding Officer may grant a request for a subpoena upon a showing of (i) the grounds and necessity therefore, and (ii) the materiality and relevancy of the evidence to be adduced. Requests for the production of documents shall describe the evidence sought as specifically as practicable.

(2) Subpoenas shall be served in accordance with § 22.05(b)(1) of the Consolidated Rules of Practice.

(3) Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears. Where a witness appears pursuant to request initiated by the Presiding Officer, fees shall be paid by the Agency.

(c) *Judicial review.* Any person against whom a civil penalty is assessed may seek judicial review in the appropriate district court of the United States by filing a notice of appeal and by simultaneously sending a copy of such notice by certified mail to the Administrator. The notice must be filed within 30 days of the date the order making such assessment was issued. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed.

(d) *Procedures for collection of civil penalty.* If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record. Interest on overdue payments shall be collected pursuant to the Debt Collection Act, 37 U.S.C. 3717.

[54 FR 21176, May 16, 1989]

§ 22.41 Supplemental rules of practice governing the administrative assessment of civil penalties under Title II of the Toxic Substances Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

(a) Scope of the Supplemental rules. These Supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR part 22), all proceedings to assess a civil penalty conducted under section 207 of the Toxic Substances Control Act (the ''Act'') (15 U.S.C. 2647). Where inconsistencies exist between these Supplemental rules and the Consolidated rules (§§ 22.01 through 22.32), these Supplemental rules shall apply.

(b) Collection of civil penalty. Any civil penalty collected under section 207 of the Act shall be used by the local educational agency for purposes of complying with Title II of the Act. Any portion of a civil penalty remaining unspent after a local educational agency achieves compliance shall be deposited into the Asbestos Trust Fund established under section 5 of AHERA.

[54 FR 24112, June 5, 1989]

§ 22.42 Supplemental rules of practice governing the administrative assessment of civil penalties for violations of compliance orders issued under Part B of the Safe Drinking Water Act.

(a) *Scope of these supplemental rules.* These supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR part 22), all proceedings to assess a civil penalty under section 1414(g)(3)(B). Where inconsistencies exist between these supplemental rules and the Consolidated rules, these supplemental rules shall apply.

(b) *Definition of ''person.''* In addition to the terms set forth in 40 CFR 22.03(a) that define *person*, for purposes of this section and proceedings under section 1414(g)(3)(B) of the Safe Drinking Water Act, the term person shall also include any officer, employee, or agent of any corporation, company or association.

(c) *Issuance of complaint.* If the Administrator determines that a person has violated any provision of a compliance order issued under section 1414(g)(1) of the Safe Drinking Water Act, 42 U.S.C. 300g–3(g)(1), he may institute a proceeding for the assessment of a civil penalty by issuing a complaint under the Act and this part.

(d) *Content of the complaint.* A complaint for the assessment of civil penalties under this part shall include specific reference to:

(1) Each provision of the compliance order issued under section 1414(g)(1) of the Act, 42 U.S.C. 300g–3(g)(1), which is alleged to have violated; and

(2) Each violation of a Safe Drinking Water Act regulation, schedule, or other requirement which served as the basis for the compliance order which is alleged to have been violated.

(e) *Scope of hearing.* Action of the Administrator with respect to which judicial review could have been obtained under section 1448 of the Safe Drinking Water Act, 42 U.S.C. 300j–7, shall not be subject to review in an administrative proceeding for the assessment of a civil penalty under section 1414(g)(3)(B) of the SDWA and this part.

[56 FR 3757, Jan. 30, 1991]

§ 22.43 Supplemental rules of practice governing the administrative assessment of civil penalties under section 113(d)(1) of the Clean Air Act.

(a) *Scope of these Supplemental rules.* These Supplemental rules shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR part 22), all proceedings to assess a civil penalty conducted under section 113(d)(1) of the Clean Air Act (42 U.S.C. 7413(d)(1)). Where inconsistencies exist between these Supplemental rules and the Consolidated Rules (§§ 22.01 through 22.32), these Supplemental rules shall apply.

(b) *Issuance of notice.* (1) Prior to the issuance of an administrative penalty order assessing a civil penalty, the person to whom the order is to be issued shall be given written notice of the proposed issuance of the order. Such

notice shall be provided by the issuance of a complaint pursuant to § 22.13 of the Consolidated Rules of Practice.

(2) Notwithstanding § 22.15(a), any answer to the complaint must be filed with the Regional Hearing Clerk within thirty (30) days after service of the complaint.

(c) *Subpoenas.* (1) The attendance of witnesses or the production of documentary evidence may be required by subpoena. The Presiding Officer may grant a request for a subpoena upon a showing of;

(i) The grounds and necessity therefor, and

(ii) The materiality and relevancy of the evidence to be adduced.

Requests for the production of documents shall describe with specificity the documents sought.

(2) Subpoenas shall be served in accordance with § 22.05(b)(1) of the Consolidated Rules of Practice.

(3) Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid in the courts of the United States.

Fees shall be paid by the party at whose instance the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by EPA.

[57 FR 4318, Feb. 4, 1992]

APPENDIX TO PART 22—ADDRESSES OF EPA REGIONAL OFFICES

Region I—John F. Kennedy Federal Building, Boston, MA 02203.
Region II—26 Federal Plaza, New York, NY 10007.
Region III—Curtis Building, 6th and Walnut Streets, Philadelphia, PA 19106.
Region IV—345 Courtland Street NE., Atlanta, GA 30308.
Region V—77 West Jackson Boulevard, Chicago, IL 60604.
Region VI—First International Building, 1201 Elm Street, Dallas, TX 75270.
Region VII—1735 Baltimore Street, Kansas City, MO 64108.
Region VIII—1860 Lincoln Street, Denver, CO 80203.
Region IX—215 Fremont Street, San Francisco, CA 94105.
Region X—1200 6th Avenue, Seattle, WA 98101.

[45 FR 24363, Apr. 4, 1980, as amended at 62 FR 1833, Jan. 14, 1997]

PART 23—JUDICIAL REVIEW UNDER EPA—ADMINISTERED STATUTES

AUTHORITY: Clean Water Act, 33 U.S.C. 1361(a), 1369(b); Clean Air Act, 42 U.S.C. 7601(a)(1), 7607(b); Resource, Conservation and Recovery Act, 42 U.S.C. 6912(a), 6976; Toxic Substances Control Act, 15 U.S.C. 2618; Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136n(b), 136w(a); Safe Drinking Water Act, 42 U.S.C. 300j–7(a)(2), 300j–9(a); Atomic Energy Act, 42 U.S.C. 2201, 2239; Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 371(a), 346a, 348; 28 U.S.C. 2112(a), 2343, 2344.

SOURCE: 50 FR 7270, Feb. 21, 1985, unless otherwise noted.

§ 23.1 Definitions.

As used in this part, the term:

(a) *Federal Register document* means a document intended for publication in the Federal Register and bearing in its heading an identification code including the letters *FRL.*

(b) *Admininstrator* means the Administrator or any official exercising authority delegated by the Administrator.

(c) *General Counsel* means the General Counsel of EPA or any official exercising authority delegated by the General Counsel.

[50 FR 7270, Feb. 21, 1985, as amended at 53 FR 29322, Aug. 3, 1988]

§ 23.2 Timing of Administrator's action under Clean Water Act.

Unless the Administrator otherwise explicity provides in a particular promulgation or approval action, the time and date of the Administrator's action in promulgation (for purposes of sections 509(b)(1) (A), (C), and (E)), approving (for purposes of section 509(b)(1)(E)), making a determination (for purposes of section 509(b)(1) (B) and (D), and issuing or denying (for purposes of section 509(b)(1)(F)) shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on (a) for a FEDERAL REGISTER document, the date that is two weeks after the date when the document is published in the FEDERAL REGISTER, or (b) for any other document, two weeks after it is signed.

§ 23.3 Timing of Administrator's action under Clean Air Act.

Unless the Administrator otherwise explicitly provides in a particular promulgation, approval, or action, the time and date of such promulgation, approval or action for purposes of the second sentence of section 307(b)(1) shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on (a) for a FEDERAL REGISTER document, the date when the document is published in the FEDERAL REGISTER, or (b) for any other document, two weeks after it is signed.

§ 23.4 Timing of Administrator's action under Resource Conservation and Recovery Act.

Unless the Administrator otherwise explicitly provides in taking a particular action, for purposes of section 7006(b), the time and date of the Administrator's action in issuing, denying, modifying, or revoking any permit under section 3005, or in granting, denying, or withdrawing authorization or interim authorization under section 3006, shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on the date that is (a) for a FEDERAL REGISTER document, two weeks after the date when the document is published in the FEDERAL REGISTER, or (b) for any other document, two weeks after it is signed.

§ 23.5 Timing of Administrator's action under Toxic Substances Control Act.

Unless the Administrator otherwise explicitly provides in promulgating a particular rule or issuing a particular order, the time and date of the Administrator's promulgation or issuance for purposes of section 19(a)(1) shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on the date that is (a) for a FEDERAL REGISTER document, two weeks after the date when the document is published in the FEDERAL REGISTER, or (b) for any other document, two weeks after it is signed.

§ 23.6 Timing of Administrator's action under Federal Insecticide, Fungicide and Rodenticide Act.

Unless the Administrator otherwise explicitly provides in a particular order, the time and date of

entry of an order issued by the Administrator following a public hearing for purposes of section 16(b) shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on the date that is two weeks after it is signed.

§ 23.7 Timing of Administrator's action under Safe Drinking Water Act.

Unless the Administrator otherwise explicitly provides in a particular promulgation action or determination, the time and date of the Administrator's promulgation, issuance, or determination for purposes of section 1448(a)(2) shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on the date that is (a) for a FEDERAL REGISTER document, two weeks after the date when the document is published in the FEDERAL REGISTER or (b) for any other document, two weeks after it is signed.

§ 23.8 Timing of Administrator's action under Uranium Mill Tailings Radiation Control Act of 1978.

Unless the Administrator otherwise explicitly provides in a particular rule, the time and date of the Administrator's promulgation for purposes of 42 U.S.C. 2022(c)(2) shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on the date that is two weeks after the date when notice of promulgation is published in the FEDERAL REGISTER.

§ 23.9 Timing of Administrator's action under the Atomic Energy Act.

Unless the Administrator otherwise explicitly provides in a particular order, the time and date of the entry of an order for purposes of 28 U.S.C. 2344 shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on the date that is two weeks after the date when notice thereof is published in the FEDERAL REGISTER.

§ 23.10 Timing of Administrator's action under the Federal Food, Drug, and Cosmetic Act.

Unless the Administrator otherwise explicitly provides in a particular order, the time and date of the entry of an order issued after a public hearing for purposes of 21 U.S.C. 346a(i) or 348(g) shall be at 1:00 p.m. eastern time (standard or daylight, as appropriate) on the date that is (a) for a FEDERAL REGISTER document, two weeks after the date when the document is published in the FEDERAL REGISTER, or (b) for any other document, two weeks after it is signed.

§ 23.11 Holidays.

If the date determined under §§ 23.2 to 23.10 falls on a Federal holiday, then the time and date of the Administrator's action shall be at 1:00 p.m. eastern time on the next day that is not a Federal holiday.

§ 23.12 Filing notice of judicial review.

(a) For the purposes of 28 U.S.C. 2112(a), a copy of any petition filed in any United States Court of Appeals challenging a final action of the Administrator shall be sent by certified mail, return receipt requested, or by personal delivery to the General Counsel. The petition copy shall be time-stamped by the Clerk of the Court when the original is filed with the Court. The petition should be addressed to: Correspondence Control Unit, Office of General Counsel (LE–130), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(b) If the General Counsel receives two or more petitions filed in two or more United States Courts of Appeals for review of any Agency action within ten days of the effective date of that action for purposes of judicial review (as specified under §§ 23.2 through 23.10 of this part), the General Counsel will notify the United States Judicial Panel of Multidistrict Litigation of any petitions that were received within the ten day period, in accordance with the applicable rules of the Panel.

(c) For purposes of determining whether a petition for review has been received within the ten day period under paragraph (b) of this section, the petition shall be considered received on the date of service, if served personally. If service is accomplished by mail, the date of receipt shall be considered to be the date noted on the return receipt card.

[53 FR 29322, Aug. 3, 1988]

PART 24—RULES GOVERNING ISSUANCE OF AND ADMINISTRATIVE HEARINGS ON INTERIM STATUS CORRECTIVE ACTION ORDERS

Subpart A—General

Sec.

Subpart B—Hearings on Orders Requiring Investigations or Studies

Subpart C—Hearings on Orders Requiring Corrective Measures

Subpart D—Post-Hearing Procedures

AUTHORITY: 42 U.S.C. sections 6912, 6928, 6991b.

SOURCE: 53 FR 12263, Apr. 13, 1988, unless otherwise noted.

Subpart A—General

§ 24.01 Scope of these rules.

(a) These rules establish procedures governing issuance of administrative orders for corrective action pursuant to sections 3008(h) and 9003(h) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (the Act), and conduct of administrative hearings on such orders, except as specified in paragraphs (b) and (c) of this section.

(b) The hearing procedures appearing at 40 CFR part 22 govern administrative hearings on any order issued pursuant to section 3008(h) of the Act which:

(1) Is contained within an administrative order that includes claims under section 3008(a) of the Act; or

(2) Includes a suspension or revocation of authorization to operate under section 3005(e) of the Act; or

(3) Seeks penalties under section 3008(h)(2) of the Act for non-compliance with a section 3008(h) order.

(c) The hearing procedures appearing at 40 CFR part 22 govern administrative hearings on any order issued pursuant to section 9003(h) of the Act that is contained within an administrative order that includes claims under section 9006 of the Act.

(d) Questions arising at any stage of the proceeding which are not addressed in these rules shall be resolved at the discretion of the Regional Administrator or Presiding Officer, as appropriate.

[53 FR 12263, Apr. 13, 1988, as amended at 56 FR 49380, Sept. 27, 1991]

§ 24.02 Issuance of initial orders; definition of final orders and orders on consent.

(a) An administrative action under section 3008(h) or 9003(h) of the Act shall be commenced by issuance of an administrative order. When the order is issued unilaterally, the order shall be referred to as an initial administrative order and may be referenced as a proceeding under section 3008(h) or 9003(h) of the Act. When the order has become effective, either after issuance of a final order following a final decision by the Regional Administrator, or after thirty days from issuance if no hearing is requested, the order shall be referred to as a final administrative order. Where the order is agreed to by the parties, the order shall be denominated as a final administrative order on consent.

(b) The initial administrative order shall be executed by an authorized official of EPA (petitioner), other than the Regional Administrator or the Assistant Administrator for the Office of Solid Waste and Emergency Response. For orders issued by EPA Headquarters, rather than by a Regional office, all references in these procedures to the Regional Administrator shall be understood to be to the Assistant Administrator for Solid Waste and Emergency Response or his delegatee.

(c) The initial administrative order shall contain:

(1) A reference to the legal authority pursuant to which the order is issued,

(2) A concise statement of the factual basis upon which the order is issued, and

(3) Notification of respondent's right to request a hearing with respect to any issue of material fact or the appropriateness of the proposed corrective action.

[53 FR 12263, Apr. 13, 1988, as amended at 56 FR 49380, Sept. 27, 1991]

§ 24.03 Maintenance of docket and official record.

(a) A Clerk shall be designated by the Regional Administrator to receive all initial orders, final orders, decisions, responses, memoranda, and documents regarding the order and to maintain the official record and docket.

(b) On or before the date the initial order is served on respondent the EPA office issuing the order shall deliver to the Clerk (a copy of) the administrative record supporting the findings of fact, determinations of law, and relief sought in the initial administrative order. This record shall include all relevant documents and oral information (which has been reduced to writing), which the Agency considered in the process of developing and issuing the order, exclusive of privileged internal communications. The administrative record delivered to the Clerk must have an index and be available for review in the appropriate Agency Regional or Headquarters office during normal business hours after the order is issued.

§ 24.04 Filing and service of orders, decisions, and documents.

(a) *Filing of orders, decisions, and documents.* The original and one copy of the initial administrative order, the recommended decision of the Presiding Officer, the final decision and the final administrative order, and one copy of the administrative record and an index thereto must be filed with the Clerk designated for 3008(h) or 9003(h) orders. In addition, all memoranda and documents submitted in the proceeding shall be filed with the clerk.

(b) *Service of orders, decisions, and rulings.* The Clerk (or in the case of the initial administrative order, any other designated EPA employee) shall arrange for the effectuation of service of the initial administrative order, the recommended decision of the Presiding Officer, the final decision, and final administrative order. Service of a copy of the initial administrative order together with a copy of these procedures, the recommended decision of the Presiding Officer, the final decision, or a final administrative order, shall be made personally or by certified mail, return receipt requested or, if personal service cannot be effectuated or certified mail is returned refused or unsigned, by regular mail, on the respondent or his representative. The Clerk shall serve other documents from the Presiding Officer by regular mail.

(c) *Service of documents filed by the parties.* Service of all documents, filed by the parties, shall be made by the parties or their representatives on other parties or their representatives and may be regular mail, with the original filed with the Clerk. The original of any pleading, letter, or other document (other than exhibits) shall be signed by the party filing or by his counsel or other representative. The signature constitutes a representation by the signer that he has read the pleading, letter, or other document, that to the best of his knowledge, information, and belief, the statements made therein are true, and that it is not interposed for delay.

(d) *Service in general.* Service of orders, decisions, rulings, or documents by either the Clerk or the parties shall, in the case of a domestic or foreign corporation, a partnership, or other unincorporated association, which is subject to suit under a common name, be made, as prescribed in § 24.04 (b) and (c), upon an officer, partner, managing or general agent, or any person authorized by appointment or by Federal or State law to receive service of process.

(e) *Effective date of service.* Service of the initial administrative order and final administrative order is complete upon receipt by respondent (or the respondent's agent, attorney, representative or other person employed by respondent and receiving such service), personally or by certified mail, or upon mailing by regular mail, if personal service or service by certified mail cannot be accomplished, in accordance with § 24.04(b). Service of all other pleadings and documents is complete upon mailing, except as provided in §§ 24.10(b) and 24.14(e).

[53 FR 12263, Apr. 13, 1988, as amended at 56 FR 49380, Sept. 27, 1991]

§ 24.05 Response to the initial order; request for hearing.

(a) The initial administrative order becomes a final administrative order thirty (30) days after service of the order, unless the respondent files with the Clerk within thirty (30) days after service of the order, a response to the initial order and requests a hearing.

(b) The response to the initial order and request for a hearing must be in writing and mailed to, or personally served on, the Clerk of the Regional office which issued the order.

(c) The response to the initial order shall specify each factual or legal determination, or relief provision in the initial order the respondent disputes and shall briefly indicate the basis upon which it disputes such determination or provision.

(d) Respondent may include with its response to the initial order and request for a hearing a statement indicating whether it believes the subpart B or subpart C hearing procedures should be em-

ployed for the requested hearing and the reason(s) therefore.

§ 24.06 Designation of Presiding Officer.

Upon receipt of a request for a hearing, the Regional Administrator shall designate a Presiding Officer to conduct the hearing and preside over the proceedings.

§ 24.07 Informal settlement conference.

The respondent may request an informal settlement conference at any time by contacting the appropriate EPA employee, as specified in the initial administrative order. A request for an informal conference will not affect the respondent's obligations to timely request a hearing. Whether or not the respondent requests a hearing, the parties may confer informally concerning any aspect of the order. The respondent and respondent's representatives shall generally be allowed the opportunity at an informal conference to discuss with the appropriate Agency technical and legal personnel all aspects of the order, and in particular the basis for the determination that a release has occurred and the appropriateness of the ordered corrective action.

§ 24.08 Selection of appropriate hearing procedures.

(a) The hearing procedures set forth in subpart B of this part shall be employed for any requested hearing if the initial order directs the respondent——

(1) To undertake only a RCRA Facility Investigation and/or Corrective Measures Study, which may include monitoring, surveys, testing, information gathering, analyses, and/or studies (including studies designed to develop recommendations for appropriate corrective measures), or

(2) To undertake such investigations and/or studies and interim corrective measures, and if such interim corrective measures are neither costly nor technically complex and are necessary to protect human health and the environment prior to development of a permanent remedy, or

(3) To undertake investigations/studies with respect to a release from an underground storage tank.

(b) The hearing procedures set forth in subpart C of this part shall be employed if the respondent seeks a hearing on an order directing that——

(1) Corrective measures or such corrective measures together with investigations/studies be undertaken, or

(2) Corrective action or such corrective action together with investigations/studies be undertaken with respect to any release from an underground storage tank.

(c) The procedures contained in subparts A and D of this part shall be followed regardless of whether the initial order directs the respondent to undertake an investigation pursuant to the procedures in subpart B of this part, or requires the respondent to implement corrective measures pursuant to the procedures in subpart C of this part.

[56 FR 49380, Sept. 27, 1991]

Subpart B—Hearings on Orders Requiring Investigations or Studies

§ 24.09 Qualifications of Presiding Officer; ex parte discussion of the proceeding.

The Presiding Officer shall be either the Regional Judicial Officer (as described in 40 CFR 22.04(b)) or another attorney employed by the Agency, who has had no prior connection with the case, including the performance of any investigative or prosecuting functions. At no time after issuance of the initial administrative order and prior to issuance of the final order shall the Regional Administrator, Presiding Officer, or any person who will advise these officials in the decision on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. If, after issuance of the initial order and prior to issuance of the final order, the Regional Administrator, Presiding Officer, or any person who will advise these officials in the decision on the case receives from or on behalf of any party in an ex parte communication information which is relevant to the decision on the case and to which other parties have not had an opportunity to respond, a summary of such information shall be served on all other parties, who shall have an opportunity to reply to same within ten (10) days of service of the summary.

§ 24.10 Scheduling the hearing; prehearing submissions by respondent.

(a) *Date and time for hearing.* The Presiding Officer shall establish the date, time, location, and agenda for the requested public hearing and transmit this information to the parties. Subject to § 24.10(c), the hearing shall be scheduled and held within thirty (30) days of the Agency's receipt of the request for a public hearing.

(b) *Pre-hearing submissions by respondent.* At any time up to five (5) business days before the hearing respondent may, but is not required to, submit for inclusion in the administrative record information and argument supporting respondent's

positions on the facts, law and relief, as each relates to the order in question. A copy of any information or argument submitted by respondent shall be served such that the Clerk and petitioner receive same at least five (5) business days before hearing.

(c) *Postponment of hearing.* The Presiding Officer may grant an extension of time for the conduct of the hearing upon written request of either party, for good cause shown, and after consideration of any prejudice to other parties. The Presiding Officer may not extend the date by which the request for hearing is due under § 24.05(a).

(d) *Location of hearing.* The hearing shall be held in the city in which the relevant EPA Regional Office is located, unless the Presiding Officer determines that there is good cause to hold it in another location.

§ 24.11 Hearing; oral presentations and written submissions by the parties.

The Presiding Officer shall conduct the hearing in a fair and impartial way, taking action as needed to avoid unnecessary delay, exclude redundant material and maintain order during the proceedings. Representatives of EPA shall introduce the administrative record and be prepared to summarize the basis for the order. The respondent shall have a reasonable opportunity to address relevant issues and present its views through legal counsel or technical advisors. The Presiding Officer may also allow technical and legal discussions and interchanges between the parties, including responses to questions to the extent deemed appropriate. It is not the Agency's intent to provide EPA or respondent an opportunity to engage in direct examination or cross-examination of witnesses. The Presiding Officer may address questions to the respondent's or EPA's representative(s) during the hearing. Each party shall insure that a representative(s) is (are) present at the hearing, who is (are) capable of responding to questions and articulating that party's position on the law and facts at issue. Where respondent can demonstrate that through no fault of its own certain documents supportive of its position could not have been submitted before hearing in accordance with the requirements of § 24.10(b), it may submit such documents at the hearing. Otherwise no new documentary support may be submitted at hearing. The Presiding Officer may upon request grant petitioner leave to respond to submissions made by respondent pursuant to this section or § 24.10(b). The Presiding Officer shall have the discretion to order either party to submit additional information (including but not limited to posthearing briefs on undeveloped factual, technical, or legal matters) in whatever form he deems appropriate either at or after the hearing.

§ 24.12 Summary of hearing; Presiding Officer's recommendation.

(a) As soon as practicable after the conclusion of the hearing a written summary of the proceeding shall be prepared. This summary shall, at a minimum, identify:

(1) The dates of and known attendees at the hearing; and

(2) The bases upon which the respondent contested the terms of the order.

The summary must be signed by the Presiding Officer.

(b) The Presiding Officer will evaluate the entire administrative record and, on the basis of that review and the representations of EPA and respondent at the hearing, shall prepare and file a recommended decision with the Regional Administrator. The recommended decision must address all material issues of fact or law properly raised by respondent, and must recommend that the order be modified, withdrawn or issued without modification. The recommended decision must provide an explanation with citation to material contained in the record for any decision to modify a term of the order, to issue the order without change, or to withdraw the order. The recommended decision shall be based on the administrative record. If the Presiding Officer finds that any contested relief provision in the order is not supported by a preponderance of the evidence in the record, the Presiding Officer shall recommend that the order be modified and issued on terms that are supported by the record or withdrawn.

(c) At any time within twenty-one (21) days of service of the recommended decision on the parties, the parties may file comments on the recommended decision with the Clerk. The Clerk shall promptly transmit any such comments received to the Regional Administrator for his consideration in reaching a final decision.

Subpart C—Hearings on Orders Requiring Corrective Measures

§ 24.13 Qualifications of Presiding Officer; ex parte discussion of the proceeding.

(a) *Qualifications of Presiding Officer.* The Presiding Officer shall be either the Regional Judicial Officer (as described in 40 CFR 22.04(b)) of another attorney employed by the Agency, who has had no prior connection with the case, including the performance of any investigative or prosecuting functions.

(b) *Ex parte discussion of the proceeding.* At no time after issuance of the initial administrative order and prior to issuance of the final order shall the Regional Administrator, Presiding Officer, or

any person who will advise these officials in the decision on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. If, after issuance of the initial order and prior to issuance of the final order, the Regional Administrator, Presiding Officer, or any person who will advise these officials in the decision on the case receives from or on behalf of any party in an ex parte communication information which is relevant to the decision on the case and to which other parties have not had an opportunity to respond, a summary of such information shall be served on all other parties, who shall have an opportunity to reply to same within ten (10) days of service of the summary.

§ 24.14 Scheduling the hearing; pre-hearing submissions by the parties.

(a) The Presiding Officer shall establish an expeditious schedule for:

(1) The submission by respondent of a memorandum, with appropriate affidavits and exhibits, stating and supporting respondent's position on the facts, law and relief, specifying the bases upon and manner in which such determinations or relief provisions, if erroneous, require modification or withdrawal of the order:

(2) Submission of a response by EPA; and

(3) A public hearing.

Subject to § 24.14(b), a hearing shall be scheduled within 45 days of the order setting the schedule. The Presiding Officer shall establish the date, time, location and agenda for the hearing and shall transmit this information to the parties along with the schedule for the hearing.

(b) *Postponement of the hearing.* The Presiding Officer, as appropriate, may grant an extension of time for the filing of any document, other than a request for a hearing under § 24.05(a), or may grant an extension of time for the conduct of the hearing, upon written request of either party, for good cause shown and after consideration of any prejudice to other parties.

(c) *Respondent's pre-hearing submission.* In accordance with the schedule set by the Presiding Officer, the respondent shall file a memorandum stating and supporting respondent's position on the facts, law and relief. The memorandum must identify each factual allegation and all issues regarding the appropriateness of the terms of the relief in the initial order that respondent contests and for which respondent requests a hearing. The memorandum must clearly state respondent's position with respect to each such issue. Respondent must also include any proposals for modification of the order. The memorandum shall also present any arguments on the legal conclusions contained in the order.

(d) *Written questions to EPA.* The respondent may file a request with the Presiding Officer for permission to submit written questions to the EPA Regional Office issuing the order concerning issues of material fact in the order.

(1) Requests shall be accompanied by the proposed questions. In most instances, no more than twenty-five (25) questions, including subquestions and subparts, may be posed. The request and questions must be submitted to the Presiding Officer at least twenty-one (21) days before the hearing.

(2) The Presiding Officer may direct EPA to respond to such questions as he designates. In deciding whether or not to direct the Agency to respond to written questions the Presiding Officer should consider whether such responses are required for full disclosure and adequate resolution of the facts. No questions shall be allowed regarding privileged internal communications. The Presiding Officer shall grant, deny, or modify such requests expeditiously. If a request is granted the Presiding Officer may revise questions and may limit the number and scope of questions. Questions may be deleted or revised in the discretion of the Presiding Officer for reasons, which may include the fact that he finds the questions to be irrelevant, redundant, unnecessary, or an undue burden on the Agency. The Presiding Officer shall transmit the questions as submitted or as modified to EPA. EPA shall respond to the questions within fourteen (14) calendar days of service of the questions by the Presiding Officer, unless an extension is granted.

(e) *Submission of additional information.* The Presiding Officer shall have the discretion to order either party to submit additional information (including but not limited to post-hearing briefs on undeveloped factual, technical, or legal matters) in whatever form he deems appropriate either before, at, or after the hearing. The Presiding Officer may issue subpoenas for the attendance and testimony of persons and the production of relevant papers, books and documents. Since these hearing procedures provide elsewhere that the parties are not to engage in direct or cross-examination of witnesses, the subpoena power is to serve only as an adjunct to the Presiding Officer's authority to ask questions and otherwise take steps to clarify factual matters which are in dispute. Upon request of the respondent the Presiding Officer may, in his discretion, allow submittal by the respondent of additional information in support of its claim, if it is received by the Clerk and petitioner at least five (5) business days before the hearing.

(f) *Location of hearing.* The hearing shall be held in the city in which the relevant EPA Re-

gional Office is located, unless the Presiding Officer determines that there is good cause to hold it in another location.

§ 24.15 Hearing; oral presentations and written submissions by the parties.

(a) The Presiding Officer shall conduct the hearing in a fair and impartial manner, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order. The Presiding Officer shall permit oral statements on behalf of the respondent and EPA. The Presiding Officer may address questions to the respondent's or the EPA's representative(s) during the hearing. Each party shall ensure that a representative(s) is (are) present at the hearing, who is (are) capable of responding to questions and articulating that party's position on the law and facts at issue. Apart from questions by the Presiding Officer, no direct examination or cross-examination shall be allowed.

(b) Upon commencement of the hearing, a representative of EPA shall introduce the order and record supporting issuance of the order, and summarize the basis for the order. The respondent may respond to the administrative record and offer any facts, statements, explanations or documents which bear on any issue for which the hearing has been requested. Any such presentation by respondent may include new documents only to the extent that respondent can demonstrate that, through no fault of its own, such documents could not have been submitted before hearing in accordance with the requirements of § 24.14 (c) and (e). The Agency may then present matters solely in rebuttal to matters previously presented by the respondent. The Presiding Officer may allow the respondent to respond to any such rebuttal submitted. The Presiding Officer may exclude repetitive or irrelevant matter. The Presiding Officer may upon request grant petitioner leave to respond to submissions made by respondent pursuant to this paragraph or § 24.14(e).

§ 24.16 Transcript or recording of hearing.

(a) The hearing shall be either transcribed stenographically or tape recorded. Upon written request, such transcript or tape recording shall be made available for inspection or copying.

(b) The transcript or recording of the hearing and all written submittals filed with the Clerk by the parties subsequent to initial issuance of the order including post-hearing submissions will become part of the administrative record for the proceeding, for consideration by the Presiding Officer and Regional Administrator.

§ 24.17 Presiding Officer's recommendation.

(a) The Presiding Officer will, as soon as practicable after the conclusion of the hearing, evaluate the entire administrative record and, on the basis of the administrative record, prepare and file a recommended decision with the Regional Administrator. The recommended decision must address all material issues of fact or law properly raised by respondent, and must recommend that the order be modified, withdrawn or issued without modification. The recommended decision must provide an explanation, with citation to material contained in the record for any decision to modify a term of the order, to issue the order without change or to withdraw the order. The recommended decision shall be based on the administrative record. If the Presiding Officer finds that any contested relief provision in the order is not supported by a preponderance of the evidence in the record, the Presiding Officer shall recommend that the order be modified and issued on terms that are supported by the record, or withdrawn.

(b) At any time within twenty-one (21) days of service of the recommended decision on the parties, the parties may file comments on the recommended decision with the Clerk. The Clerk shall promptly transmit any such comments received to the Regional Administrator for his consideration in reaching a final decision.

Subpart D—Post-Hearing Procedures

§ 24.18 Final decision.

As soon as practicable after receipt of the recommended decision, the Regional Administrator will either sign or modify such recommended decision, and issue it as a final decision. If the Regional Administrator modifies the recommended decision, he shall insure that the final decision indicates the legal and factual basis for the decision as modified. The Regional Administrator's decision shall be based on the administrative record.

§ 24.19 Final order.

If the Regional Administrator does not adopt portions of the initial order, or finds that modification of the order is necessary, the signatory official on the initial administrative order shall modify the order in accordance with the terms of the final decision and file and serve a copy of the final administrative order. If the Regional Administrator finds the initial order appropriate as originally issued, the final decision shall declare the initial administrative order to be a final order, effective upon service of the final decision. If the Regional Administrator declares that the initial order must

be withdrawn, the signatory official on the initial administrative order will file and serve a withdrawal of the initial administrative order. This may be done without prejudice.

§ 24.20 Final agency action.

The final decision and the final administrative order are final agency actions that are effective on filing and service. These actions are not appealable to the Administrator.

PART 25—PUBLIC PARTICIPATION IN PROGRAMS UNDER THE RESOURCE CONSERVATION AND RECOVERY ACT, THE SAFE DRINKING WATER ACT, AND THE CLEAN WATER ACT

AUTHORITY: Sec. 101(e), Clean Water Act, as amended (33 U.S.C. 1251(e)); sec. 7004(b), Resource Conservation and Recovery Act (42 U.S.C. 6974(b)); sec. 1450(a)(1), Safe Drinking Water Act, as amended (42 U.S.C. 300j–9).

SOURCE: 44 FR 10292, Feb. 16, 1979, unless otherwise noted.

§ 25.1 Introduction.

This part sets forth minimum requirements and suggested program elements for public participation in activities under the Clean Water Act (Pub. L. 95–217), the Resource Conservation and Recovery Act (Pub. L. 94–580), and the Safe Drinking Water Act (Pub. L. 93–523). The applicability of the requirements of this part is as follows:

(a) Basic requirements and suggested program elements for public information, public notification, and public consultation are set forth in § 25.4. These requirements are intended to foster public awareness and open processes of government decisionmaking. They are applicable to all covered activities and programs described in § 25.2(a).

(b) Requirements and suggested program elements which govern the structure of particular public participation mechanisms (for example, advisory groups and responsiveness summaries) are set forth in §§ 25.5, 25.6, 25.7, and 25.8. This part does not mandate the use of these public participation mechanisms. It does, however, set requirements which those responsible for implementing the mechanisms must follow if the mechanisms are required elsewhere in this chapter.

(c) Requirements which apply to Federal financial assistance programs (grants and cooperative agreements) under the three acts are set forth in §§ 25.10 and 25.12(a).

(d) Requirements for public involvement which apply to specific activities are set forth in § 25.9 (Permit enforcement), § 25.10 (Rulemaking), and § 25.12 (Assuring compliance with requirements).

§ 25.2 Scope.

(a) The activities under the three Acts which are covered by this part are:

(1) EPA rulemaking, except non-policy rulemaking (for example publication of funding allotments under statutory formulas); and State rulemaking under the Clean Water Act and Resource Conservation and Recovery Act;

(2) EPA issuance and modification of permits, and enforcement of permits as delineated by § 25.9;

(3) Development by EPA of major informational materials, such as citizen guides or handbooks, which are expected to be used over several years and which are intended to be widely distributed to the public;

(4) Development by EPA of strategy and policy guidance memoranda when a Deputy Assistant Administrator determines it to be appropriate;

(5) Development and implementation of plans, programs, standards, construction, and other activities supported with EPA financial assistance (grants and cooperative agreements) to State, interstate, regional and local agencies (herein after referred to as ''State, interstate, and substate agencies'');

(6) The process by which EPA makes a determination regarding approval of State administration of the Construction Grants program in lieu of Federal administration; and the administration of the Construction Grants Program by the State after EPA approval;

(7) The process by which EPA makes a determination regarding approval of State administration of the following programs in lieu of Federal administration: The State Hazardous Waste Program; the NPDES Permit Program; the Dredge and Fill Permit Program; and the Underground Injection Control Program;

(8) Other activities which the Assistant Administrator for Water and Waste Management, the Assistant Administrator for Enforcement, or any EPA Regional Administrator deems appropriate in view of the Agency's responsibility to involve the public in significant decisions.

(b) Activities which are not covered by this part, except as otherwise provided under (a)(8) or (c) of this section, are activities under Parts 33 (Subagreements), 39 (Loan Guarantees for Construction of Treatment Works), 40 (Research and Development Grants), 45 (Training Grants and

Manpower Forecasting) and 46 (Fellowships) of this chapter.

(c) Some programs covered by these regulations contain further provisions concerning public participation. These are found elsewhere in this chapter in provisions which apply to the program of interest. Regulations which govern the use and release of public information are set forth in part 2 of this chapter.

(d) Specific provisions of court orders which conflict with requirements of this part, such as court-established timetables, shall take precedence over the provisions in this part.

(e) Where the State undertakes functions in the construction grants program, the State shall be responsible for meeting these requirements for public participation, and any applicable public participation requirements found elsewhere in this chapter, to the same extent as EPA.

(f) Where the State undertakes functions in those programs specifically cited in § 25.2(a)(7), the State shall be responsible for meeting the requirements for public participation included in the applicable regulations governing those State programs. The requirements for public participation in State Hazardous Waste Programs, Dredge and Fill Permit programs, Underground Injection Control programs and NPDES permit programs are found in part 123 of this chapter. These regulations embody the substantive requirements of this part.

(g) These regulations apply to the activities of all agencies receiving EPA financial assistance which is awarded after [the effective date of final regulations], and to all other covered activities of EPA, State, interstate, and substate agencies which occur after that date. These regulations will apply to ongoing grants or other covered activities upon any significant change in the activity (for example, upon a significant proposed increase in project scope of a construction grant). Parts 105 (Public Participation in Water Pollution Control) and 249 (Public Participation in Solid Waste Management) will no longer appear in the Code of Federal Regulations; however, they will remain applicable, in uncodified form, to grants awarded prior to the effective date of this part and to all other ongoing activities.

§ 25.3 Policy and objectives.

(a) EPA, State, interstate, and substate agencies carrying out activities described in § 25.2(a) shall provide for, encourage, and assist the participation of the public. The term, ''the public'' in the broadest sense means the people as a whole, the general populace. There are a number of identifiable ''segments of the public'' which may have a particular interest in a given program or decision. Interested and affected segments of the public may be affected directly by a decision, either beneficially or adversely; they may be affected indirectly; or they may have some other concern about the decision. In addition to private citizens, the public may include, among others, representatives of consumer, environmental, and minority associations; trade, industrial, agricultural, and labor organizations; public health, scientific, and professional societies; civic associations; public officials; and governmental and educational associations.

(b) Public participation is that part of the decision-making process through which responsible officials become aware of public attitudes by providing ample opportunity for interested and affected parties to communicate their views. Public participation includes providing access to the decision-making process, seeking input from and conducting dialogue with the public, assimilating public viewpoints and preferences, and demonstrating that those viewpoints and preferences have been considered by the decision-making official. Disagreement on significant issues is to be expected among government agencies and the diverse groups interested in and affected by public policy decisions. Public agencies should encourage full presentation of issues at an early stage so that they can be resolved and timely decisions can be made. In the course of this process, responsible officials should make special efforts to encourage and assist participation by citizens representing themselves and by others whose resources and access to decision-making may be relatively limited.

(c) The following are the objectives of EPA, State, interstate, and substate agencies in carrying out activities covered by this part:

(1) To assure that the public has the opportunity to understand official programs and proposed actions, and that the government fully considers the public's concerns;

(2) To assure that the government does not make any significant decision on any activity covered by this part without consulting interested and affected segments of the public;

(3) To assure that government action is as responsive as possible to public concerns;

(4) To encourage public involvement in implementing environmental laws;

(5) To keep the public informed about significant issues and proposed project or program changes as they arise;

(6) To foster a spirit of openness and mutual trust among EPA, States, substate agencies and the public; and

(7) To use all feasible means to create opportunities for public participation, and to stimulate and support participation.

§ 25.4 Information, notification, and consultation responsibilities.

(a) *General.* EPA, State, interstate, and substate agencies shall conduct a continuing program for public information and participation in the development and implementation of activities covered by this part. This program shall meet the following requirements:

(b) *Information and assistance requirements.* (1) Providing information to the public is a necessary prerequisite to meaningful, active public involvement. Agencies shall design informational activities to encourage and facilitate the public's participation in all significant decisions covered by § 25.2(a), particularly where alternative courses of action are proposed.

(2) Each agency shall provide the public with continuing policy, program, and technical information and assistance beginning at the earliest practicable time. Informational materials shall highlight significant issues that will be the subject of decision-making. Whenever possible, consistent with applicable statutory requirements, the social, economic, and environmental consequences of proposed decisions shall be clearly stated in such material. Each agency shall identify segments of the public likely to be affected by agency decisions and should consider targeting informational materials toward them (in addition to the materials directed toward the general public). Lengthy documents and complex technical materials that relate to significant decisions should be summarized for public and media uses. Fact sheets, news releases, newsletters, and other similar publications may be used to provide notice that materials are available and to facilitate public understanding of more complex documents, but shall not be a substitute for public access to the full documents.

(3) Each agency shall provide one or more central collections of reports, studies, plans, and other documents relating to controversial issues or significant decisions in a convenient location or locations, for example, in public libraries. Examples of such documents are catalogs of documents available from the agency, grant applications, fact sheets on permits and permit applications, permits, effluent discharge information, and compliance schedule reports. Copying facilities at reasonable cost should be available at the depositories.

(4) Whenever possible, agencies shall provide copies of documents of interest to the public free of charge. Charges for copies should not exceed prevailing commercial copying costs. EPA requirements governing charges for information and documents provided to the public in response to requests made under the Freedom of Information Act are set forth in part 2 of this chapter. Consistent with the objectives of § 25.3(b), agencies may reserve their supply of free copies for private citizens and others whose resources are limited.

(5) Each agency shall develop and maintain a list of persons and organizations who have expressed an interest in or may, by the nature of their purposes, activities or members, be affected by or have an interest in any covered activity. Generally, this list will be most useful where subdivided by area of interest or geographic area. Whenever possible, the list should include representatives of the several categories of interests listed under § 25.3(a). Those on the list, or relevant portions if the list is subdivided, shall receive timely and periodic notification of the availability of materials under § 25.4(b)(2).

(c) *Public notification.* Each agency shall notify interested and affected parties, including appropriate portions of the list required by paragraph (b)(5) of this section, and the media in advance of times at which major decisions not covered by notice requirements for public meetings or public hearings are being considered. Generally, notices should include the timetable in which a decision will be reached, the issues under consideration, any alternative courses of action or tentative determinations which the agency has made, a brief listing of the applicable laws or regulations, the location where relevant documents may be reviewed or obtained, identification of any associated public participation opportunities such as workshops or meetings, the name of an individual to contact for additional information, and any other appropriate information. All advance notifications under this paragraph must be provided far enough in advance of agency action to permit time for public response; generally this should not be less than 30 days.

(d) *Public consultation.* For the purposes of this part, ''public consultation'' means an exchange of views between governmental agencies and interested or affected persons and organizations in order to meet the objectives set forth in § 25.3. Requirements for three common forms of public consultation (public hearings, public meetings, and advisory groups) are set forth in §§ 25.5, 25.6, and 25.7. Other less formal consultation mechanisms may include but are not limited to review groups, ad hoc committees, task forces, workshops, seminars and informal personal communications with individuals and groups. Public consultation must be preceded by timely distribution of information and must occur sufficiently in advance of decision-making to allow the agency to assimilate public views into agency action. EPA, State, interstate, and substate agencies shall provide for early and continuing public consultation in any significant action covered by this part. Merely conferring with the public after an agency decision does not meet this requirement. In addition to holding hear-

ings and meetings as specifically required in this chapter, a hearing or meeting shall be held if EPA, the State, interstate, or substate agency determines that there is significant public interest or that a hearing or meeting would be useful.

(e) *Public information concerning legal proceedings.* EPA, State, interstate, and substate agencies shall provide full and open information on legal proceedings to the extent not inconsistent with court requirements, and where such disclosure would not prejudice the conduct of the litigation. EPA actions with regard to affording opportunities for public comment before the Department of Justice consents to a proposed judgment in an action to enjoin discharges of pollutants into the environment shall be consistent with the Statement of Policy issued by the Department of Justice (see Title 28, CFR, Chapter 1, § 50.7).

§ 25.5 Public hearings.

(a) *Applicability.* Any non-adjudicatory public hearing, whether mandatory or discretionary, under the three Acts shall meet the following minimum requirements. These requirements are subordinate to any more stringent requirements found elsewhere in this chapter or otherwise imposed by EPA, State, interstate, or substate agencies. Procedures developed for adjudicatory hearings required by this chapter shall be consistent with the public participation objectives of this part, to the extent practicable.

(b) *Notice.* A notice of each hearing shall be well publicized, and shall also be mailed to the appropriate portions of the list of interested and affected parties required by § 25.4(b)(5). Except as otherwise specifically provided elsewhere in this chapter, these actions must occur at least 45 days prior to the date of the hearing. However, where EPA determines that there are no substantial documents which must be reviewed for effective hearing participation and that there are no complex or controversial matters to be addressed by the hearing, the notice requirement may be reduced to no less than 30 days. EPA may further reduce or waive the hearing notice requirement in emergency situations where EPA determines that there is an imminent danger to public health. To the extent not duplicative, the agency holding the hearing shall also provide informal notice to all interested persons or organizations that request it. The notice shall identify the matters to be discussed at the hearing and shall include or be accompanied by a discussion of the agency's tentative determination on major issues (if any), information on the availability of a bibliography of relevant materials (if deemed appropriate), and procedures for obtaining further information. Reports, documents and data relevant to the discussion at the public hearing shall be available to the public at least 30 days before the hearing. Earlier availability of materials relevant to the hearing will further assist public participation and is encouraged where possible.

(c) *Locations and time.* Hearings must be held at times and places which, to the maximum extent feasible, facilitate attendance by the public. Accessibility of public transportation, and use of evening and weekend hearings, should be considered. In the case of actions with Statewide interest, holding more than one hearing should be considered.

(d) *Scheduling presentations.* The agency holding the hearing shall schedule witnesses in advance, when necessary, to ensure maximum participation and allotment of adequate time for all speakers. However, the agency shall reserve some time for unscheduled testimony and may consider reserving blocks of time for major categories of witnesses.

(e) *Conduct of hearing.* The agency holding the hearing shall inform the audience of the issues involved in the decision to be made, the considerations the agency will take into account, the agency's tentative determinations (if any), and the information which is particularly solicited from the public. The agency should consider allowing a question and answer period. Procedures shall not unduly inhibit free expression of views (for example, by onerous written statement requirements or qualification of witnesses beyond minimum identification).

(f) *Record.* The agency holding the hearing shall prepare a transcript, recording or other complete record of public hearing proceedings and make it available at no more than cost to anyone who requests it. A copy of the record shall be available for public review.

§ 25.6 Public meetings.

Public meetings are any assemblies or gathering, (such as conferences, informational sessions, seminars, workshops, or other activities) which the responsible agency intends to be open to anyone wishing to attend. Public meetings are less formal than public hearings. They do not require formal presentations, scheduling of presentations and a record of proceedings. The requirements of § 25.5 (b) and (c) are applicable to public meetings, except that the agency holding the meeting may reduce the notice to not less than 30 days if there is good reason that longer notice cannot be provided.

§ 25.7 Advisory groups.

(a) *Applicability.* The requirements of this section on advisory groups shall be met whenever provisions of this chapter require use of an advisory group by State, interstate, or substate agen-

cies involved in activities supported by EPA financial assistance under any of the three Acts.

(b) *Role.* Primary responsibility for decision-making in environmental programs is vested by law in the elected and appointed officials who serve on public bodies and agencies at various levels of government. However, all segments of the public must have the opportunity to participate in environmental quality planning. Accordingly, where EPA identifies a need for continued attention of an informed core group of citizens in relation to activities conducted with EPA financial assistance, program regulations elsewhere in this chapter will require an advisory group to be appointed by the financially assisted agency. Such advisory groups will not be the sole mechanism for public participation, but will complement other mechanisms. They are intended to assist elected or appointed officials with final decision-making responsibility by making recommendations to such officials on important issues. In addition, advisory groups should foster a constructive interchange among the various interests present on the group and enhance the prospect of community acceptance of agency action.

(c) *Membership.* (1) The agency receiving financial assistance shall assure that the advisory group reflects a balance of interests in the affected area. In order to meet this requirement, the assisted agency shall take positive action, in accordance with paragraph (c)(3) of this section, to establish an advisory group which consists of substantially equivalent proportions of the following four groups:

(i) *Private citizens.* No person may be included in this portion of the advisory group who is likely to incur a financial gain or loss greater than that of an average homeowner, taxpayer or consumer as a result of any action likely to be taken by the assisted agency.

(ii) *Representatives of public interest groups.* A ''public interest group'' is an organization which reflects a general civic, social, recreational, environmental or public health perspective in the area and which does not directly reflect the economic interests of its membership.

(iii) Public officials.

(iv) Citizens or representatives of organizations with substantial economic interests in the plan or project.

(2) Generally, where the activity has a particular geographic focus, the advisory group shall be made up of persons who are residents of that geographic area.

(3) In order to meet the advisory group membership requirements of paragraph (c)(1) of this section, the assisted agency shall:

(i) Identify public interest groups, economic interests, and public officials who are interested in or affected by the assisted activity.

(ii) Make active efforts to inform citizens in the affected area, and the persons or groups identified under paragraph (c)(3)(i) of this section, of this opportunity for participation on the advisory group. This may include such actions as placing notices or announcements in the newspapers or other media, mailing written notices to interested parties, contacting organizations or individuals directly, requesting organizations to notify their members through meetings, newsletters, or other means.

(iii) Where the membership composition set forth in paragraph (c)(1) of this section is not met after the above actions, the assisted agency shall identify the causative problems and make additional efforts to overcome such problems. For example, the agency should make personal contact with prospective participants to invite their participation.

(iv) Where problems in meeting the membership composition arise, the agency should request advice and assistance from EPA.

(d) The assisted agency shall record the names and mailing addresses of each member of the advisory group, with the attributes of each in relation to the membership requirements set forth in paragraph (c)(1) of this section, provide a copy to EPA, and make the list available to the public. In the event that the membership requirements set forth in paragraph (c)(1) of this section are not met, the assisted agency shall append to the list a description of its efforts to comply with those requirements and an explanation of the problems which prevented compliance. EPA shall review the agency's efforts to comply and approve the advisory group composition or, if the agency's efforts were inadequate, require additional actions to achieve the required membership composition.

(e) *Responsibilities of the assisted agency.* (1) The assisted agency shall designate a staff contact who will be responsible for day-to-day coordination among the advisory group, the agency, and any agency contractors or consultants. The financial assistance agreement shall include a budget item for this staff contact. Where substantial portions of the assisted agency's responsibilities will be met under contract, the agency shall require a similar designation, and budget specification, of its contractor. In the latter event, the assisted agency does not have to designate a separate staff contact on its own staff, if the Regional Administrator determines that the contractor's designation will result in adequate coordination. The staff contact shall be located in the project area.

(2) The assisted agency has such responsibilities as providing the advisory group with information,

identifying issues for the advisory group's consideration, consulting with the advisory group throughout the project, requesting the advisory group's recommendations prior to major decisions, transmitting advisory group recommendations to decision-making officials, and making written responses to any formal recommendation by the advisory group. The agency shall make any such written responses available to the public. To the maximum extent feasible, the assisted agency shall involve the advisory group in the development of the public participation program.

(3) The assisted agency shall identify professional and clerical staff time which the advisory group may depend upon for assistance, and provide the advisory group with an operating budget which may be used for technical assistance and other purposes agreed upon between the advisory group and the agency.

(4) The assisted agency shall establish a system to make costs of reasonable out-of-pocket expenses of advisory group participation available to group members. Time away from work need not be reimbursed; however, assisted agencies are encouraged to schedule meetings at times and places which will not require members to leave their jobs to attend.

(f) *Advisory group responsibilities and duties.* The advisory group may select its own chairperson, adopt its own rules of order, and schedule and conduct its own meetings. Advisory group meetings shall be announced well in advance and shall be open to the public. At all meetings, the advisory group shall provide opportunity for public comment. Any minutes of advisory group meetings and recommendations to the assisted agency shall be available to the public. The advisory group should monitor the progress of the project and become familiar with issues relevant to project development. In the event the assisted agency and the advisory group agree that the advisory group will assume public participation responsibilities, the group should undertake those responsibilities promptly. The advisory group should make written recommendations directly to the assisted agency and to responsible decision-making officials on major decisions (including approval of the public participation program) and respond to any requests from the agency or decision-making officials for recommendations. The advisory group should remain aware of community attitudes and responses to issues as they arise. As part of this effort, the advisory group may, within the limitations of available resources, conduct public participation activities in conjunction with the assisted agency; solicit outside advice; and establish, in conjunction with the assisted agency, subcommittees, ad hoc groups, or task forces to investigate and develop recommendations on particular issues as they arise. The advisory group should undertake its responsibilities fully and promptly in accordance with the policies and requirements of this part. Nothing shall preclude the right of the advisory group from requesting EPA to perform an evaluation of the assisted agency's compliance with the requirements of this part.

(g) *Training and assistance.* EPA will promptly provide appropriate written guidance and project information to the newly formed advisory group and may provide advice and assistance to the group throughout the life of the project. EPA will develop and, in conjunction with the State or assisted agency, carry out a program to provide a training session for the advisory group, and appropriate assisted agency representatives, promptly after the advisory group is formed. The assisted agency shall provide additional needed information or assistance to the advisory group.

§ 25.8 Responsiveness summaries.

Each agency which conducts any activities required under this part shall prepare a Responsiveness Summary at specific decision points as specified in program regulations or in the approved public participation work plan. Responsiveness Summaries are also required for rulemaking activities under § 25.10. Each Responsiveness Summary shall identify the public participation activity conducted; describe the matters on which the public was consulted; summarize the public's views, significant comments, criticisms and suggestions; and set forth the agency's specific responses in terms of modifications of the proposed action or an explanation for rejection of proposals made by the public. Responsiveness Summaries prepared by agencies receiving EPA financial assistance shall also include evaluations by the agency of the effectiveness of the public participation program. Assisted agencies shall request such evaluations from any advisory group and provide an opportunity for other participating members of the public to contribute to the evaluation. (In the case of programs with multiple responsiveness summary requirements, these analyses need only be prepared and submitted with the final summary required.) Responsiveness summaries shall be forwarded to the appropriate decision-making official and shall be made available to the public. Responsiveness Summaries shall be used as part of evaluations required under this part or elsewhere in this chapter.

§ 25.9 Permit enforcement.

Each agency administering a permit program shall develop internal procedures for receiving evidence submitted by citizens about permit violations and ensuring that it is properly considered. Public effort in reporting violations shall be encouraged, and the agency shall make available in-

formation on reporting procedures. The agency shall investigate alleged violations promptly.

§ 25.10 Rulemaking.

(a) EPA shall invite and consider written comments on proposed and interim regulations from any interested or affected persons and organizations. All such comments shall be part of the public record, and a copy of each comment shall be available for public inspection. EPA will maintain a docket of comments received and any Agency responses. Notices of proposed and interim rulemaking, as well as final rules and regulations, shall be distributed in accordance with § 25.4(c) to interested or affected persons promptly after publication. Each notice shall include information as to the availability of the full texts of rules and regulations (where these are not set forth in the notice itself) and places where copying facilities are available at reasonable cost to the public. Under Executive Order 12044 (March 23, 1978), further EPA guidance will be issued concerning public participation in EPA rulemaking. A Responsiveness Summary shall be published as part of the preamble to interim and final regulations. In addition to providing opportunity for written comments on proposed and interim regulations, EPA may choose to hold a public hearing.

(b) State rulemaking specified in § 25.2(a)(1) shall be in accord with the requirements of paragraph (a) of this section or with the State's administrative procedures act, if one exists. However, in the event of conflict between a provision of paragraph (a) of this section and a provision of a State's administrative procedures act, the State's law shall apply.

§ 25.11 Work elements in financial assistance agreements.

(a) This section is applicable to activities under § 25.2(a)(5) except as otherwise provided in parts 30 or 35.

(b) Each applicant for EPA financial assistance shall set forth in the application a public participation work plan or work element which reflects how public participation will be provided for, encouraged, and assisted in accordance with this part. This work plan or element shall cover the project period. At a minimum, the work plan or element shall include:

(1) Staff contacts and budget resources to be devoted to public participation by category;

(2) A proposed schedule for public participation activities to impact major decisions, including consultation points where responsiveness summaries will be prepared;

(3) An identification of consultation and information mechanisms to be used;

(4) The segments of the public targeted for involvement.

(c) All reasonable costs of public participation incurred by assisted agencies which are identified in an approved public participation work plan or element, or which are otherwise approved by EPA, shall be eligible for financial assistance.

(d) The work plan or element may be revised as necessary throughout the project period with approval of the Regional Administrator.

§ 25.12 Assuring compliance with public participation requirements.

(a) *Financial assistance programs*—(1) *Applications.* EPA shall review the public participation work plan (or, if no work plan is required by this chapter for the particular financial assistance agreement, the public participation element) included in the application to determine consistency with all policies and requirements of this part. No financial assistance shall be awarded unless EPA is satisfied that the public participation policies and requirements of this part and, any applicable public participation requirements found elsewhere in this chapter, will be met.

(2) *Compliance*—(i) *Evaluation.* EPA shall evaluate compliance with public participation requirements using the work plan, responsiveness summary, and other available information. EPA will judge the adequacy of the public participation effort in relation to the objectives and requirements of § 25.3 and § 25.4 and other applicable requirements. In conducting this evaluation, EPA may request additional information from the assisted agency, including records of hearings and meetings, and may invite public comment on the agency's performance. The evaluation will be undertaken as part of any mid-project review required in various programs under this chapter; where no such review is required the review shall be conducted at an approximate mid-point in continuing EPA oversight activity. EPA may, however, undertake such evaluation at any point in the project period, and will do so whenever it believes that an assisted agency may have failed to meet public participation requirements.

(ii) *Remedial actions.* Whenever EPA determines that an assisted agency has not fully met public participation requirements, EPA shall take actions which it deems appropriate to mitigate the adverse effects of the failure and assure that the failure is not repeated. For ongoing projects, that action shall include, at a minimum, imposing more stringent requirements on the assisted agency for the next budget period or other period of the project (including such actions as more specific output requirements and milestone schedules for output achievement; interim EPA review of public participation activities and materials prepared by

the agency, and phased release of funds based on compliance with milestone schedules.) EPA may terminate or suspend part or all financial assistance for non-compliance with public participation requirements, and may take any further actions that it determines to be appropriate in accordance with parts 30 and 35 of this chapter (see, in particular, §§ 30.340, Noncompliance and 30.615–3, Withholding of Payments, and subpart H of part 30, Modification, Suspension, and Termination).

(b) *State programs approved in lieu of Federal programs.* State compliance with applicable public participation requirements in programs specified in § 25.2(a) (6) and (7) and administered by approved States shall be monitored by EPA during the annual review of the State's program, and during any financial or program audit or review of these programs. EPA may withdraw an approved program from a State for failure to comply with applicable public participation requirements.

(c) *Other covered programs.* Assuring compliance with these public participation requirements for programs not covered by paragraphs (a) and (b) of this section is the responsibility of the Administrator of EPA. Citizens with information concerning alleged failures to comply with the public participation requirements should notify the Administrator. The Administrator will assure that instances of alleged non-compliance are promptly investigated and that corrective action is taken where necessary.

§ 25.13 Coordination and non-duplication.

The public participation activities and materials that are required under this part should be coordinated or combined with those of closely related programs or activities wherever this will enhance the economy, the effectiveness, or the timeliness of the effort; enhance the clarity of the issue; and not be detrimental to participation by the widest possible public. Hearings and meetings on the same matter may be held jointly by more than one agency where this does not conflict with the policy of this paragraph. Special efforts shall be made to coordinate public participation procedures under this part and applicable regulations elsewhere in this chapter with environmental assessment and analysis procedures under 40 CFR part 6. EPA encourages interstate agencies in particular to develop combined proceedings for the States concerned.

§ 25.14 Termination of reporting requirements.

All reporting requirements specifically established by this part will terminate on (5 years from date of publication) unless EPA acts to extend the requirements beyond that date.

PART 26—PROTECTION OF HUMAN SUBJECTS

AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

SOURCE: 56 FR 28012, 28022, June 18, 1991, unless otherwise noted.

§ 26.101 To what does this policy apply?

(a) Except as provided in paragraph (b) of this section, this policy applies to all research involving human subjects conducted, supported or otherwise subject to regulation by any federal department or agency which takes appropriate administrative action to make the policy applicable to such research. This includes research conducted by federal civilian employees or military personnel, except that each department or agency head may adopt such procedural modifications as may be appropriate from an administrative standpoint. It also includes research conducted, supported, or otherwise subject to regulation by the federal government outside the United States.

(1) Research that is conducted or supported by a federal department or agency, whether or not it is regulated as defined in § 26.102(e), must comply with all sections of this policy.

(2) Research that is neither conducted nor supported by a federal department or agency but is subject to regulation as defined in § 26.102(e) must be reviewed and approved, in compliance with § 26.101, § 26.102, and § 26.107 through § 26.117 of this policy, by an institutional review board (IRB) that operates in accordance with the pertinent requirements of this policy.

(b) Unless otherwise required by department or agency heads, research activities in which the only involvement of human subjects will be in one or more of the following categories are exempt from this policy:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (i) research on regular and special education instructional strategies, or (ii) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless:

(i) Information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (ii) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior that is not exempt under paragraph (b)(2) of this section, if:

(i) The human subjects are elected or appointed public officials or candidates for public office; or (ii) federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research, involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine:

(i) Public benefit or service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv)

possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (i) if wholesome foods without additives are consumed or (ii) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

(c) Department or agency heads retain final judgment as to whether a particular activity is covered by this policy.

(d) Department or agency heads may require that specific research activities or classes of research activities conducted, supported, or otherwise subject to regulation by the department or agency but not otherwise covered by this policy, comply with some or all of the requirements of this policy.

(e) Compliance with this policy requires compliance with pertinent federal laws or regulations which provide additional protections for human subjects.

(f) This policy does not affect any state or local laws or regulations which may otherwise be applicable and which provide additional protections for human subjects.

(g) This policy does not affect any foreign laws or regulations which may otherwise be applicable and which provide additional protections to human subjects of research.

(h) When research covered by this policy takes place in foreign countries, procedures normally followed in the foreign countries to protect human subjects may differ from those set forth in this policy. [An example is a foreign institution which complies with guidelines consistent with the World Medical Assembly Declaration (Declaration of Helsinki amended 1989) issued either by sovereign states or by an organization whose function for the protection of human research subjects is internationally recognized.] In these circumstances, if a department or agency head determines that the procedures prescribed by the institution afford protections that are at least equivalent to those provided in this policy, the department or agency head may approve the substitution of the foreign procedures in lieu of the procedural requirements provided in this policy. Except when otherwise required by statute, Executive Order, or the department or agency head, notices of these actions as they occur will be published in the FEDERAL REGISTER or will be otherwise published as provided in department or agency procedures.

(i) Unless otherwise required by law, department or agency heads may waive the applicability of some or all of the provisions of this policy to specific research activities or classes of research activities otherwise covered by this policy. Except when otherwise required by statute or Executive Order, the department or agency head shall forward advance notices of these actions to the Office for Protection from Research Risks, Department of Health and Human Services (HHS), and shall also publish them in the FEDERAL REGISTER or in such other manner as provided in department or agency procedures.[1]

[56 FR 28012, 28022, June 18, 1991, 56 FR 29756, June 28, 1991]

§ 26.102 Definitions.

(a) *Department or agency head* means the head of any federal department or agency and any other officer or employee of any department or agency to whom authority has been delegated.

(b) *Institution* means any public or private entity or agency (including federal, state, and other agencies).

(c) *Legally authorized representative* means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research.

(d) *Research* means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

(e) *Research subject to regulation*, and similar terms are intended to encompass those research activities for which a federal department or agency has specific responsibility for regulating as a research activity, (for example, Investigational New Drug requirements administered by the Food and

[1] Institutions with HHS-approved assurances on file will abide by provisions of title 45 CFR part 46 subparts A–D. Some of the other Departments and Agencies have incorporated all provisions of title 45 CFR part 46 into their policies and procedures as well. However, the exemptions at 45 CFR 46.101(b) do not apply to research involving prisoners, fetuses, pregnant women, or human in vitro fertilization, subparts B and C. The exemption at 45 CFR 46.101(b)(2), for research involving survey or interview procedures or observation of public behavior, does not apply to research with children, subpart D, except for research involving observations of public behavior when the investigator(s) do not participate in the activities being observed.

Drug Administration). It does not include research activities which are incidentally regulated by a federal department or agency solely as part of the department's or agency's broader responsibility to regulate certain types of activities whether research or non-research in nature (for example, Wage and Hour requirements administered by the Department of Labor).

(f) *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains

(1) Data through intervention or interaction with the individual, or

(2) Identifiable private information.

Intervention includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes. Interaction includes communication or interpersonal contact between investigator and subject. ''Private information'' includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

(g) *IRB* means an institutional review board established in accord with and for the purposes expressed in this policy.

(h) *IRB approval* means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and federal requirements.

(i) *Minimal risk* means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

(j) *Certification* means the official notification by the institution to the supporting department or agency, in accordance with the requirements of this policy, that a research project or activity involving human subjects has been reviewed and approved by an IRB in accordance with an approved assurance.

§ 26.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.

(a) Each institution engaged in research which is covered by this policy and which is conducted or supported by a federal department or agency shall provide written assurance satisfactory to the department or agency head that it will comply with the requirements set forth in this policy. In lieu of requiring submission of an assurance, individual department or agency heads shall accept the existence of a current assurance, appropriate for the research in question, on file with the Office for Protection from Research Risks, HHS, and approved for federalwide use by that office. When the existence of an HHS-approved assurance is accepted in lieu of requiring submission of an assurance, reports (except certification) required by this policy to be made to department and agency heads shall also be made to the Office for Protection from Research Risks, HHS.

(b) Departments and agencies will conduct or support research covered by this policy only if the institution has an assurance approved as provided in this section, and only if the institution has certified to the department or agency head that the research has been reviewed and approved by an IRB provided for in the assurance, and will be subject to continuing review by the IRB. Assurances applicable to federally supported or conducted research shall at a minimum include:

(1) A statement of principles governing the institution in the discharge of its responsibilities for protecting the rights and welfare of human subjects of research conducted at or sponsored by the institution, regardless of whether the research is subject to federal regulation. This may include an appropriate existing code, declaration, or statement of ethical principles, or a statement formulated by the institution itself. This requirement does not preempt provisions of this policy applicable to department- or agency-supported or regulated research and need not be applicable to any research exempted or waived under § 26.101 (b) or (i).

(2) Designation of one or more IRBs established in accordance with the requirements of this policy, and for which provisions are made for meeting space and sufficient staff to support the IRB's review and recordkeeping duties.

(3) A list of IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member's chief anticipated contributions to IRB deliberations; and any employment or other relationship between each member and the institution; for example: full-time employee, part-time employee, member of

governing panel or board, stockholder, paid or unpaid consultant. Changes in IRB membership shall be reported to the department or agency head, unless in accord with § 26.103(a) of this policy, the existence of an HHS-approved assurance is accepted. In this case, change in IRB membership shall be reported to the Office for Protection from Research Risks, HHS.

(4) Written procedures which the IRB will follow (i) for conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution; (ii) for determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review; and (iii) for ensuring prompt reporting to the IRB of proposed changes in a research activity, and for ensuring that such changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except when necessary to eliminate apparent immediate hazards to the subject.

(5) Written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the department or agency head of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy or the requirements or determinations of the IRB and (ii) any suspension or termination of IRB approval.

(c) The assurance shall be executed by an individual authorized to act for the institution and to assume on behalf of the institution the obligations imposed by this policy and shall be filed in such form and manner as the department or agency head prescribes.

(d) The department or agency head will evaluate all assurances submitted in accordance with this policy through such officers and employees of the department or agency and such experts or consultants engaged for this purpose as the department or agency head determines to be appropriate. The department or agency head's evaluation will take into consideration the adequacy of the proposed IRB in light of the anticipated scope of the institution's research activities and the types of subject populations likely to be involved, the appropriateness of the proposed initial and continuing review procedures in light of the probable risks, and the size and complexity of the institution.

(e) On the basis of this evaluation, the department or agency head may approve or disapprove the assurance, or enter into negotiations to develop an approvable one. The department or agency head may limit the period during which any particular approved assurance or class of approved assurances shall remain effective or otherwise condition or restrict approval.

(f) Certification is required when the research is supported by a federal department or agency and not otherwise exempted or waived under § 26.101 (b) or (i). An institution with an approved assurance shall certify that each application or proposal for research covered by the assurance and by § 26.103 of this Policy has been reviewed and approved by the IRB. Such certification must be submitted with the application or proposal or by such later date as may be prescribed by the department or agency to which the application or proposal is submitted. Under no condition shall research covered by § 26.103 of the Policy be supported prior to receipt of the certification that the research has been reviewed and approved by the IRB. Institutions without an approved assurance covering the research shall certify within 30 days after receipt of a request for such a certification from the department or agency, that the application or proposal has been approved by the IRB. If the certification is not submitted within these time limits, the application or proposal may be returned to the institution.

(Approved by the Office of Management and Budget under control number 9999–0020)

[56 FR 28012, 28022, June 18, 1991, 56 FR 29756, June 28, 1991]

§§ 26.104—26.106 [Reserved]

§ 26.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women, or handicapped or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

(b) Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

(d) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

(e) No IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

(f) An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of issues which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

§ 26.108 IRB functions and operations.

In order to fulfill the requirements of this policy each IRB shall:

(a) Follow written procedures in the same detail as described in § 26.103(b)(4) and, to the extent required by, § 26.103(b)(5).

(b) Except when an expedited review procedure is used (see § 26.110), review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting.

§ 26.109 IRB Review of Research.

(a) An IRB shall review and have authority to approve, require modifications in (to secure approval), or disapprove all research activities covered by this policy.

(b) An IRB shall require that information given to subjects as part of informed consent is in accordance with § 26.116. The IRB may require that information, in addition to that specifically mentioned in § 26.116, be given to the subjects when in the IRB's judgment the information would meaningfully add to the protection of the rights and welfare of subjects.

(c) An IRB shall require documentation of informed consent or may waive documentation in accordance with § 26.117.

(d) An IRB shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.

(e) An IRB shall conduct continuing review of research covered by this policy at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.

(Approved by the Office of Management and Budget under control number 9999–0020)

§ 26.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

(a) The Secretary, HHS, has established, and published as a Notice in the FEDERAL REGISTER, a list of categories of research that may be reviewed by the IRB through an expedited review procedure. The list will be amended, as appropriate after consultation with other departments and agencies, through periodic republication by the Secretary, HHS, in the FEDERAL REGISTER. A copy of the list is available from the Office for Protection from Research Risks, National Institutes of Health, HHS, Bethesda, Maryland 20892.

(b) An IRB may use the expedited review procedure to review either or both of the following:

(1) Some or all of the research appearing on the list and found by the reviewer(s) to involve no more than minimal risk,

(2) Minor changes in previously approved research during the period (of one year or less) for which approval is authorized.

Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the non-expedited procedure set forth in § 26.108(b).

(c) Each IRB which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

(d) The department or agency head may restrict, suspend, terminate, or choose not to authorize an institution's or IRB's use of the expedited review procedure.

§ 26.111 Criteria for IRB approval of research.

(a) In order to approve research covered by this policy the IRB shall determine that all of the following requirements are satisfied:

(1) Risks to subjects are minimized: (i) By using procedures which are consistent with sound research design and which do not unnecessarily expose subjects to risk, and (ii) whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (for example, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons.

(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with, and to the extent required by § 26.116.

(5) Informed consent will be appropriately documented, in accordance with, and to the extent required by § 26.117.

(6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

(7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

§ 26.112 Review by institution.

Research covered by this policy that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials of the institution. However, those officials may not approve the research if it has not been approved by an IRB.

§ 26.113 Suspension or termination of IRB approval of research.

An IRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the IRB's action and shall be reported promptly to the investigator, appropriate institutional officials, and the department or agency head.

(Approved by the Office of Management and Budget under control number 9999–0020)

§ 26.114 Cooperative research.

Cooperative research projects are those projects covered by this policy which involve more than one institution. In the conduct of cooperative research projects, each institution is responsible for safeguarding the rights and welfare of human subjects and for complying with this policy. With the approval of the department or agency head, an institution participating in a cooperative project may enter into a joint review arrangement, rely upon the review of another qualified IRB, or make similar arrangements for avoiding duplication of effort.

§ 26.115 IRB records.

(a) An institution, or when appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities, including the following:

(1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to subjects.

(2) Minutes of IRB meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the IRB; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.

(3) Records of continuing review activities.

(4) Copies of all correspondence between the IRB and the investigators.

(5) A list of IRB members in the same detail as described is § 26.103(b)(3).

(6) Written procedures for the IRB in the same detail as described in § 26.103(b)(4) and § 26.103(b)(5).

(7) Statements of significant new findings provided to subjects, as required by § 26.116(b)(5).

(b) The records required by this policy shall be retained for at least 3 years, and records relating to research which is conducted shall be retained for at least 3 years after completion of the research. All records shall be accessible for inspection and copying by authorized representatives of the department or agency at reasonable times and in a reasonable manner.

(Approved by the Office of Management and Budget under control number 9999–0020)

§ 26.116 General requirements for informed consent.

Except as provided elsewhere in this policy, no investigator may involve a human being as a subject in research covered by this policy unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution or its agents from liability for negligence.

(a) Basic elements of informed consent. Except as provided in paragraph (c) or (d) of this section, in seeking informed consent the following information shall be provided to each subject:

(1) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental;

(2) A description of any reasonably foreseeable risks or discomforts to the subject;

(3) A description of any benefits to the subject or to others which may reasonably be expected from the research;

(4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;

(5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;

(6) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;

(7) An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject; and

(8) A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

(b) Additional elements of informed consent. When appropriate, one or more of the following elements of information shall also be provided to each subject:

(1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable;

(2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;

(3) Any additional costs to the subject that may result from participation in the research;

(4) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;

(5) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject; and

(6) The approximate number of subjects involved in the study.

(c) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth above, or waive the requirement to obtain informed consent provided the IRB finds and documents that:

(1) The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine: (i) Public benefit of service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs; and

(2) The research could not practicably be carried out without the waiver or alteration.

(d) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth

in this section, or waive the requirements to obtain informed consent provided the IRB finds and documents that:

(1) The research involves no more than minimal risk to the subjects;

(2) The waiver or alteration will not adversely affect the rights and welfare of the subjects;

(3) The research could not practicably be carried out without the waiver or alteration; and

(4) Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

(e) The informed consent requirements in this policy are not intended to preempt any applicable federal, state, or local laws which require additional information to be disclosed in order for informed consent to be legally effective.

(f) Nothing in this policy is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable federal, state, or local law.

(Approved by the Office of Management and Budget under control number 9999–0020)

§ 26.117 Documentation of informed consent.

(a) Except as provided in paragraph (c) of this section, informed consent shall be documented by the use of a written consent form approved by the IRB and signed by the subject or the subject's legally authorized representative. A copy shall be given to the person signing the form.

(b) Except as provided in paragraph (c) of this section, the consent form may be either of the following:

(1) A written consent document that embodies the elements of informed consent required by § 26.116. This form may be read to the subject or the subject's legally authorized representative, but in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed; or

(2) A short form written consent document stating that the elements of informed consent required by § 26.116 have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the IRB shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the representative, in addition to a copy of the short form.

(c) An IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:

(1) That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or

(2) That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context.

In cases in which the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research.

(Approved by the Office of Management and Budget under control number 9999–0020)

§ 26.118 Applications and proposals lacking definite plans for involvement of human subjects.

Certain types of applications for grants, cooperative agreements, or contracts are submitted to departments or agencies with the knowledge that subjects may be involved within the period of support, but definite plans would not normally be set forth in the application or proposal. These include activities such as institutional type grants when selection of specific projects is the institution's responsibility; research training grants in which the activities involving subjects remain to be selected; and projects in which human subjects' involvement will depend upon completion of instruments, prior animal studies, or purification of compounds. These applications need not be reviewed by an IRB before an award may be made. However, except for research exempted or waived under § 26.101 (b) or (i), no human subjects may be involved in any project supported by these awards until the project has been reviewed and approved by the IRB, as provided in this policy, and certification submitted, by the institution, to the department or agency.

§ 26.119 Research undertaken without the intention of involving human subjects.

In the event research is undertaken without the intention of involving human subjects, but it is later proposed to involve human subjects in the research, the research shall first be reviewed and approved by an IRB, as provided in this policy, a certification submitted, by the institution, to the department or agency, and final approval given to the proposed change by the department or agency.

§ 26.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.

The department or agency head will evaluate all applications and proposals involving human subjects submitted to the department or agency through such officers and employees of the department or agency and such experts and consultants as the department or agency head determines to be appropriate. This evaluation will take into consideration the risks to the subjects, the adequacy of protection against these risks, the potential benefits of the research to the subjects and others, and the importance of the knowledge gained or to be gained.

(b) On the basis of this evaluation, the department or agency head may approve or disapprove the application or proposal, or enter into negotiations to develop an approvable one.

§ 26.121 [Reserved]

§ 26.122 Use of Federal funds.

Federal funds administered by a department or agency may not be expended for research involving human subjects unless the requirements of this policy have been satisfied.

§ 26.123 Early termination of research support: Evaluation of applications and proposals.

(a) The department or agency head may require that department or agency support for any project be terminated or suspended in the manner prescribed in applicable program requirements, when the department or agency head finds an institution has materially failed to comply with the terms of this policy.

(b) In making decisions about supporting or approving applications or proposals covered by this policy the department or agency head may take into account, in addition to all other eligibility requirements and program criteria, factors such as whether the applicant has been subject to a termination or suspension under paragarph (a) of this section and whether the applicant or the person or persons who would direct or has have directed the scientific and technical aspects of an activity has have, in the judgment of the department or agency head, materially failed to discharge responsibility for the protection of the rights and welfare of human subjects (whether or not the research was subject to federal regulation).

§ 26.124 Conditions.

With respect to any research project or any class of research projects the department or agency head may impose additional conditions prior to or at the time of approval when in the judgment of the department or agency head additional conditions are necessary for the protection of human subjects.

PART 27—PROGRAM FRAUD CIVIL REMEDIES

AUTHORITY: 31 U.S.C. 3801–3812; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note; Pub. L. 104–134, 110 Stat. 1321, 31 U.S.C. 3701 note.

SOURCE: 53 FR 15182, Apr. 27, 1988, unless otherwise noted.

§ 27.1 Basis and purpose.

(a) *Basis.* This part implements the Program Fraud Civil Remedies Act of 1986, Public Law No. 99–509, sections 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This part (1) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to the Environmental Protection Agency, and (2) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 27.2 Definitions.

Administrative Law Judge means an administrative law judge in the Authority appointed pursuant to 5 U.S.C. 3105 or detailed to the Authority pursuant to 5 U.S.C. 3344.

Administrator means the Administrator of the United States Environmental Protection Agency.

Authority means the United States Environmental Protection Agency.

Benefit means, in the context of ''statement,'' anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

Claim means any request, demand, or submission—

(a) Made to the Authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(b) Made to a recipient of property, services, or money from the Authority or to a party to a contract with the Authority—

(1) For property or services if the United States—

(i) Provided such property or services;

(ii) Provided any portion of the funds for the purchase of such property or services; or

(iii) Will reimburse such recipient or party for the purchase of such property or services; or

(2) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(i) Provided any portion of the money requested or demanded; or

(ii) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(c) Made to the Authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

Complaint means the administrative complaint served by the reviewing official on the defendant under § 27.7.

Defendant means any person alleged in a complaint under § 27.7 to be liable for a civil penalty or assessment under § 27.3.

Environmental Appeals Board means the Board within the Agency described in § 1.25 of this title.

Government means the United States Government.

Hearing Clerk means the Hearing Clerk, A–110, United States Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Individual means a natural person.

Initial decision means the written decision of the presiding officer required by § 27.10 or § 27.37, and includes a revised initial decision issued following a remand or a motion for reconsideration.

Investigating official means the Inspector General of the United States Environmental Protection Agency or an officer or employee of the Office of Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Knows or has reason to know means that a person, with respect to a claim or statement—

(a) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(b) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(c) Acts in reckless disregard of the truth or falsity of the claim or statement.

Makes, wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, *making* or *made* shall likewise include the corresponding forms of such terms.

Person means any individual, partnership, corporation, association, or private organization, and includes the plural of those terms.

Presiding officer means the administrative law judge designated by the Chief administrative law judge to serve as presiding officer.

Representative means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico, or other representative who must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

Reviewing official means the General Counsel of the Authority or his designee who is—

(a) Not subject to supervision by, or required to report to, the investigating official;

(b) Not employed in the organizational unit of the Authority in which the investigating official is employed; and

(c) Serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

Statement means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(a) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(b) With respect to (including relating to eligibility for)—

(1) A contract with, or a bid or proposal for a contract with; or

(2) A grant, loan, or benefit from,

the Authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5326, Feb. 13, 1992]

§ 27.3 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes, or is supported by, any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,500 [1] for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

[1] As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321).

(3) A claim shall be considered made to the Authority, recipient, or party when such claim is actually made to an an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section, shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, factitious, or fraudulent; or

(B) Is false, factitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains, or is accompanied by, an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,500 [2] for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the Authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such Authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

[53 FR 15182, Apr. 27, 1988, as amended at 61 FR 69366, Dec. 31, 1996]

§ 27.4 Investigation.

(a) If the investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to defer or postpone a report or referral to the reviewing official to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 27.5 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 27.4(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 27.3 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 27.7.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 27.3 of this part;

[2] As adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321).

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

§ 27.6 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 27.7 only if—

(1) The Department of Justice approves the issuance of a complaint in written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 27.3(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in paragraph (b) of this section), the amount of money or the value of property or services demanded or requested in violation of § 27.3(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (*e.g.*, grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person, claims that are unrelated or were not submitted simultaneously, regardless of the amount of money, or the value of property or services, demanded or requested.

§ 27.7 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 27.8.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statuory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer to request a hearing, including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal as provided in § 27.10.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 27.8 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure. Service is complete upon receipt.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual serving the complaint by delivery;

(2) A United States Postal Service return receipt card acknowledging receipt; or

(3) Written acknowledgment of receipt by the defendant or his or her representative.

§ 27.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

(c) If the defendant is unable to file an answer meeting the requirements of paragraph (b) of this section within the time provided, the defendant may, before the expiration of 30 days from service of the complaint, file with the reviewing official a general answer denying liability and requesting a hearing, and a request for an extension of time within which to file an answer meeting requirements of paragraph (b) of this section. The reviewing official shall file promptly with the hearing clerk the complaint, the general answer denying liability, and the request for an extension of time as provided in § 27.11. Upon assignment to a presiding officer, the presiding officer may, for good cause shown, grant the defendant up to 30 additional days within which to file an answer meeting the requirements of paragraph (b) of this section.

§ 27.10 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 27.9(a), the reviewing official may file the complaint with the hearing clerk as provided in § 27.11.

(b) Upon assignment of the complaint to a presiding officer, the presiding officer shall promptly serve on defendant in the manner prescribed in § 27.8, a notice that an initial decision will be issued under this section.

(c) The presiding officer shall assume the facts alleged in the complaint to be true, and, if such facts establish liability under § 27.3, the presiding officer shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under paragraph (c) of this section, and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the presiding officer's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the presiding officer shall withdraw the initial decision in paragraph (c) of this section, if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the presiding officer denying a defendant's motion under paragraph (e) of this section, is not subject to reconsideration under § 27.38.

(h) The defendant may appeal to the Environmental Appeals Board the decision denying a motion to reopen by filing a notice of appeal within 15 days after the presiding officer denies the section. The timely filing of a notice of appeal shall stay the initial decision the Environmental Appeals Board decides the issue.

(i) If the defendant files a timely notice of appeal, the presiding officer shall forward the record of the proceeding to the Environmental Appeals Board.

(j) The Environmental Appeals Board shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the presiding officer.

(k) If the Environmental Appeals Board decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the Environmental Appeals Board shall remand the case to the presiding officer with instructions to grant the defendant an opportunity to answer.

(l) If the Environmental Appeals Board decides that the defendant's failure to file a timely answer is not excused, the Environmental Appeals Board shall reinstate the initial decision of the presiding officer, which shall become final and binding upon the parties 30 days after the Environmental Appeals Board issues such decision.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5326, Feb. 13, 1992]

§ 27.11 Referral of complaint and answer to the presiding officer.

(a) Upon receipt of an answer, the reviewing official shall file the complaint and answer with the hearing clerk.

(b) The hearing clerk shall forward the complaint and answer to the Chief administrative law judge who shall assign himself or herself or another administrative law judge as presiding officer. The presiding officer shall then obtain the complaint and answer from the Chief administrative law judge and notify the parties of his or her assignment.

§ 27.12 Notice of hearing.

(a) When the presiding officer obtains the complaint and answer, the presiding officer shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 27.8. At the same time, the presiding officer shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The date, time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the presiding officer deems appropriate.

(c) The presiding officer shall issue the notice of hearing at least twenty (20) days prior to the date set for the hearing.

§ 27.13 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the Authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 27.14 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the Authority who takes part in investigating, preparing, or presenting a particular case, may not, in such case or a factually related case—

(1) Participate in the hearing as the presiding officer;

(2) Participate or advise in the initial decision or the review of the initial decision by the Environmental Appeals Board, except as a witness or representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) Neither the presiding officer nor the members of the Environmental Appeals Board shall be responsible to, or subject to, the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in paragraph (a) of this section, the representative for the Government may be employed anywhere in the authority, including in the offices of either the investigating official or the reviewing official.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5326, Feb. 13, 1992]

§ 27.15 Ex parte contacts.

No party or person (except employees of the presiding officer's office) shall communicate in any way with the presiding officer on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine question concerning administrative functions or procedures.

§ 27.16 Disqualification of the reviewing official or presiding officer.

(a) A reviewing official or presiding officer in a particular case may disqualify himself or herself at any time.

(b) A party may file a motion for disqualification of a reviewing official or presiding officer with the hearing clerk. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed within 15 days of the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the presiding officer shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f) of this section.

(f)(1) If the presiding officer determines that the reviewing official is disqualified because the reviewing official could not have made an impartial determination pursuant to § 27.5(a), the presiding officer shall dismiss the complaint without prejudice.

(2) If the presiding officer disqualifies himself or herself, the case shall be reassigned promptly to another presiding officer.

(3) If the presiding officer denies a motion to disqualify, the Environmental Appeals Board may determine the matter only as part of its review of the initial decision upon appeal, if any.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5326, Feb. 13, 1992]

§ 27.17 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the presiding officer;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral arguments at the hearing as permitted by the presiding officer; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 27.18 Authority of the presiding officer.

(a) The presiding officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The presiding officer has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the presiding officer under this part.

(c) The presiding officer does not have the authority to find Federal statutes or regulations invalid.

§ 27.19 Prehearing conferences.

(a) The presiding officer may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the presiding officer shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The presiding officer may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations and admissions of fact as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The presiding officer may issue an order containing all matters agreed upon by the parties or ordered by the presiding officer at a prehearing conference.

§ 27.20 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 27.4(b) are based, unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 27.5 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed following the filing of an answer pursuant to § 27.9.

§ 27.21 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 27.22 and 27.23, the term ''documents'' includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the presiding officer. The presiding officer shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion which shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 27.24.

(3) The presiding officer may grant a motion for discovery only if he finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

(5) The presiding officer may grant discovery subject to a protective order under § 27.24.

(e) *Depositions.* (1) If a motion for deposition is granted, the presiding officer shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 27.8.

(3) The deponent may file a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 27.22 Exchange of witness lists, statements, and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the presiding officer, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 27.33(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the presiding officer, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the presiding officer shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the presiding officer finds good cause for the failure or that there is not prejudice to the objecting party.

(c) Unless another party objects within the time set by the presiding officer, documents exchanged in accordance with paragraph (a) of this section shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 27.23 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the presiding officer issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the presiding officer for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 27.8. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 27.24 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by a party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the presiding officer;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the presiding officer;

(8) That a trade secret or other confidential research, development, or commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

§ 27.25 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the Authority, a check for witness fees and mileage need not accompany the subpoena.

§ 27.26 Form, filing and service of papers.

(a) *Form.* (1) Documents filed with the hearing clerk shall include an original and two copies.

(2) The first page of every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the hearing clerk, and a designation of the paper (*e.g.,* motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of, the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the hearing clerk shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document, other than those required to be served as prescribed in § 27.8, shall be made by delivering a copy or by placing a copy of the document in the United States mail, postage prepaid and addressed, to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 27.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) When a document has been served or issued by placing it in the mail, an additional five days will be added to the time permitted for any response.

§ 27.28 Motions.

(a) Any application to the presiding officer for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with hearing clerk and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The presiding officer may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the presiding officer, any party may file a response to such motion.

(d) The presiding officer may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The presiding officer shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 27.29 Sanctions.

(a) The presiding officer may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the presiding officer may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the presiding officer may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The presiding officer may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 27.30 The hearing and burden of proof.

(a) The presiding officer shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 27.3 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The Authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the presiding officer for good cause shown.

§ 27.31 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the presiding officer and the Environmental Appeals Board, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the presiding officer and the Environmental Appeals Board in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.,* the false, fictitious, or fraudulent claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the defendant's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the defendant has engaged in a pattern of the same or similar misconduct;

(9) Whether the defendant attempted to conceal the misconduct;

(10) The degree to which the defendant has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the defendant, the extent to which the defendant's practices fostered or attempted to preclude such misconduct;

(12) Whether the defendant cooperated in or obstructed an investigation of the misconduct;

(13) Whether the defendant assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the defendant's sophistication with respect to it, including the extent of the defendant's prior participation in the program or in similar transactions;

(15) Whether the defendant has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the Government of the United States or of a State, directly or indirectly; and

(16) The need to deter the defendant and others from engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the presiding officer or the Environmental Appeals Board from considering any other factors that in any given case may mitigate or aggravate the offense for which penalties and assessments are imposed.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5327, Feb. 13, 1992]

§ 27.32 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the presiding officer.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the presiding officer.

§ 27.33 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the presiding officer, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 27.22(a).

(c) The presiding officer shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

(1) Make the interrrogation and presentation effective for the ascertainment of the truth,

(2) Avoid needless consumption of time, and

(3) Protect witnesses from harassment or undue embarrassment.

(d) The presiding officer shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) At the discretion of the presiding officer, a witness may be cross-examined on matters relevant to the proceeding without regard to the scope of his or her direct examination. To the extent permitted by the presiding officer, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the presiding officer shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or empoyee of the party appearing for the entity *pro se* or designated by the party's representative; or

(3) an individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 27.34 Evidence.

(a) The presiding officer shall determine the admissibility of evidence.

(b) Except as provided in this part, the presiding officer shall not be bound by the Federal Rules of Evidence. However, the presiding officer may apply the Federal Rules of Evidence when appropriate, *e.g.,* to exclude unreliable evidence.

(c) The presiding officer shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The presiding officer shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the presiding officer pursuant to § 27.24.

§ 27.35 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the hearing clerk at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the presiding officer and the Environmental Appeals Board.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the presiding officer pursuant to § 27.24.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5327, Feb. 13, 1992]

27.36 Post-hearing briefs.

The presiding officer may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The presiding officer

shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The presiding officer may permit the parties to file responsive briefs.

§ 27.37 Initial decision.

(a) The presiding officer shall issue an initial decision based only on the record. The decision shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 27.3;

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case, such as those described in § 27.31.

(c) The presiding officer shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and responsive briefs (if permitted) has expired. The presiding officer shall at the same time serve all parties with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration or a notice of appeal. If the presiding officer fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the presiding officer is timely appealed to the Environmental Appeals Board, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Environmental Appeals Board and shall be final and binding on the parties 30 days after it is issued by the presiding officer.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5327, Feb. 13, 1992]

§ 27.38 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the presiding officer.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The presiding officer may dispose of a motion for reconsideration by denying it or by issuing a revised intial decision.

(f) If the presiding officer denies a motion for reconsideration, the initial decision shall constitute the final decision of the Environmental Appeals Board and shall be final and binding on the parties 30 days after the presiding officer denies the motion, unless the initial decision is timely appealed to the Environmental Appeals Board in accordance with § 27.39.

(g) If the presiding officer issued a revised initial decision, that decision shall constitute the final decision of the Environmental Appeals Board and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Environmental Appeals Board in accordance with § 27.39.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5327, Feb. 13, 1992]

§ 27.39 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Environmental Appeals Board by filing a notice of appeal with the hearing clerk in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the presiding officer issues an initial decision. However, if another party files a motion for reconsideration under § 27.38, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the presiding officer denies the motion or issues a revised initial decision, whichever applies.

(3) The Environmental Appeals Board may extend the initial 30 day period for an additional 30 days if the defendant files a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant filed a timely notice of appeal, and the time for filing motions for reconsideration under § 27.38 has expired, the presiding officer shall forward the record of the proceeding to the Environmental Appeals Board.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Environmental Appeals Board.

(g) There is no right to appeal any interlocutory ruling by the presiding officer.

(h) In reviewing the initial decision, the Environmental Appeals Board shall not consider any objection that was not raised before the presiding officer unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Environmental Appeals Board that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Environmental Appeals Board shall remand the matter to the presiding officer for consideration of such additional evidence.

(j) The Environmental Appeals Board may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the presiding officer in any initial decision.

(k) The Environmental Appeals Board shall promptly serve each party to the appeal with a copy of the decision of the Environmental Appeals Board and a statement describing the right of any person determined to be liable for a civil penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Environmental Appeals Board serves the defendant with a copy of the Environmental Appeals Board's decision, a determination that a defendant is liable under § 27.3 is final and is not subject to judicial review.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5327, Feb. 13, 1992]

§ 27.40 Stay ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Environmental Appeals Board a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the Environmental Appeals Board shall stay the process immediately. The Environmental Appeals Board may order the process resumed only upon receipt of the written authorization of the Attorney General.

[57 FR 5327, Feb. 13, 1992]

§ 27.41 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Environmental Appeals Board.

(b) No administrative stay is available following a final decision of the Environmental Appeals Board.

[57 FR 5327, Feb. 13, 1992]

§ 27.42 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Environmental Appeals Board imposing penalties or assessments under this part and specifies the procedures for such review.

[57 FR 5327, Feb. 13, 1992]

§ 27.43 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 27.44 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under §§ 27.42 or 27.43, or any amount agreed upon in a compromise or settlement under § 27.46, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this section against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 27.45 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 27.46 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint

and before the date on which the presiding officer issues an initial decision.

(c) The Environmental Appeals Board has exclusive authority to compromise or settle a case under this part at any time after the date on which the presiding officer issues an initial decision, except during the pendency of any review under § 27.42 or during the pendency of any action to collect penalties and assessments under § 27.43.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 27.42 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the Environmental Appeals Board, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Environmental Appeals Board or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

[45 FR 24363, Apr. 9, 1980, as amended at 57 FR 5327, Feb. 13, 1992]

§ 27.47 Limitations.

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 27.8 within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 27.10(b) shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

§ 27.48 Delegated functions.

The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under this part. An appeal directed to the Administrator, rather than the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or motion filed under this part to the Administrator for decision when the Environmental Appeals Board, in its descretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator. If a case or motion is referred to the Administrator by the Environmental Appeals Board, the Administrator may consult with any EPA employee concerning the matter, provided such consultation does not violate the ex parte contacts restrictions set forth in §§ 27.14 and 27.15 of this part.

[57 FR 5328, Feb. 13, 1992]

PART 29—INTERGOVERNMENTAL REVIEW OF ENVIRONMENTAL PROTECTION AGENCY PROGRAMS AND ACTIVITIES

Sec.

AUTHORITY: E.O. 12372, July 14, 1982 (47 FR 30959), as amended Apr. 8, 1983 (48 FR 15887); sec. 401 of the Intergovernmental Cooperation Act of 1968 as amended (31 U.S.C. 6506); sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

SOURCE: 48 FR 29300, June 24, 1983, unless otherwise noted.

§ 29.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' issued July 14, 1982, and amended, on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968, as amended and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of the Environmental Protection Agency (EPA) and are not intended to create any right or benefit enforceable at law by a party against EPA or its officers.

§ 29.2 What definitions apply to these regulations?

Administrator means the Administrator of the U.S. Environmental Protection Agency or an official or employee of the Agency acting for the Administrator under a delegation of authority.

Agency means the U.S. Environmental Protection Agency (EPA). *Order* means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled ''Intergovernmental Review of Federal Programs.''

States means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 29.3 What programs and activities of the Environmental Protection Agency are subject to these regulations?

The Administrator publishes in the FEDERAL REGISTER a list of the EPA programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 29.4 What are the Administrator's general responsibilities under the Order?

(a) The Administrator provides opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, the EPA.

(b) If a State adopts a process under the Order to review and coordinate proposed Federal financial assistance and direct Federal development, the Administrator to the extent permitted by law:

(1) Uses the State process to determine official views of State and local elected officials;

(2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the State process;

(4) Allows the States to simplify and consolidate existing federally required State plan submissions;

(5) Where State planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of State plans for federally required State plans;

(6) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports State and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials,

§ 29.5 What is the Administrator's obligation with respect to Federal interagency coordination?

The Administrator, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and EPA regarding programs and activities covered under these regulations.

§ 29.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A State may select any program or activity published in the FEDERAL REGISTER in accordance with § 29.3 of this part for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.

(b) Each State that adopts a process shall notify the Administrator of EPA programs and activities selected for that process.

(c) A State may notify the Administrator of changes in its selections at any time. For each change, the State shall submit an assurance to the Administrator that the State has consulted with local elected officials regarding the change. EPA may establish deadlines by which States are required to inform the Administrator of changes in their program selections.

(d) The Administrator uses a State's process as soon as feasible, depending on individual programs and activities, after the Administrator is notified of its selections.

§ 29.7 How does the Administrator communicate with State and local officials concerning the EPA programs and activities?

(a) For those programs and activities covered by a State process under § 29.6, the Administrator, to the extent permitted by law:

(1) Uses the State process to determine views of State and local elected officials; and

(2) Communicates with State and local elected officials, through the State process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Administrator provides notice of proposed Federal financial assistance or direct Federal development to directly affected State, areawide, regional, and local entities in a State if:

(1) The State has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the State process.

This notice may be published in the FEDERAL REGISTER or issued by other means which EPA, in its discretion deems appropriate.

§ 29.8 How does the Administrator provide States an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) Except in unusual circumstances, the Administrator gives State processes or directly affected State, areawide, regional and local officials and entities:

(1) At least 30 days from the date established by the Administrator to comment on proposed Federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Administrator to comment on proposed direct Federal development or Federal financial assistance, other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Environmental Protection Agency have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Development Act shall allow areawide agencies a 60-day opportunity for review and comment.

§ 29.9 How does the Administrator receive and respond to comments?

(a) The Administrator follows the procedures in § 29.10 if:

(1) A State office or official is designated to act as a single point of contact between a State process and all Federal agencies, and

(2) That office or official transmits a State process recommendation for a program selected under § 29.6.

(b) The single point of contact is not obligated to transmit comments from State, areawide, re-

gional or local officials and entities where there is no State process recommendation. However, if a State process recommendation is transmitted by a single point of contact, all comments from State, area-wide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a State process recommendation, the State, areawide, regional and local officials and entities may submit comments directly either to the applicant or to EPA.

(d) If a program or activity is not selected for a State process, the State, areawide, regional and local officials and entities may submit comments either directly to the applicant or to EPA. In addition, if a State process recommendation for a nonselected program or activity is transmitted to EPA by the single point of contact, the Administrator follows the procedures of § 29.10 of this part.

(e) The Administrator *considers* comments which do not constitute a State process recommendation submitted under these regulations and for which the Administrator is not required to apply the procedures of § 29.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the Agency by a commenting party.

§ 29.10 How does the Administrator make efforts to accommodate intergovernmental concerns?

(a) If a State process provides a State process recommendation to the Agency through the State's single point of contact, the Administrator either:

(1) Accepts the recommendation;

(2) reaches a mutually agreeable solution with the State process; or

(3) Provides the single point of contact with such written explanation of the decision, as the Administrator, in his or her discretion, deems appropriate. The Administrator may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that:

(1) EPA will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Administrator has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 29.11 What are the Administrator's obligations in interstate situations?

(a) The Administrator is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in States which have adopted a process and selected an EPA program or activity.

(3) Making efforts to identify and notify the affected State, areawide, regional, and local officials and entities in those States that do not adopt a process under the Order or do not select an EPA program or activity;

(4) Responding in accordance with § 29.10 of this part to a recommendation received from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with EPA were delegated.

(b) The Administrator uses the procedures in § 29.10 if a State process provides a State process recommendation to the Agency through a single point of contact.

§ 29.12 How may a State simplify, consolidate, or substitute federally required State plans?

(a) As used in this section:

(1) *Simplify* means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.

(2) *Consolidate* means that a State may meet statutory and regulatory requirements by combining two or more plans into one document and that the State can select the format, submission date, and planning period for the consolidated plan.

(3) *Substitute* means that a State may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a State may decide to try to simplify, consolidate, or substitute federally required State plans without prior approval by the Administrator.

(c) The Administrator reviews each State plan that a State has simplified, consolidated, or substituted and accepts the plan only if its contents meet Federal requirements.

§ 29.13 May the Administrator waive any provision of these regulations?

In an emergency, the Administrator may waive any provision of these regulations.

APPENDIX G -- PUBLIC PARTICIPATION REGULATIONS IN 40 CFR 124 SUBPART A

PART 100—[RESERVED]

PART 104—PUBLIC HEARINGS ON EFFLUENT STANDARDS FOR TOXIC POLLUTANTS

AUTHORITY: Secs. 501 and 307(a) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, Pub. L. 92–500, 86 Stat. 816).

SOURCE: 41 FR 17902, Apr. 29, 1976, unless otherwise noted.

§ 104.1 Applicability.

This part shall be applicable to hearings required by statute to be held in connection with the establishment of toxic pollutant effluent standards under section 307(a) of the Act.

§ 104.2 Definitions.

As used in this part, the term:

(a) *Act* means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*, Public Law 92–500, 86 Stat. 816.

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

(c) *Agency* means the Environmental Protection Agency.

(d) *Hearing Clerk* means the Hearing Clerk, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(e) *Party* means the Environmental Protection Agency as the proponent of an effluent standard or standards, and any person who files an objection pursuant to § 104.3 hereof.

(f) *Person* means an individual, corporation, partnership, association, state, municipality or other political subdivision of a state, or any interstate body.

(g) *Effluent standard* means any effluent standard or limitation, which may include a prohibition of any discharge, established or proposed to be established for any toxic pollutant under section 307(a) of the Act.

(h) *Presiding Officer* means the Chief Administrative Law Judge of the Agency or a person designated by the Chief Administrative Law Judge or by the Administrator to preside at a hearing under this part, in accordance with § 104.6 hereof.

§ 104.3 Notice of hearing; objection; public comment.

(a) *Notice of hearing.* Whenever the Administrator publishes any proposed effluent standard, he shall simultaneously publish a notice of a public hearing to be held within thirty days following the date of publication of the proposed standard. Any person who has any objection to a proposed standard may file with the hearing clerk a concise statement of any such objection. No person may participate in the hearing on the proposed toxic pollutant effluent standards unless the hearing clerk has received within 25 days of the publication of the notice of the proposed standards a statement of objection as herein described. In exceptional circumstances and for good cause shown the Presiding Officer may allow an objection to be filed after the filing deadline prescribed in the preceding sentence, which good cause must include at a minimum lack of actual notice on the part of the objector or any representative of such objector of the proposed standards despite his exercise of due diligence, so long as such later filing will not cause undue delay in the proceedings or prejudice to any of the parties.

(b) *Objections.* Any objection to a proposed standard which is filed pursuant to paragraph (a) of this section shall meet the following requirements:

(1) It shall be filed in triplicate with the hearing clerk within the time prescribed in paragraph (a) of this section;

(2) It shall state concisely and with particularity each portion of the proposed standard to which objection is taken; to the greatest extent feasible it shall state the basis for such objection;

(3) To the greatest extent feasible it shall (i) state specifically the objector's proposed modification to any such standard proposed by the Agency to which objection is taken, (ii) set forth the reasons why such modification is sought, and (iii) identify and describe the scientific or other basis for such proposed modification, including reference to any pertinent scientific data or authority in support thereof.

Any objection which fails to comply with the foregoing provisions shall not be accepted for filing.

The Presiding Officer shall promptly notify any person whose objection is not accepted for any of the reasons set forth in this section, stating the reasons therefor.

(c) *Data in support of objection or modification.* In the event that the time prescribed for filing objections pursuant to paragraphs (a) and (b) of this section is insufficient to permit an objecting party to fully set forth with such objection the basis therefor together with the information and data specified in paragraph (b) (3) of this section, he may so state at the time of the filing of such objection, and file a more complete statement of such basis, information, and data (hereinafter referred to as ''supplemental data'') within the time prescribed by this paragraph (c). The supplemental data herein described shall be filed not later than 40 days following publication of the proposed effluent standards.

(d) *Public comment.* The notice required under paragraph (a) of this section shall also provide for the submission to the Agency of written comments on the proposed rulemaking by interested persons not filing objections pursuant to this section as hereinabove described, and hence not participating in the hearing as parties. The notice shall fix a time deadline for the submission of such comments which shall be not later than the date set for commencement of the hearing. Such comments shall be received in evidence at the commencement of the hearing. The Administrator in making any decision based upon the record shall take into account the unavailability of cross-examination in determining the weight to be accorded such comments.

(e) *Promulgation in absence of objection.* If no objection is filed pursuant to this section, then the Administrator shall promulgate the final standards on the basis of the Agency's statement of basis and purpose and any public comments received pursuant to paragraph (d) of this section.

§ 104.4 Statement of basis and purpose.

Whenever the Administrator publishes a proposed effluent standard, the notice thereof published in the FEDERAL REGISTER shall include a statement of the basis and purpose of the standard or a summary thereof. This statement shall include:

(a) The purpose of the proposed standard;

(b) An explanation of how the proposed standard was derived;

(c) Scientific and technical data and studies supporting the proposed standard or references thereto if the materials are published or otherwise readily available; and

(d) Such other information as may be reasonably required to set forth fully the basis of the standard.

Where the notice of the proposed rulemaking summarizes the full statement of basis and purpose, or incorporates documents by reference, the documents thus summarized or incorporated by reference shall thereupon be made available by the Agency for inspection and copying by any interested person.

§ 104.5 Docket and record.

Whenever the Administrator publishes a notice of hearing under this part, the hearing clerk shall promptly establish a docket for the hearing. The docket shall include all written objections filed by any party, any public comments received pursuant to § 104.3(d), a verbatim transcript of the hearing, the statement of basis and purpose required by § 104.4, and any supporting documents referred to therein, and other documents of exhibits that may be received in evidence or marked for identification by or at the direction of the Presiding Officer, or filed by any party in connection with the hearing. Copies of documents in the docket shall be available to any person upon payment to the Agency of such charges as the Agency may prescribe to cover the costs of duplication. The materials contained in the docket shall constitute the record.

§ 104.6 Designation of Presiding Officer.

The Chief Administrative Law Judge of the Agency may preside personally at any hearing under this part, or he may designate another Administrative Law Judge as Presiding Officer for the hearing. In the event of the unavailability of any such Administrative Law Judge, the Administrator may designate a Presiding Officer. No person who has any personal pecuniary interest in the outcome of a proceeding under this part, or who has participated in the development or enforcement of any standard or proposed standard at issue in a proceeding hereunder, shall serve as Presiding Officer in such proceeding.

§ 104.7 Powers of Presiding Officer.

The Presiding Officer shall have the duty to conduct a fair hearing within the time constraints imposed by section 307(a) of the Act. He shall take all necessary action to avoid delay and to maintain order. He shall have all powers necessary to these ends, including but not limited to the power to:

(a) Rule upon motions and requests;

(b) Change the time and place of the hearing, and adjourn the hearing from time to time or from place to place;

(c) Examine and cross-examine witnesses;

(d) Admit or exclude evidence; and

(e) Require any part or all of the evidence to be submitted in writing and by a certain date.

§ 104.8 Prehearing conferences.

Prehearing conferences are encouraged for the purposes of simplification of issues, identification and scheduling of evidence and witnesses, the establishment of an orderly framework for the proceedings, the expediting of the hearing, and such other purposes of a similar nature as may be appropriate.

(a) The Presiding Officer on his own motion may, and at the request of any party made within 20 days of the proposal of standards hereunder shall, direct all parties to appear at a specified time and place for an initial hearing session in the nature of a prehearing conference. Matters taken up at the conference may include, without limitation:

(1) Consideration and simplification of any issues of law or fact;

(2) Identification, advance submission, marking for identification, consideration of any objections to admission, and admission of documentary evidence;

(3) Possible stipulations of fact;

(4) The identification of each witness expected to be called by each party, and the nature and substance of his expected testimony;

(5) Scheduling of witnesses where practicable, and limitation of the number of witnesses where appropriate in order to avoid delay or repetition;

(6) If desirable, the segregation of the hearing into separate segments for different provisions of the proposed effluent standards and the establishment of separate service lists;

(7) Encouragement of objecting parties to agree upon and designate lead counsel for objectors with common interests so as to avoid repetitious questioning of witnesses.

(b) The Presiding Officer may, following a prehearing conference, issue an order setting forth the agreements reached by the parties or representatives, the schedule of witnesses, and a statement of issues for the hearing. In addition such order may direct the parties to file and serve copies of documents or materials, file and serve lists of witnesses which may include a short summary of the expected testimony of each and, in the case of an expert witness, his curriculum vitae, and may contain such other directions as may be appropriate to facilitate the proceedings.

§ 104.9 Admission of evidence.

(a) Where the Presiding Officer has directed identification of witnesses and production of documentation evidence by a certain date, the Presiding Officer may exclude any such evidence, or refuse to allow any witness to testify, when the witness was not identified or the document was not served by the time set by the Presiding Officer. Any such direction with respect to a party's case in chief shall not preclude the use of such evidence or testimony on rebuttal or response, or upon a showing satisfactory to the Presiding Officer that good cause existed for failure to serve testimony or a document or identify a witness by the time required. The Presiding Officer may require direct testimony to be in writing under oath and served by a certain date, and may exclude testimony not so served.

(b) At the first prehearing conference, or at another time before the beginning of the taking of oral testimony to be set by the Presiding Officer, the statement of basis and purpose, together with any publications or reference materials cited therein, except where excluded by stipulation, shall be received in evidence.

(c) The Presiding Officer may exclude evidence which is immaterial, irrelevant, unduly repetitious or cumulative, or would involve undue delay, or which, if hearsay, is not of the sort upon which responsible persons are accustomed to rely.

(d) If relevant and material evidence is contained in a report or document containing immaterial or irrelevant matter, such immaterial or irrelevant matter may be excluded.

(e) Whenever written testimony or a document or object is excluded from evidence by the Presiding Officer, it shall at the request of the proponent be marked for identification. Where oral testimony is permitted by the Presiding Officer, but the Presiding Officer excludes particular oral testimony, the party offering such testimony may make a brief offer of proof.

(f) Any relevant and material documentary evidence, including but not limited to affidavits, published articles, and official documents, regardless of the availability of the affiant or author for cross-examination, may be admitted in evidence, subject to the provisions of paragraphs (a), (c), and (d) of this section. The availability or nonavailability of cross-examination shall be considered as affecting the weight to be accorded such evidence in any decision based upon the record.

(g) Official notice may be taken by the Presiding Officer or the Administrator of any matter which could be judicially noticed in the United States District Courts, and of other facts within the specialized knowledge and experience of the Agency. Opposing parties shall be given adequate opportunity to show the contrary.

§ 104.10 Hearing procedures.

(a) Following the admission in evidence of the materials described in § 104.9(b), the Agency shall

have the right at the commencement of the hearing to supplement that evidence or to introduce additional relevant evidence. Thereafter the evidence of each objector shall be presented in support of its objection and any proposed modification. The Agency staff shall then be given an opportunity to rebut or respond to the objectors' presentation, including at its option the introduction of evidence which tends to support a standard or standards other than as set forth in the Agency's own initially proposed standards. In the event that evidence which tends to support such other standard or standards is offered and received in evidence, then the objectors may thereafter rebut or respond to any such new evidence.

(b) The burden of proof as to any modification of any standard proposed by the Agency shall be upon the party who advocates such modification to show that the proposed modification is justified based upon a preponderance of the evidence.

(c) Where necessary in order to prevent undue prolongation of the hearing, or to comply with time limitations set forth in the Act, the Presiding Officer may limit the number of witnesses who may testify, and the scope and extent of cross-examination.

(d) A verbatim transcript of the hearing shall be maintained and shall constitute a part of the record.

(e) If a party objects to the admission or rejection of any evidence or to any other ruling of the Presiding Officer during the hearing, he shall state briefly the grounds of such objection. With respect to any ruling on evidence, it shall not be necessary for any party to claim an exception in order to preserve any right of subsequent review.

(f) Any party may at any time withdraw his objection to a proposed effluent standard.

§ 104.11 Briefs and findings of fact.

At the conclusion of the hearing, the Presiding Officer shall set a schedule for the submission by the parties of briefs and proposed findings of fact and conclusions. In establishing the aforesaid time schedule, the Presiding Officer shall consider the time constraints placed upon the parties and the Administrator by the statutory deadlines.

§ 104.12 Certification of record.

As soon as possible after the hearing, the Presiding Officer shall transmit to the hearing clerk the transcript of the testimony and exhibits introduced in the hearing. The Presiding Officer shall attach to the original transcript his certificate stating that, to the best of his knowledge and belief, the transcript is a true transcript of the testimony given at the hearing except in such particulars as he shall specify, and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as he shall specify.

§ 104.13 Interlocutory and post-hearing review of rulings of the Presiding Officer; motions.

(a) The Presiding Officer may certify a ruling for interlocutory review by the Administrator where a party so requests and the Presiding Officer concludes that (1) the ruling from which review is sought involves an important question as to which there is substantial ground for difference of opinion, and (2) either (i) a subsequent reversal of his ruling would be likely to result in substantial delay or expense if left to the conclusion of the proceedings, or (ii) a ruling on the question by the Administrator would be of material assistance in expediting the hearing. The certificate shall be in writing and shall specify the material relevant to the ruling certified. If the Administrator determines that interlocutory review is not warranted, he may decline to consider the ruling which has been certified.

(b) Where the Presiding Officer declines to certify a ruling the party who had requested certification may apply to the Administrator for interlocutory review, or the Administrator may on his own motion direct that any matter be submitted to him for review, subject to the standards for review set forth in paragraph (a) of this section. An application for review shall be in writing and shall briefly state the grounds relied on. If the Administrator takes no action with respect to such application for interlocutory review within 15 days of its filing, such application shall be deemed to have been denied.

(c) Unless otherwise ordered by the Presiding Officer or the Administrator, the hearing shall continue pending consideration by the Administrator of any ruling or request for interlocutory review.

(d) Unless otherwise ordered by the Presiding Officer or the Administrator, briefs in response to any application for interlocutory review may be filed by any party within five days of the filing of the application for review.

(e) Failure to request or obtain interlocutory review does not waive the rights of any party to complain of a ruling following completion of the hearing. Within five days following the close of a hearing under this part, any party may apply to the Administrator for post-hearing review of any procedural ruling, or any ruling made by the Presiding Officer concerning the admission or exclusion of evidence to which timely objection was made. Within seven days following the filing of any such application any other party may file a brief in response thereto.

(f) If the Administrator on review under paragraph (e) of this section determines that evidence

was improperly excluded, he may order its admission without remand for further proceedings, or may remand with such instructions as he deems appropriate concerning cross-examination, or opportunity for any party to submit further evidence, with respect to such evidence as he directs should be admitted. In making his determination whether to remand, the Administrator shall consider whether the statutory time restraints permit a remand, and whether it would be constructive to allow cross-examination or further evidence with respect to the newly admitted evidence. If evidence is admitted without cross-examination, the Administrator shall consider the lack of opportunity for cross-examination in determining the weight to be given such evidence.

(g) Motions shall be brief, in writing, and may be filed at any time following the publication of the proposed effluent standards, unless otherwise ordered by the Presiding Officer or the Administrator. Unless otherwise ordered or provided in these rules, responses to motions may be filed within seven days of the actual filing of the motion with the hearing clerk.

§ 104.14 Tentative and final decision by the Administrator.

(a) As soon as practicable following the certification of the record and the filing by the parties of briefs and proposed findings of fact and conclusions under § 104.11, the Administrator, with such staff assistance as he deems necessary and appropriate, shall review the entire record and prepare and file a tentative decision based thereon. The tentative decision shall include findings of fact and conclusions, and shall be filed with the hearing clerk who shall at once transmit a copy thereof to each party who participated at the hearing, or his attorney or other representative.

(b) Upon filing of the tentative decision, the Administrator may allow a reasonable time for the parties to file with him any exceptions to the tenative decision, a brief in support of such exceptions containing appropriate references to the record, and any proposed changes in the tentative decision. Such materials shall, upon submission, become part of the record. As soon as practicable after the filing thereof the Administrator shall prepare and file a final decision, copies of which shall be transmitted to the parties or their representatives in the manner prescribed in paragraph (a) of this section.

(c) In the event that the Administrator determines that due and timely execution of his functions, including compliance with time limitations established by law, imperatively and unavoidably so requires, he may omit the preparation and filing of the tentative decision and related procedures set forth in paragraph (b) of this section, and shall instead prepare and file a final decision, copies of which shall be transmitted to the parties or their representatives in the manner prescribed in paragraph (a) of this section.

(d) Any decision rendered by the Administrator pursuant to this section shall include a statement of his findings and conclusions, and the reasons and basis therefor, and shall indicate the toxic pollutant effluent standard or standards which the Administrator is promulgating or intends to promulgate based thereon.

§ 104.15 Promulgation of standards.

Upon consideration of the record, at the time of his final decision the Administrator shall determine whether the proposed effluent standard or standards should be promulgated as proposed, or whether any modification thereof is justified based upon a proponderance of the evidence adduced at the hearing, regardless of whether or not such modification was actually proposed by any objecting party. If he determines that a modification is not justified, he shall promulgate the standard or standards as proposed. If he determines that a modification is justified, he shall promulgate a standard or standards as so modified.

§ 104.16 Filing and time.

(a) All documents or papers required or authorized by the foregoing provisions of this part including, but not limited to, motions, applications for review, and briefs, shall be filed in duplicate with the hearing clerk, except as otherwise expressly provided in these rules. Any document or paper so required or authorized to be filed with the hearing clerk, if it is filed during the course of the hearing, shall be also filed with the Presiding Officer. A copy of each document or paper filed by any party with the Presiding Officer, with the hearing clerk, or with the Administrator shall be served upon all other parties, except to the extent that the list of parties to be so served may be modified by order of the Presiding Officer, and each such document or paper shall be accompanied by a certificate of such service.

(b) A party may be represented in any proceeding under this part by an attorney or other authorized representative. When any document or paper is required under these rules to be served upon a party such service shall be made upon such attorney or other representative.

(c) Except where these rules or an order of the Presiding Officer require receipt of a document by a certain date, any document or paper required or authorized to be filed by this part shall be deemed to be filed when postmarked, or in the case of papers delivered other than by mail, when received by the hearing clerk.

(d) Sundays and legal holidays shall be included in computing the time allowed for the filing of any document or paper, provided, that when such time expires on a Sunday or legal holiday, such period shall be extended to include the next following business day.

PART 108—EMPLOYEE PROTECTION HEARINGS

Sec.

AUTHORITY: Sec. 507(e), Pub. L. 92–500, 86 Stat. 816 (33 U.S.C. 1251 et seq.).

SOURCE: 39 FR 15398, May 3, 1974, unless otherwise noted.

§ 108.1 Applicability.

This part shall be applicable to investigations and hearings required by section 507(e) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.* (Pub. L. 92–500).

§ 108.2 Definitions.

As used in this part, the term:

(a) *Act* means the Federal Water Pollution Control Act, as amended;

(b) *Effluent limitation* means any effluent limitation which is established as a condition of a permit issued or proposed to be issued by a State or by the Environmental Protection Agency pursuant to section 402 of the Act; any toxic or pretreatment effluent standard established under section 307 of the Act; any standard of performance established under section 306 of the Act; and any effluent limitation established under section 302, section 316, or section 318 of the Act.

(c) *Order* means any order issued by the Administrator under section 309 of the Act; any order issued by a State to secure compliance with a permit, or condition thereof, issued under a program approved pursuant to section 402 of the Act; or any order issued by a court in an action brought pursuant to section 309 or section 505 of the Act.

(d) *Party* means an employee filing a request under § 108.3, any employee similarly situated, the employer of any such employee, and the Regional Administrator or his designee.

(e) *Administrator* or *Regional Administrator* means the Administrator or a Regional Administrator of the Environmental Protection Agency.

§ 108.3 Request for investigation.

Any employee who is discharged or laid-off, threatened with discharge or lay-off, or otherwise discriminated against by any person because of the alleged results of any effluent limitation or order issued under the Act, or any representative of such employee, may submit a request for an investigation under this part to the Regional Administrator of the region in which such discrimination is alleged to have occurred.

§ 108.4 Investigation by Regional Administrator.

Upon receipt of any request meeting the requirements of § 108.3, the Regional Administrator shall conduct a full investigation of the matter, in order to determine whether the request may be related to an effluent limitation or order under the Act. Following the investigation, the Regional Administrator shall notify the employee requesting the investigation (or the employee's representative) and the employer of such employee, in writing, of his preliminary findings and conclusions. The employee, the representative of such employee, or the employer may within fifteen days following receipt of the preliminary findings and conclusions of the Regional Administrator request a hearing under this part. Upon receipt of such a request, the Regional Administrator, with the concurrence of the Chief Administrative Law Judge, shall publish notice of a hearing to be held not less than 30 days following the date of such publication where he determines that there are factual issues concerning the existence of the alleged discrimination or its relationship to an effluent limitation or order under the Act. The notice shall specify a date before which any party (or representative of such party) may submit a request to appear.

§ 108.5 Procedure.

Any hearing held pursuant to this part shall be of record and shall be conducted according to the requirements of 5 U.S.C. 554. The Administrative Law Judge shall conduct the hearing in an orderly and expeditious manner. By agreement of the parties, he may dismiss the hearing. The Administrative Law Judge, on his own motion, or at the request of any party, shall have the power to hold prehearing conferences, to issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. The Regional Administrator, and any party submitting a request pursuant to § 108.3 or § 108.4, or counsel or other representative of such party or the Regional Administrator, may appear and offer evidence at the hearing.

§ 108.6 Recommendations.

At the conclusion of any hearing under this part, the Administrative Law Judge shall, based on the record, issue tentative findings of fact and recommendations concerning the alleged discrimination, and shall submit such tentative findings and recommendations to the Administrator. The Administrator shall adopt or modify the findings and recommendations of the Administrative Law

Judge, and shall make copies of such findings and recommendations available to the complaining employee, the employer, and the public.

§ 108.7 Hearing before Administrator.

At his option, the Administrator may exercise any powers of an Administrative Law Judge with respect to hearings under this part.

PART 109—CRITERIA FOR STATE, LOCAL AND REGIONAL OIL REMOVAL CONTINGENCY PLANS

Sec.

AUTHORITY: Sec. 11(j)(1)(B), 84 Stat. 96, 33 U.S.C. 1161(j)(1)(B).

SOURCE: 36 FR 22485, Nov. 25, 1971, unless otherwise noted.

§ 109.1 Applicability.

The criteria in this part are provided to assist State, local and regional agencies in the development of oil removal contingency plans for the inland navigable waters of the United States and all areas other than the high seas, coastal and contiguous zone waters, coastal and Great Lakes ports and harbors and such other areas as may be agreed upon between the Environmental Protection Agency and the Department of Transportation in accordance with section 11(j)(1)(B) of the Federal Act, Executive Order No. 11548 dated July 20, 1970 (35 FR 11677) and § 306.2 of the National Oil and Hazardous Materials Pollution Contingency Plan (35 FR 8511).

§ 109.2 Definitions.

As used in these guidelines, the following terms shall have the meaning indicated below:

(a) *Oil* means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(b) *Discharge* includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(c) *Remove* or *removal* refers to the removal of the oil from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

(d) *Major disaster* means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, or other catastrophe in any part of the United States which, in the determination of the President, is or threatens to become of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of States and local governments and relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(e) *United States* means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(f) *Federal Act* means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1151, *et seq.*

§ 109.3 Purpose and scope.

The guidelines in this part establish minimum criteria for the development and implementation of State, local, and regional contingency plans by State and local governments in consultation with private interests to insure timely, efficient, coordinated and effective action to minimize damage resulting from oil discharges. Such plans will be directed toward the protection of the public health or welfare of the United States, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches. The development and implementation of such plans shall be consistent with the National Oil and Hazardous Materials Pollution Contingency Plan. State, local and regional oil removal contingency plans shall provide for the coordination of the total response to an oil discharge so that contingency organizations established thereunder can function independently, in conjunction with each other, or in conjunction with the National and Regional Response Teams established by the National Oil and Hazardous Materials Pollution Contingency Plan.

§ 109.4 Relationship to Federal response actions.

The National Oil and Hazardous Materials Pollution Contingency Plan provides that the Federal on-scene commander shall investigate all reported spills. If such investigation shows that appropriate action is being taken by either the discharger or non-Federal entities, the Federal on-scene commander shall monitor and provide advice or assistance, as required. If appropriate containment or cleanup action is not being taken by the discharger or non-Federal entities, the Federal on-scene commander will take control of the response activity in accordance with section 11(c)(1) of the Federal Act.

§ 109.5 Development and implementation criteria for State, local and regional oil removal contingency plans.

Criteria for the development and implementation of State, local and regional oil removal contingency plans are:

(a) Definition of the authorities, responsibilities and duties of all persons, organizations or agencies which are to be involved or could be involved in planning or directing oil removal operations, with particular care to clearly define the authorities, responsibilities and duties of State and local governmental agencies to avoid unnecessary duplication of contingency planning activities and to minimize the potential for conflict and confusion that could be generated in an emergency situation as a result of such duplications.

(b) Establishment of notification procedures for the purpose of early detection and timely notification of an oil discharge including:

(1) The identification of critical water use areas to facilitate the reporting of and response to oil discharges.

(2) A current list of names, telephone numbers and addresses of the responsible persons and alternates on call to receive notification of an oil discharge as well as the names, telephone numbers and addresses of the organizations and agencies to be notified when an oil discharge is discovered.

(3) Provisions for access to a reliable communications system for timely notification of an oil discharge and incorporation in the communications system of the capability for interconnection with the communications systems established under related oil removal contingency plans, particularly State and National plans.

(4) An established, prearranged procedure for requesting assistance during a major disaster or when the situation exceeds the response capability of the State, local or regional authority.

(c) Provisions to assure that full resource capability is known and can be committed during an oil discharge situation including:

(1) The identification and inventory of applicable equipment, materials and supplies which are available locally and regionally.

(2) An estimate of the equipment, materials and supplies which would be required to remove the maximum oil discharge to be anticipated.

(3) Development of agreements and arrangements in advance of an oil discharge for the acquisition of equipment, materials and supplies to be used in responding to such a discharge.

(d) Provisions for well defined and specific actions to be taken after discovery and notification of an oil discharge including:

(1) Specification of an oil discharge response operating team consisting of trained, prepared and available operating personnel.

(2) Predesignation of a properly qualified oil discharge response coordinator who is charged with the responsibility and delegated commensurate authority for directing and coordinating response operations and who knows how to request assistance from Federal authorities operating under existing national and regional contingency plans.

(3) A preplanned location for an oil discharge response operations center and a reliable communications system for directing the coordinated overall response operations.

(4) Provisions for varying degrees of response effort depending on the severity of the oil discharge.

(5) Specification of the order of priority in which the various water uses are to be protected where more than one water use may be adversely affected as a result of an oil discharge and where response operations may not be adequate to protect all uses.

(e) Specific and well defined procedures to facilitate recovery of damages and enforcement measures as provided for by State and local statutes and ordinances.

§ 109.6 Coordination.

For the purposes of coordination, the contingency plans of State and local governments should be developed and implemented in consultation with private interests. A copy of any oil removal contingency plan developed by State and local governments should be forwarded to the Council on Environmental Quality upon request to facilitate the coordination of these contingency plans with the National Oil and Hazardous Materials Pollution Contingency Plan.

PART 110—DISCHARGE OF OIL

Sec.

AUTHORITY: 33 U.S.C. 1321(b)(3) and (b)(4) and 1361(a); E.O. 11735, 38 FR 21243, 3 CFR Parts 1971–1975 Comp., p. 793.

SOURCE: 52 FR 10719, Apr. 2, 1987, unless otherwise noted.

§ 110.1 Definitions.

Terms not defined in this section have the same meaning given by the Section 311 of the Act. As used in this part, the following terms shall have the meaning indicated below:

Act means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*, also known as the Clean Water Act;

Administrator means the Administrator of the Environmental Protection Agency (EPA);

Applicable water quality standards means State water quality standards adopted by the State pursuant to section 303 of the Act or promulgated by EPA pursuant to that section;

MARPOL 73/78 means the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, Annex I, which regulates pollution from oil and which entered into force on October 2, 1983;

Navigable waters means the waters of the United States, including the territorial seas. The term includes:

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

(b) Interstate waters, including interstate wetlands;

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

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

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

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

(d) All impoundments of waters otherwise defined as navigable waters under this section;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this section, including adjacent wetlands; and

(f) Wetlands adjacent to waters identified in paragraphs (a) through (e) of this section: Provided, That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States;

Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

NPDES means National Pollutant Discharge Elimination System;

Sheen means an iridescent appearance on the surface of water;

Sludge means an aggregate of oil or oil and other matter of any kind in any form other than dredged spoil having a combined specific gravity equivalent to or greater than water;

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.

[52 FR 10719, Apr. 2, 1987, as amended at 58 FR 45039, Aug. 25, 1993; 61 FR 7421, Feb. 28, 1996]

§ 110.2 Applicability.

The regulations of this part apply to the discharge of oil prohibited by section 311(b)(3) of the Act.

[61 FR 7421, Feb. 28, 1996]

§ 110.3 Discharge of oil in such quantities as "may be harmful" pursuant to section 311(b)(4) of the Act.

For purposes of section 311(b)(4) of the Act, discharges of oil in such quantities that the Administrator has determined may be harmful to the public health or welfare or the environment of the United States include discharges of oil that:

(a) Violate applicable water quality standards; or

(b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited be-

neath the surface of the water or upon adjoining shorelines.

[61 FR 7421, Feb. 28, 1996]

§110.4 Dispersants.

Addition of dispersants or emulsifiers to oil to be discharged that would circumvent the provisions of this part is prohibited.

[52 FR 10719, Apr. 2, 1987. Redesignated at 61 FR 7421, Feb. 28, 1996]

§110.5 Discharges of oil not determined "as may be harmful" pursuant to Section 311(b)(3) of the Act.

Notwithstanding any other provisions of this part, the Administrator has not determined the following discharges of oil ''as may be harmful'' for purposes of section 311(b) of the Act:

(a) Discharges of oil from a properly functioning vessel engine (including an engine on a public vessel) and any discharges of such oil accumulated in the bilges of a vessel discharged in compliance with MARPOL 73/78, Annex I, as provided in 33 CFR part 151, subpart A;

(b) Other discharges of oil permitted under MARPOL 73/78, Annex I, as provided in 33 CFR part 151, subpart A; and

(c) Any discharge of oil explicitly permitted by the Administrator in connection with research, demonstration projects, or studies relating to the prevention, control, or abatement of oil pollution.

[61 FR 7421, Feb. 28, 1996]

§110.6 Notice.

Any person in charge of a vessel or of an onshore or offshore facility shall, as soon as he or she has knowledge of any discharge of oil from such vessel or facility in violation of section 311(b)(3) of the Act, immediately notify the National Response Center (NRC) (800–424–8802; in the Washington, DC metropolitan area, 202–426–2675). If direct reporting to the NRC is not practicable, reports may be made to the Coast Guard or EPA predesignated On-Scene Coordinator (OSC) for the geographic area where the discharge occurs. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or the predesignated OCS immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the person in charge of the vessel or onshore or offshore facility notifies the NRC as soon as possible. The reports shall be made in accordance with such procedures as the Secretary of Transportation may prescribe. The procedures for such notice are set forth in U.S. Coast Guard regulations, 33 CFR part 153, subpart B and in the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300, subpart E.

(Approved by the Office of Management and Budget under the control number 2050–0046)

[52 FR 10719, Apr. 2, 1987. Redesignated and amended at 61 FR 7421, Feb. 28, 1996; 61 FR 14032, Mar. 29, 1996]

PART 112—OIL POLLUTION PREVENTION

AUTHORITY: 33 U.S.C. 1321 and 1361; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

SOURCE: 38 FR 34165, Dec. 11, 1973, unless otherwise noted.

§ 112.1 General applicability.

(a) This part establishes procedures, methods and equipment and other requirements for equipment to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines.

(b) Except as provided in paragraph (d) of this section, this part applies to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil and oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines.

(c) As provided in section 313 (86 Stat. 875) departments, agencies, and instrumentalities of the Federal government are subject to these regulations to the same extent as any person, except for the provisions of § 112.6.

(d) This part does not apply to:

(1) Facilities, equipment or operations which are not subject to the jurisdiction of the Environmental Protection Agency, as follows:

(i) Onshore and offshore facilities, which, due to their location, could not reasonably be expected to discharge oil into or upon the navigable waters of the United States or adjoining shorelines. This determination shall be based solely upon a consideration of the geographical, locational aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.) and shall exclude consideration of manmade features such as dikes, equipment or other structures which may serve to restrain, hinder, contain, or otherwise prevent a discharge of oil from reaching navigable waters of the United States or adjoining shorelines; and

(ii) Equipment or operations of vessels or transportation-related onshore and offshore facilities which are subject to authority and control of the Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971, 36 FR 24000.

(2) Those facilities which, although otherwise subject to the jurisdiction of the Environmental Protection Agency, meet both of the following requirements:

(i) The underground buried storage capacity of the facility is 42,000 gallons or less of oil, and

(ii) The storage capacity, which is not buried, of the facility is 1,320 gallons or less of oil, provided no single container has a capacity in excess of 660 gallons.

(e) This part provides for the preparation and implementation of Spill Prevention Control and Countermeasure Plans prepared in accordance with § 112.7, designed to complement existing laws, regulations, rules, standards, policies and procedures pertaining to safety standards, fire prevention and pollution prevention rules, so as to form a comprehensive balanced Federal/State spill prevention program to minimize the potential for oil discharges. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State or local laws.

[38 FR 34165, Dec. 11, 1973, as amended at 41 FR 12657, Mar. 26, 1976]

§ 112.2 Definitions.

For the purposes of this part:

Adverse weather means the weather conditions that make it difficult for response equipment and

personnel to cleanup or remove spilled oil, and that will be considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include significant wave height as specified in Appendix E to this part, as appropriate, ice conditions, temperatures, weather-related visibility, and currents within the area in which the systems or equipment are intended to function.

Complex means a facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the Clean Water Act.

Contract or other approved means: (1) A written contractual agreement with an oil spill removal organization(s) that identifies and ensures the availability of the necessary personnel and equipment within appropriate response times; and/or

(2) A written certification by the owner or operator that the necessary personnel and equipment resources, owned or operated by the facility owner or operator, are available to respond to a discharge within appropriate response times; and/or

(3) Active membership in a local or regional oil spill removal organization(s) that has identified and ensures adequate access through such membership to necessary personnel and equipment to respond to a discharge within appropriate response times in the specified geographic areas; and/or

(4) Other specific arrangements approved by the Regional Administrator upon request of the owner or operator.

Discharge includes but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping. For purposes of this part, the term *discharge* shall not include any discharge of oil which is authorized by a permit issued pursuant to section 13 of the River and Harbor Act of 1899 (30 Stat. 1121, 33 U.S.C. 407), or sections 402 or 405 of the FWPCA Amendments of 1972 (86 Stat. 816 *et seq.*, 33 U.S.C. 1251 *et seq.*).

Fish and wildlife and sensitive environments means areas that may be identified by either their legal designation or by evaluations of Area Committees (for planning) or members of the Federal On-Scene Coordinator's spill response structure (during responses). These areas may include wetlands, National and State parks, critical habitats for endangered/threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, recreational areas, national forests, Federal and State lands that are research national areas, heritage program areas, land trust areas, and historical and archeological sites and parks. These areas may also include unique habitats such as: aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats.

Injury means a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge of oil, or exposure to a product of reactions resulting from a discharge of oil.

Maximum extent practicable means the limitations used to determine oil spill planning resources and response times for on-water recovery, shoreline protection, and cleanup for worst case discharges from onshore non- transportation-related facilities in adverse weather. It considers the planned capability to respond to a worst case discharge in adverse weather, as contained in a response plan that meets the requirements in § 112.20 or in a specific plan approved by the Regional Administrator.

The term *navigable waters* of the United States means *navigable waters* as defined in section 502(7) of the FWPCA, and includes:

(1) All navigable waters of the United States, as defined in judicial decisions prior to passage of the 1972 Amendments to the FWPCA (Pub. L. 92–500), and tributaries of such waters;

(2) Interstate waters;

(3) Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and

(4) Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Offshore facility means any facility of any kind located in, on, or under any of the navigable waters of the United States, which is not a transportation-related facility.

Oil means oil of any kind or in any form, including, but not limited to petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.

Oil Spill Removal Organization means an entity that provides oil spill response resources, and includes any for-profit or not-for-profit contractor, cooperative, or in-house response resources that have been established in a geographic area to provide required response resources.

Onshore facility means any facility of any kind located in, on, or under any land within the United States, other than submerged lands, which is not a transportation-related facility.

Owner or operator means any person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment.

Person includes an individual, firm, corporation, association, and a partnership.

Regional Administrator, means the Regional Administrator of the Environmental Protection Agency, or his designee, in and for the Region in which the facility is located.

Spill event means a discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in harmful quantities, as defined at 40 CFR part 110.

Transportation-related and *non-transportation-related* as applied to an onshore or offshore facility, are defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971, 36 FR 24080.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used as a means of transportation on water, other than a public vessel.

Worst case discharge for an onshore non-transportation-related facility means the largest foreseeable discharge in adverse weather conditions as determined using the worksheets in Appendix D to this part.

[38 FR 34165, Dec. 11, 1973, as amended at 58 FR 45039, Aug. 25, 1993; 59 FR 34097, July 1, 1994]

§ 112.3 Requirements for preparation and implementation of Spill Prevention Control and Countermeasure Plans.

(a) Owners or operators of onshore and offshore facilities in operation on or before the effective date of this part that have discharged or, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in 40 CFR part 110, into or upon the navigable waters of the United States or adjoining shorelines, shall prepare a Spill Prevention Control and Countermeasure Plan (hereinafter ''SPCC Plan''), in writing and in accordance with § 112.7. Except as provided for in paragraph (f) of this section, such SPCC Plan shall be prepared within six months after the effective date of this part and shall be fully implemented as soon as possible, but not later than one year after the effective date of this part.

(b) Owners or operators of onshore and offshore facilities that become operational after the effective date of this part, and that have discharged or could reasonably be expected to discharge oil in harmful quantities, as defined in 40 CFR part 110, into or upon the navigable waters of the United States or adjoining shorelines, shall prepare an SPCC Plan in accordance with § 112.7. Except as provided for in paragraph (f) of this section, such SPCC Plan shall be prepared within six months after the date such facility begins operations and shall be fully implemented as soon as possible, but not later than one year after such facility begins operations.

(c) Owners or operators of onshore and offshore mobile or portable facilities, such as onshore drilling or workover rigs, barge mounted offshore drilling or workover rigs, and portable fueling facilities shall prepare and implement an SPCC Plan as required by paragraphs (a), (b) and (d) of this section. The owners or operators of such facility need not prepare a new SPCC Plan each time the facility is moved to a new site. The SPCC Plan may be a general plan, prepared in accordance with § 112.7, using good engineering practice. When the mobile or portable facility is moved, it must be located and installed using the spill prevention practices outlined in the SPCC Plan for the facility. No mobile or portable facility subject to this regulation shall operate unless the SPCC Plan has been implemented. The SPCC Plan shall only apply while the facility is in a fixed (non-transportation) operating mode.

(d) No SPCC Plan shall be effective to satisfy the requirements of this part unless it has been reviewed by a Registered Professional Engineer and certified to by such Professional Engineer. By means of this certification the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the SPCC Plan has been prepared in accordance with good engineering practices. Such certification shall in no way relieve the owner or operator of an onshore or offshore facility of his duty to prepare and fully implement such Plan in accordance with § 112.7, as required by paragraphs (a), (b) and (c) of this section.

(e) Owners or operators of a facility for which an SPCC Plan is required pursuant to paragraph (a), (b) or (c) of this section shall maintain a complete copy of the Plan at such facility if the facility is normally attended at least 8 hours per day, or at the nearest field office if the facility is not so attended, and shall make such Plan available to the Regional Administrator for on-site review during normal working hours.

(f) *Extensions of time.* (1) The Regional Administrator may authorize an extension of time for the preparation and full implementation of an SPCC

Plan beyond the time permitted for the preparation and implementation of an SPCC Plan pursuant to paragraph (a), (b) or (c) of this section where he finds that the owner or operator of a facility subject to paragraphs (a), (b) or (c) of this section cannot fully comply with the requirements of this part as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of such owner or operator or their respective agents or employees.

(2) Any owner or operator seeking an extension of time pursuant to paragraph (f)(1) of this section may submit a letter of request to the Regional Administrator. Such letter shall include:

(i) A complete copy of the SPCC Plan, if completed;

(ii) A full explanation of the cause for any such delay and the specific aspects of the SPCC Plan affected by the delay;

(iii) A full discussion of actions being taken or contemplated to minimize or mitigate such delay;

(iv) A proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for completion of tests or studies, installation and operation of any necessary equipment or other preventive measures.

In addition, such owner or operator may present additional oral or written statements in support of his letter of request.

(3) The submission of a letter of request for extension of time pursuant to paragraph (f)(2) of this section shall in no way relieve the owner or operator from his obligation to comply with the requirements of § 112.3 (a), (b) or (c). Where an extension of time is authorized by the Regional Administrator for particular equipment or other specific aspects of the SPCC Plan, such extension shall in no way affect the owner's or operator's obligation to comply with the requirements of § 112.3 (a), (b) or (c) with respect to other equipment or other specific aspects of the SPCC Plan for which an extension of time has not been expressly authorized.

[38 FR 34165, Dec. 11, 1973, as amended at 41 FR 12657, Mar. 26, 1976]

§ 112.4 Amendment of SPCC Plans by Regional Administrator.

(a) Notwithstanding compliance with § 112.3, whenever a facility subject to § 112.3 (a), (b) or (c) has: Discharged more than 1,000 U.S. gallons of oil into or upon the navigable waters of the United States or adjoining shorelines in a single spill event, or discharged oil in harmful quantities, as defined in 40 CFR part 110, into or upon the navigable waters of the United States or adjoining shorelines in two spill events, reportable under section 311(b)(5) of the FWPCA, occurring within any twelve month period, the owner or operator of such facility shall submit to the Regional Administrator, within 60 days from the time such facility becomes subject to this section, the following:

(1) Name of the facility;

(2) Name(s) of the owner or operator of the facility;

(3) Location of the facility;

(4) Date and year of initial facility operation;

(5) Maximum storage or handling capacity of the facility and normal daily throughput;

(6) Description of the facility, including maps, flow diagrams, and topographical maps;

(7) A complete copy of the SPCC Plan with any amendments;

(8) The cause(s) of such spill, including a failure analysis of system or subsystem in which the failure occurred;

(9) The corrective actions and/or countermeasures taken, including an adequate description of equipment repairs and/or replacements;

(10) Additional preventive measures taken or contemplated to minimize the possibility of recurrence;

(11) Such other information as the Regional Administrator may reasonably require pertinent to the Plan or spill event.

(b) Section 112.4 shall not apply until the expiration of the time permitted for the preparation and implementation of an SPCC Plan pursuant to § 112.3 (a), (b), (c) and (f).

(c) A complete copy of all information provided to the Regional Administrator pursuant to paragraph (a) of this section shall be sent at the same time to the State agency in charge of water pollution control activities in and for the State in which the facility is located. Upon receipt of such information such State agency may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment and other requirements for equipment necessary to prevent and to contain discharges of oil from such facility.

(d) After review of the SPCC Plan for a facility subject to paragraph (a) of this section, together with all other information submitted by the owner or operator of such facility, and by the State agency under paragraph (c) of this section, the Regional Administrator may require the owner or operator of such facility to amend the SPCC Plan if he finds that the Plan does not meet the requirements of this part or that the amendment of the Plan is necessary to prevent and to contain discharges of oil from such facility.

(e) When the Regional Administrator proposes to require an amendment to the SPCC Plan, he shall notify the facility operator by certified mail

addressed to, or by personal delivery to, the facility owner or operator, that he proposes to require an amendment to the Plan, and shall specify the terms of such amendment. If the facility owner or operator is a corporation, a copy of such notice shall also be mailed to the registered agent, if any, of such corporation in the State where such facility is located. Within 30 days from receipt of such notice, the facility owner or operator may submit written information, views, and arguments on the amendment. After considering all relevant material presented, the Regional Administrator shall notify the facility owner or operator of any amendment required or shall rescind the notice. The amendment required by the Regional Administrator shall become part of the Plan 30 days after such notice, unless the Regional Administrator, for good cause, shall specify another effective date. The owner or operator of the facility shall implement the amendment of the Plan as soon as possible, but not later than six months after the amendment becomes part of the Plan, unless the Regional Administrator specifies another date.

(f) An owner or operator may appeal a decision made by the Regional Administrator requiring an amendment to an SPCC Plan. The appeal shall be made to the Administrator of the United States Environmental Protection Agency and must be made in writing within 30 days of receipt of the notice from the Regional Administrator requiring the amendment. A complete copy of the appeal must be sent to the Regional Administrator at the time the appeal is made. The appeal shall contain a clear and concise statement of the issues and points of fact in the case. It may also contain additional information from the owner or operator, or from any other person. The Administrator or his designee may request additional information from the owner or operator, or from any other person. The Administrator or his designee shall render a decision within 60 days of receiving the appeal and shall notify the owner or operator of his decision.

[38 FR 34165, Dec. 11, 1973, as amended at 41 FR 12658, Mar. 26, 1976]

§ 112.5 Amendment of Spill Prevention Control and Countermeasure Plans by owners or operators.

(a) Owners or operators of facilities subject to § 112.3 (a), (b) or (c) shall amend the SPCC Plan for such facility in accordance with § 112.7 whenever there is a change in facility design, construction, operation or maintenance which materially affects the facility's potential for the discharge of oil into or upon the navigable waters of the United States or adjoining shore lines. Such amendments shall be fully implemented as soon as possible, but not later than six months after such change occurs.

(b) Notwithstanding compliance with paragraph (a) of this section, owners and operators of facilities subject to § 112.3 (a), (b) or (c) shall complete a review and evaluation of the SPCC Plan at least once every three years from the date such facility becomes subject to this part. As a result of this review and evaluation, the owner or operator shall amend the SPCC Plan within six months of the review to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a spill event from the facility, and (2) if such technology has been field-proven at the time of the review.

(c) No amendment to an SPCC Plan shall be effective to satisfy the requirements of this section unless it has been certified by a Professional Engineer in accordance with § 112.3(d).

§ 112.7 Guidelines for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan.

The SPCC Plan shall be a carefully thought-out plan, prepared in accordance with good engineering practices, and which has the full approval of management at a level with authority to commit the necessary resources. If the plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, these items should be discussed in separate paragraphs, and the details of installation and operational start-up should be explained separately. The complete SPCC Plan shall follow the sequence outlined below, and include a discussion of the facility's conformance with the appropriate guidelines listed:

(a) A facility which has experienced one or more spill events within twelve months prior to the effective date of this part should include a written description of each such spill, corrective action taken and plans for preventing recurrence.

(b) Where experience indicates a reasonable potential for equipment failure (such as tank overflow, rupture, or leakage), the plan should include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each major type of failure.

(c) Appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching a navigable water course should be provided. One of the following preventive systems or its equivalent should be used as a minimum:

(1) Onshore facilities:

(i) Dikes, berms or retaining walls sufficiently impervious to contain spilled oil;

(ii) Curbing;

(iii) Culverting, gutters or other drainage systems;

(iv) Weirs, booms or other barriers;

(v) Spill diversion ponds;

(vi) Retention ponds;

(vii) Sorbent materials.

(2) Offshore facilities:

(i) Curbing, drip pans;

(ii) Sumps and collection systems.

(d) When it is determined that the installation of structures or equipment listed in § 112.7(c) to prevent discharged oil from reaching the navigable waters is not practicable from any onshore or offshore facility, the owner or operator should clearly demonstrate such impracticability and provide the following:

(1) A strong oil spill contingency plan following the provision of 40 CFR part 109.

(2) A written commitment of manpower, equipment and materials required to expeditiously control and remove any harmful quantity of oil discharged.

(e) In addition to the minimal prevention standards listed under § 112.7(c), sections of the Plan should include a complete discussion of conformance with the following applicable guidelines, other effective spill prevention and containment procedures (or, if more stringent, with State rules, regulations and guidelines):

(1) *Facility drainage* (*onshore*)*;* (*excluding production facilities*). (i) Drainage from diked storage areas should be restrained by valves or other positive means to prevent a spill or other excessive leakage of oil into the drainage system or inplant effluent treatment system, except where plan systems are designed to handle such leakage. Diked areas may be emptied by pumps or ejectors; however, these should be manually activated and the condition of the accumulation should be examined before starting to be sure no oil will be discharged into the water.

(ii) Flapper-type drain valves should not be used to drain diked areas. Valves used for the drainage of diked areas should, as far as practical, be of manual, open-and-closed design. When plant drainage drains directly into water courses and not into wastewater treatment plants, retained storm water should be inspected as provided in paragraphs (e)(2)(iii) (B), (C) and (D) of this section before drainage.

(iii) Plant drainage systems from undiked areas should, if possible, flow into ponds, lagoons or catchment basins, designed to retain oil or return it to the facility. Catchment basins should not be located in areas subject to periodic flooding.

(iv) If plant drainage is not engineered as above, the final discharge of all in-plant ditches should be equipped with a diversion system that could, in the event of an uncontrolled spill, return the oil to the plant.

(v) Where drainage waters are treated in more than one treatment unit, natural hydraulic flow should be used. If pump transfer is needed, two ''lift'' pumps should be provided, and at least one of the pumps should be permanently installed when such treatment is continuous. In any event, whatever techniques are used facility drainage systems should be adequately engineered to prevent oil from reaching navigable waters in the event of equipment failure or human error at the facility.

(2) *Bulk storage tanks* (*onshore*)*;* (*excluding production facilities*). (i) No tank should be used for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.

(ii) All bulk storage tank installations should be constructed so that a secondary means of containment is provided for the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation. Diked areas should be sufficiently impervious to contain spilled oil. Dikes, containment curbs, and pits are commonly employed for this purpose, but they may not always be appropriate. An alternative system could consist of a complete drainage trench enclosure arranged so that a spill could terminate and be safely confined in an in-plant catchment basin or holding pond.

(iii) Drainage of rainwater from the diked area into a storm drain or an effluent discharge that empties into an open water course, lake, or pond, and bypassing the in-plant treatment system may be acceptable if:

(A) The bypass valve is normally sealed closed.

(B) Inspection of the run-off rain water ensures compliance with applicable water quality standards and will not cause a harmful discharge as defined in 40 CFR part 110.

(C) The bypass valve is opened, and resealed following drainage under responsible supervision.

(D) Adequate records are kept of such events.

(iv) Buried metallic storage tanks represent a potential for undetected spills. A new buried installation should be protected from corrosion by coatings, cathodic protection or other effective methods compatible with local soil conditions. Such buried tanks should at least be subjected to regular pressure testing.

(v) Partially buried metallic tanks for the storage of oil should be avoided, unless the buried section of the shell is adequately coated, since partial burial in damp earth can cause rapid corrosion of metallic surfaces, especially at the earth/air interface.

(vi) Aboveground tanks should be subject to periodic integrity testing, taking into account tank design (floating roof, etc.) and using such techniques as hydrostatic testing, visual inspection or a system of non-destructive shell thickness testing. Comparison records should be kept where appropriate, and tank supports and foundations should be included in these inspections. In addition, the

outside of the tank should frequently be observed by operating personnel for signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked areas.

(vii) To control leakage through defective internal heating coils, the following factors should be considered and applied, as appropriate.

(A) The steam return or exhaust lines from internal heating coils which discharge into an open water course should be monitored for contamination, or passed through a settling tank, skimmer, or other separation or retention system.

(B) The feasibility of installing an external heating system should also be considered.

(viii) New and old tank installations should, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation to avoid spills. Consideration should be given to providing one or more of the following devices:

(A) High liquid level alarms with an audible or visual signal at a constantly manned operation or surveillance station; in smaller plants an audible air vent may suffice.

(B) Considering size and complexity of the facility, high liquid level pump cutoff devices set to stop flow at a predetermined tank content level.

(C) Direct audible or code signal communication between the tank gauger and the pumping station.

(D) A fast response system for determining the liquid level of each bulk storage tank such as digital computers, telepulse, or direct vision gauges or their equivalent.

(E) Liquid level sensing devices should be regularly tested to insure proper operation.

(ix) Plant effluents which are discharged into navigable waters should have disposal facilities observed frequently enough to detect possible system upsets that could cause an oil spill event.

(x) Visible oil leaks which result in a loss of oil from tank seams, gaskets, rivets and bolts sufficiently large to cause the accumulation of oil in diked areas should be promptly corrected.

(xi) Mobile or portable oil storage tanks (onshore) should be positioned or located so as to prevent spilled oil from reaching navigable waters. A secondary means of containment, such as dikes or catchment basins, should be furnished for the largest single compartment or tank. These facilities should be located where they will not be subject to periodic flooding or washout.

(3) *Facility transfer operations, pumping, and in-plant process* (*onshore*)*;* (*excluding production facilities*). (i) Buried piping installations should have a protective wrapping and coating and should be cathodically protected if soil conditions warrant. If a section of buried line is exposed for any reason, it should be carefully examined for deterioration. If corrosion damage is found, additional examination and corrective action should be taken as indicated by the magnitude of the damage. An alternative would be the more frequent use of exposed pipe corridors or galleries.

(ii) When a pipeline is not in service, or in standby service for an extended time the terminal connection at the transfer point should be capped or blank-flanged, and marked as to origin.

(iii) Pipe supports should be properly designed to minimize abrasion and corrosion and allow for expansion and contraction.

(iv) All aboveground valves and pipelines should be subjected to regular examinations by operating personnel at which time the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces should be assessed. In addition, periodic pressure testing may be warranted for piping in areas where facility drainage is such that a failure might lead to a spill event.

(v) Vehicular traffic granted entry into the facility should be warned verbally or by appropriate signs to be sure that the vehicle, because of its size, will not endanger above ground piping.

(4) *Facility tank car and tank truck loading/unloading rack* (*onshore*). (i) Tank car and tank truck loading/unloading procedures should meet the minimum requirements and regulation established by the Department of Transportation.

(ii) Where rack area drainage does not flow into a catchment basin or treatment facility designed to handle spills, a quick drainage system should be used for tank truck loading and unloading areas. The containment system should be designed to hold at least maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded in the plant.

(iii) An interlocked warning light or physical barrier system, or warning signs, should be provided in loading/unloading areas to prevent vehicular departure before complete disconnect of flexible or fixed transfer lines.

(iv) Prior to filling and departure of any tank car or tank truck, the lowermost drain and all outlets of such vehicles should be closely examined for leakage, and if necessary, tightened, adjusted, or replaced to prevent liquid leakage while in transit.

(5) *Oil production facilities* (*onshore*)—(i) *Definition.* An onshore production facility may include all wells, flowlines, separation equipment, storage facilities, gathering lines, and auxiliary non-transportation-related equipment and facilities in a single geographical oil or gas field operated by a single operator.

(ii) *Oil production facility* (*onshore*) *drainage.* (A) At tank batteries and central treating stations where an accidental discharge of oil would have

a reasonable possibility of reaching navigable waters, the dikes or equivalent required under § 112.7(c)(1) should have drains closed and sealed at all times except when rainwater is being drained. Prior to drainage, the diked area should be inspected as provided in paragraphs (e)(2)(iii)(B), (C), and (D) of this section. Accumulated oil on the rainwater should be picked up and returned to storage or disposed of in accordance with approved methods.

(B) Field drainage ditches, road ditches, and oil traps, sumps or skimmers, if such exist, should be inspected at regularly scheduled intervals for accumulation of oil that may have escaped from small leaks. Any such accumulations should be removed.

(iii) *Oil production facility* (*onshore*) *bulk storage tanks.* (A) No tank should be used for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage.

(B) All tank battery and central treating plant installations should be provided with a secondary means of containment for the entire contents of the largest single tank if feasible, or alternate systems such as those outlined in § 112.7(c)(1). Drainage from undiked areas should be safely confined in a catchment basin or holding pond.

(C) All tanks containing oil should be visually examined by a competent person for condition and need for maintenance on a scheduled periodic basis. Such examination should include the foundation and supports of tanks that are above the surface of the ground.

(D) New and old tank battery installations should, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation to prevent spills. Consideration should be given to one or more of the following:

(*1*) Adequate tank capacity to assure that a tank will not overfill should a pumper/gauger be delayed in making his regular rounds.

(*2*) Overflow equalizing lines between tanks so that a full tank can overflow to an adjacent tank.

(*3*) Adequate vacuum protection to prevent tank collapse during a pipeline run.

(*4*) High level sensors to generate and transmit an alarm signal to the computer where facilities are a part of a computer production control system.

(iv) *Facility transfer operations, oil production facility* (*onshore*). (A) All above ground valves and pipelines should be examined periodically on a scheduled basis for general condition of items such as flange joints, valve glands and bodies, drip pans, pipeline supports, pumping well polish rod stuffing boxes, bleeder and gauge valves.

(B) Salt water (oil field brine) disposal facilities should be examined often, particularly following a sudden change in atmospheric temperature to detect possible system upsets that could cause an oil discharge.

(C) Production facilities should have a program of flowline maintenance to prevent spills from this source. The program should include periodic examinations, corrosion protection, flowline replacement, and adequate records, as appropriate, for the individual facility.

(6) *Oil drilling and workover facilities* (*onshore*). (i) Mobile drilling or workover equipment should be positioned or located so as to prevent spilled oil from reaching navigable waters.

(ii) Depending on the location, catchment basins or diversion structures may be necessary to intercept and contain spills of fuel, crude oil, or oily drilling fluids.

(iii) Before drilling below any casing string or during workover operations, a blowout prevention (BOP) assembly and well control system should be installed that is capable of controlling any well head pressure that is expected to be encountered while that BOP assembly is on the well. Casing and BOP installations should be in accordance with State regulatory agency requirements.

(7) *Oil drilling, production, or workover facilities* (*offshore*). (i) Definition: ''An oil drilling, production or workover facility (offshore)'' may include all drilling or workover equipment, wells, flowlines, gathering lines, platforms, and auxiliary nontransportation-related equipment and facilities in a single geographical oil or gas field operated by a single operator.

(ii) Oil drainage collection equipment should be used to prevent and control small oil spillage around pumps, glands, valves, flanges, expansion joints, hoses, drain lines, separators, treaters, tanks, and allied equipment. Drains on the facility should be controlled and directed toward a central collection sump or equivalent collection system sufficient to prevent discharges of oil into the navigable waters of the United States. Where drains and sumps are not practicable oil contained in collection equipment should be removed as often as necessary to prevent overflow.

(iii) For facilities employing a sump system, sump and drains should be adequately sized and a spare pump or equivalent method should be available to remove liquid from the sump and assure that oil does not escape. A regular scheduled preventive maintenance inspection and testing program should be employed to assure reliable operation of the liquid removal system and pump start-up device. Redundant automatic sump pumps and control devices may be required on some installations.

(iv) In areas where separators and treaters are equipped with dump valves whose predominant mode of failure is in the closed position and pollution risk is high, the facility should be specially

equipped to prevent the escape of oil. This could be accomplished by extending the flare line to a diked area if the separator is near shore, equipping it with a high liquid level sensor that will automatically shut-in wells producing to the separator, parallel redundant dump valves, or other feasible alternatives to prevent oil discharges.

(v) Atmospheric storage or surge tanks should be equipped with high liquid level sensing devices or other acceptable alternatives to prevent oil discharges.

(vi) Pressure tanks should be equipped with high and low pressure sensing devices to activate an alarm and/or control the flow or other acceptable alternatives to prevent oil discharges.

(vii) Tanks should be equipped with suitable corrosion protection.

(viii) A written procedure for inspecting and testing pollution prevention equipment and systems should be prepared and maintained at the facility. Such procedures should be included as part of the SPCC Plan.

(ix) Testing and inspection of the pollution prevention equipment and systems at the facility should be conducted by the owner or operator on a scheduled periodic basis commensurate with the complexity, conditions and circumstances of the facility or other appropriate regulations.

(x) Surface and subsurface well shut-in valves and devices in use at the facility should be sufficiently described to determine method of activation or control, e.g., pressure differential, change in fluid or flow conditions, combination of pressure and flow, manual or remote control mechanisms. Detailed records for each well, while not necessarily part of the plan should be kept by the owner or operator.

(xi) Before drilling below any casing string, and during workover operations a blowout preventer (BOP) assembly and well control system should be installed that is capable of controlling any wellhead pressure that is expected to be encountered while that BOP assembly is on the well. Casing and BOP installations should be in accordance with State regulatory agency requirements.

(xii) Extraordinary well control measures should be provided should emergency conditions, including fire, loss of control and other abnormal conditions, occur. The degree of control system redundancy should vary with hazard exposure and probable consequences of failure. It is recommended that surface shut-in systems have redundant or ''fail close'' valving. Subsurface safety valves may not be needed in producing wells that will not flow but should be installed as required by applicable State regulations.

(xiii) In order that there will be no misunderstanding of joint and separate duties and obligations to perform work in a safe and pollution free manner, written instructions should be prepared by the owner or operator for contractors and subcontractors to follow whenever contract activities include servicing a well or systems appurtenant to a well or pressure vessel. Such instructions and procedures should be maintained at the offshore production facility. Under certain circumstances and conditions such contractor activities may require the presence at the facility of an authorized representative of the owner or operator who would intervene when necessary to prevent a spill event.

(xiv) All manifolds (headers) should be equipped with check valves on individual flowlines.

(xv) If the shut-in well pressure is greater than the working pressure of the flowline and manifold valves up to and including the header valves associated with that individual flowline, the flowline should be equipped with a high pressure sensing device and shut-in valve at the wellhead unless provided with a pressure relief system to prevent over pressuring.

(xvi) All pipelines appurtenant to the facility should be protected from corrosion. Methods used, such as protective coatings or cathodic protection, should be discussed.

(xvii) Sub-marine pipelines appurtenant to the facility should be adequately protected against environmental stresses and other activities such as fishing operations.

(xviii) Sub-marine pipelines appurtenant to the facility should be in good operating condition at all times and inspected on a scheduled periodic basis for failures. Such inspections should be documented and maintained at the facility.

(8) *Inspections and records.* Inspections required by this part should be in accordance with written procedures developed for the facility by the owner or operator. These written procedures and a record of the inspections, signed by the appropriate supervisor or inspector, should be made part of the SPCC Plan and maintained for a period of three years.

(9) *Security* (*excluding oil production facilities*). (i) All plants handling, processing, and storing oil should be fully fenced, and entrance gates should be locked and/or guarded when the plant is not in production or is unattended.

(ii) The master flow and drain valves and any other valves that will permit direct outward flow of the tank's content to the surface should be securely locked in the closed position when in non-operating or non-standby status.

(iii) The starter control on all oil pumps should be locked in the ''off'' position or located at a site accessible only to authorized personnel when the pumps are in a non-operating or non-standby status.

(iv) The loading/unloading connections of oil pipelines should be securely capped or blank-flanged when not in service or standby service for an extended time. This security practice should also apply to pipelines that are emptied of liquid content either by draining or by inert gas pressure.

(v) Facility lighting should be commensurate with the type and location of the facility. Consideration should be given to: (A) Discovery of spills occurring during hours of darkness, both by operating personnel, if present, and by non-operating personnel (the general public, local police, etc.) and (B) prevention of spills occurring through acts of vandalism.

(10) *Personnel, training and spill prevention procedures.* (i) Owners or operators are responsible for properly instructing their personnel in the operation and maintenance of equipment to prevent the discharges of oil and applicable pollution control laws, rules and regulations.

(ii) Each applicable facility should have a designated person who is accountable for oil spill prevention and who reports to line management.

(iii) Owners or operators should schedule and conduct spill prevention briefings for their operating personnel at intervals frequent enough to assure adequate understanding of the SPCC Plan for that facility. Such briefings should highlight and describe known spill events or failures, malfunctioning components, and recently developed precautionary measures.

§ 112.20 Facility response plans.

(a) The owner or operator of any non-transportation-related onshore facility that, because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines shall prepare and submit a facility response plan to the Regional Administrator, according to the following provisions:

(1) For the owner or operator of a facility in operation on or before February 18, 1993 who is required to prepare and submit a response plan under 33 U.S.C. 1321(j)(5), the Oil Pollution Act of 1990 (Pub. L. 101–380, 33 U.S.C. 2701 *et seq.*) requires the submission of a response plan that satisfies the requirements of 33 U.S.C. 1321(j)(5) no later than February 18, 1993.

(i) The owner or operator of an existing facility that was in operation on or before February 18, 1993 who submitted a response plan by February 18, 1993 shall revise the response plan to satisfy the requirements of this section and resubmit the response plan or updated portions of the response plan to the Regional Administrator by February 18, 1995.

(ii) The owner or operator of an existing facility in operation on or before February 18, 1993 who failed to submit a response plan by February 18, 1993 shall prepare and submit a response plan that satisfies the requirements of this section to the Regional Administrator before August 30, 1994.

(2) The owner or operator of a facility in operation on or after August 30, 1994 that satisfies the criteria in paragraph (f)(1) of this section or that is notified by the Regional Administrator pursuant to paragraph (b) of this section shall prepare and submit a facility response plan that satisfies the requirements of this section to the Regional Administrator.

(i) For a facility that commenced operations after February 18, 1993 but prior to August 30, 1994, and is required to prepare and submit a response plan based on the criteria in paragraph (f)(1) of this section, the owner or operator shall submit the response plan or updated portions of the response plan, along with a completed version of the response plan cover sheet contained in Appendix F to this part, to the Regional Administrator prior to August 30, 1994.

(ii) For a newly constructed facility that commences operation after August 30, 1994, and is required to prepare and submit a response plan based on the criteria in paragraph (f)(1) of this section, the owner or operator shall submit the response plan, along with a completed version of the response plan cover sheet contained in Appendix F to this part, to the Regional Administrator prior to the start of operations (adjustments to the response plan to reflect changes that occur at the facility during the start-up phase of operations must be submitted to the Regional Administrator after an operational trial period of 60 days).

(iii) For a facility required to prepare and submit a response plan after August 30, 1994, as a result of a planned change in design, construction, operation, or maintenance that renders the facility subject to the criteria in paragraph (f)(1) of this section, the owner or operator shall submit the response plan, along with a completed version of the response plan cover sheet contained in Appendix F to this part, to the Regional Administrator before the portion of the facility undergoing change commences operations (adjustments to the response plan to reflect changes that occur at the facility during the start-up phase of operations must be submitted to the Regional Administrator after an operational trial period of 60 days).

(iv) For a facility required to prepare and submit a response plan after August 30, 1994, as a result of an unplanned event or change in facility characteristics that renders the facility subject to the criteria in paragraph (f)(1) of this section, the owner or operator shall submit the response plan, along with a completed version of the response plan cover sheet contained in Appendix F to this

part, to the Regional Administrator within six months of the unplanned event or change.

(3) In the event the owner or operator of a facility that is required to prepare and submit a response plan uses an alternative formula that is comparable to one contained in Appendix C to this part to evaluate the criterion in paragraph (f)(1)(ii)(B) or (f)(1)(ii)(C) of this section, the owner or operator shall attach documentation to the response plan cover sheet contained in Appendix F to this part that demonstrates the reliability and analytical soundness of the alternative formula.

(b)(1) The Regional Administrator may at any time require the owner or operator of any non-transportation-related onshore facility to prepare and submit a facility response plan under this section after considering the factors in paragraph (f)(2) of this section. If such a determination is made, the Regional Administrator shall notify the facility owner or operator in writing and shall provide a basis for the determination. If the Regional Administrator notifies the owner or operator in writing of the requirement to prepare and submit a response plan under this section, the owner or operator of the facility shall submit the response plan to the Regional Administrator within six months of receipt of such written notification.

(2) The Regional Administrator shall review plans submitted by such facilities to determine whether the facility could, because of its location, reasonably be expected to cause significant and substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines.

(c) The Regional Administrator shall determine whether a facility could, because of its location, reasonably be expected to cause significant and substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, based on the factors in paragraph (f)(3) of this section. If such a determination is made, the Regional Administrator shall notify the owner or operator of the facility in writing and:

(1) Promptly review the facility response plan;

(2) Require amendments to any response plan that does not meet the requirements of this section;

(3) Approve any response plan that meets the requirements of this section; and

(4) Review each response plan periodically thereafter on a schedule established by the Regional Administrator provided that the period between plan reviews does not exceed five years.

(d)(1) The owner or operator of a facility for which a response plan is required under this part shall revise and resubmit revised portions of the response plan within 60 days of each facility change that materially may affect the response to a worst case discharge, including:

(i) A change in the facility's configuration that materially alters the information included in the response plan;

(ii) A change in the type of oil handled, stored, or transferred that materially alters the required response resources;

(iii) A material change in capabilities of the oil spill removal organization(s) that provide equipment and personnel to respond to discharges of oil described in paragraph (h)(5) of this section;

(iv) A material change in the facility's spill prevention and response equipment or emergency response procedures; and

(v) Any other changes that materially affect the implementation of the response plan.

(2) Except as provided in paragraph (d)(1) of this section, amendments to personnel and telephone number lists included in the response plan and a change in the oil spill removal organization(s) that does not result in a material change in support capabilities do not require approval by the Regional Administrator. Facility owners or operators shall provide a copy of such changes to the Regional Administrator as the revisions occur.

(3) The owner or operator of a facility that submits changes to a response plan as provided in paragraph (d)(1) or (d)(2) of this section shall provide the EPA-issued facility identification number (where one has been assigned) with the changes.

(4) The Regional Administrator shall review for approval changes to a response plan submitted pursuant to paragraph (d)(1) of this section for a facility determined pursuant to paragraph (f)(3) of this section to have the potential to cause significant and substantial harm to the environment.

(e) If the owner or operator of a facility determines pursuant to paragraph (a)(2) of this section that the facility could not, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, the owner or operator shall complete and maintain at the facility the certification form contained in Appendix C to this part and, in the event an alternative formula that is comparable to one contained in Appendix C to this part is used to evaluate the criterion in paragraph (f)(1)(ii)(B) or (f)(1)(ii)(C) of this section, the owner or operator shall attach documentation to the certification form that demonstrates the reliability and analytical soundness of the comparable formula and shall notify the Regional Administrator in writing that an alternative formula was used.

(f)(1) A facility could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on

the navigable waters or adjoining shorelines pursuant to paragraph (a)(2) of this section, if it meets any of the following criteria applied in accordance with the flowchart contained in Attachment C-I to Appendix C to this part:

(i) The facility transfers oil over water to or from vessels and has a total oil storage capacity greater than or equal to 42,000 gallons; or

(ii) The facility's total oil storage capacity is greater than or equal to 1 million gallons, and one of the following is true:

(A) The facility does not have secondary containment for each aboveground storage area sufficiently large to contain the capacity of the largest aboveground oil storage tank within each storage area plus sufficient freeboard to allow for precipitation;

(B) The facility is located at a distance (as calculated using the appropriate formula in Appendix C to this part or a comparable formula) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III of the ''Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments'' (see Appendix E to this part, section 10, for availability) and the applicable Area Contingency Plan prepared pursuant to section 311(j)(4) of the Clean Water Act;

(C) The facility is located at a distance (as calculated using the appropriate formula in Appendix C to this part or a comparable formula) such that a discharge from the facility would shut down a public drinking water intake; or

(D) The facility has had a reportable oil spill in an amount greater than or equal to 10,000 gallons within the last 5 years.

(2)(i) To determine whether a facility could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines pursuant to paragraph (b) of this section, the Regional Administrator shall consider the following:

(A) Type of transfer operation;

(B) Oil storage capacity;

(C) Lack of secondary containment;

(D) Proximity to fish and wildlife and sensitive environments and other areas determined by the Regional Administrator to possess ecological value;

(E) Proximity to drinking water intakes;

(F) Spill history; and

(G) Other site-specific characteristics and environmental factors that the Regional Administrator determines to be relevant to protecting the environment from harm by discharges of oil into or on navigable waters or adjoining shorelines.

(ii) Any person, including a member of the public or any representative from a Federal, State, or local agency who believes that a facility subject to this section could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines may petition the Regional Administrator to determine whether the facility meets the criteria in paragraph (f)(2)(i) of this section. Such petition shall include a discussion of how the factors in paragraph (f)(2)(i) of this section apply to the facility in question. The RA shall consider such petitions and respond in an appropriate amount of time.

(3) To determine whether a facility could, because of its location, reasonably be expected to cause significant and substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, the Regional Administrator may consider the factors in paragraph (f)(2) of this section as well as the following:

(i) Frequency of past spills;

(ii) Proximity to navigable waters;

(iii) Age of oil storage tanks; and

(iv) Other facility-specific and Region-specific information, including local impacts on public health.

(g)(1) All facility response plans shall be consistent with the requirements of the National Oil and Hazardous Substance Pollution Contingency Plan (40 CFR part 300) and applicable Area Contingency Plans prepared pursuant to section 311(j)(4) of the Clean Water Act. The facility response plan should be coordinated with the local emergency response plan developed by the local emergency planning committee under section 303 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 11001 et seq.). Upon request, the owner or operator should provide a copy of the facility response plan to the local emergency planning committee or State emergency response commission.

(2) The owner or operator shall review relevant portions of the National Oil and Hazardous Substances Pollution Contingency Plan and applicable Area Contingency Plan annually and, if necessary, revise the facility response plan to ensure consistency with these plans.

(3) The owner or operator shall review and update the facility response plan periodically to reflect changes at the facility.

(h) A response plan shall follow the format of the model facility-specific response plan included in Appendix F to this part, unless an equivalent response plan has been prepared to meet State or other Federal requirements. A response plan that does not follow the specified format in Appendix F to this part shall have an emergency response

action plan as specified in paragraphs (h)(1) of this section and be supplemented with a cross-reference section to identify the location of the elements listed in paragraphs (h)(2) through (h)(10) of this section. To meet the requirements of this part, a response plan shall address the following elements, as further described in Appendix F to this part:

(1) *Emergency response action plan.* The response plan shall include an emergency response action plan in the format specified in paragraphs (h)(1)(i) through (viii) of this section that is maintained in the front of the response plan, or as a separate document accompanying the response plan, and that includes the following information:

(i) The identity and telephone number of a qualified individual having full authority, including contracting authority, to implement removal actions;

(ii) The identity of individuals or organizations to be contacted in the event of a discharge so that immediate communications between the qualified individual identified in paragraph (h)(1) of this section and the appropriate Federal officials and the persons providing response personnel and equipment can be ensured;

(iii) A description of information to pass to response personnel in the event of a reportable spill;

(iv) A description of the facility's response equipment and its location;

(v) A description of response personnel capabilities, including the duties of persons at the facility during a response action and their response times and qualifications;

(vi) Plans for evacuation of the facility and a reference to community evacuation plans, as appropriate;

(vii) A description of immediate measures to secure the source of the discharge, and to provide adequate containment and drainage of spilled oil; and

(viii) A diagram of the facility.

(2) *Facility information.* The response plan shall identify and discuss the location and type of the facility, the identity and tenure of the present owner and operator, and the identity of the qualified individual identified in paragraph (h)(1) of this section.

(3) *Information about emergency response.* The response plan shall include:

(i) The identity of private personnel and equipment necessary to remove to the maximum extent practicable a worst case discharge and other discharges of oil described in paragraph (h)(5) of this section, and to mitigate or prevent a substantial threat of a worst case discharge (To identify response resources to meet the facility response plan requirements of this section, owners or operators shall follow Appendix E to this part or, where not appropriate, shall clearly demonstrate in the response plan why use of Appendix E of this part is not appropriate at the facility and make comparable arrangements for response resources);

(ii) Evidence of contracts or other approved means for ensuring the availability of such personnel and equipment;

(iii) The identity and the telephone number of individuals or organizations to be contacted in the event of a discharge so that immediate communications between the qualified individual identified in paragraph (h)(1) of this section and the appropriate Federal official and the persons providing response personnel and equipment can be ensured;

(iv) A description of information to pass to response personnel in the event of a reportable spill;

(v) A description of response personnel capabilities, including the duties of persons at the facility during a response action and their response times and qualifications;

(vi) A description of the facility's response equipment, the location of the equipment, and equipment testing;

(vii) Plans for evacuation of the facility and a reference to community evacuation plans, as appropriate;

(viii) A diagram of evacuation routes; and

(ix) A description of the duties of the qualified individual identified in paragraph (h)(1) of this section, that include:

(A) Activate internal alarms and hazard communication systems to notify all facility personnel;

(B) Notify all response personnel, as needed;

(C) Identify the character, exact source, amount, and extent of the release, as well as the other items needed for notification;

(D) Notify and provide necessary information to the appropriate Federal, State, and local authorities with designated response roles, including the National Response Center, State Emergency Response Commission, and Local Emergency Planning Committee;

(E) Assess the interaction of the spilled substance with water and/or other substances stored at the facility and notify response personnel at the scene of that assessment;

(F) Assess the possible hazards to human health and the environment due to the release. This assessment must consider both the direct and indirect effects of the release (i.e., the effects of any toxic, irritating, or asphyxiating gases that may be generated, or the effects of any hazardous surface water runoffs from water or chemical agents used to control fire and heat-induced explosion);

(G) Assess and implement prompt removal actions to contain and remove the substance released;

(H) Coordinate rescue and response actions as previously arranged with all response personnel;

(I) Use authority to immediately access company funding to initiate cleanup activities; and

(J) Direct cleanup activities until properly relieved of this responsibility.

(4) *Hazard evaluation.* The response plan shall discuss the facility's known or reasonably identifiable history of discharges reportable under 40 CFR part 110 for the entire life of the facility and shall identify areas within the facility where discharges could occur and what the potential effects of the discharges would be on the affected environment. To assess the range of areas potentially affected, owners or operators shall, where appropriate, consider the distance calculated in paragraph (f)(1)(ii) of this section to determine whether a facility could, because of its location, reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines.

(5) *Response planning levels.* The response plan shall include discussion of specific planning scenarios for:

(i) A worst case discharge, as calculated using the appropriate worksheet in Appendix D to this part. In cases where the Regional Administrator determines that the worst case discharge volume calculated by the facility is not appropriate, the Regional Administrator may specify the worst case discharge amount to be used for response planning at the facility. For complexes, the worst case planning quantity shall be the larger of the amounts calculated for each component of the facility;

(ii) A discharge of 2,100 gallons or less, provided that this amount is less than the worst case discharge amount. For complexes, this planning quantity shall be the larger of the amounts calculated for each component of the facility; and

(iii) A discharge greater than 2,100 gallons and less than or equal to 36,000 gallons or 10 percent of the capacity of the largest tank at the facility, whichever is less, provided that this amount is less than the worst case discharge amount. For complexes, this planning quantity shall be the larger of the amounts calculated for each component of the facility.

(6) *Discharge detection systems.* The response plan shall describe the procedures and equipment used to detect discharges.

(7) *Plan implementation.* The response plan shall describe:

(i) Response actions to be carried out by facility personnel or contracted personnel under the response plan to ensure the safety of the facility and to mitigate or prevent discharges described in paragraph (h)(5) of this section or the substantial threat of such discharges;

(ii) A description of the equipment to be used for each scenario;

(iii) Plans to dispose of contaminated cleanup materials; and

(iv) Measures to provide adequate containment and drainage of spilled oil.

(8) *Self-inspection, drills/exercises, and response training.* The response plan shall include:

(i) A checklist and record of inspections for tanks, secondary containment, and response equipment;

(ii) A description of the drill/exercise program to be carried out under the response plan as described in § 112.21;

(iii) A description of the training program to be carried out under the response plan as described in § 112.21; and

(iv) Logs of discharge prevention meetings, training sessions, and drills/exercises. These logs may be maintained as an annex to the response plan.

(9) *Diagrams.* The response plan shall include site plan and drainage plan diagrams.

(10) *Security systems.* The response plan shall include a description of facility security systems.

(11) *Response plan cover sheet.* The response plan shall include a completed response plan cover sheet provided in Section 2.0 of Appendix F to this part.

(i)(1) In the event the owner or operator of a facility does not agree with the Regional Administrator's determination that the facility could, because of its location, reasonably be expected to cause substantial harm or significant and substantial harm to the environment by discharging oil into or on the navigable waters or adjoining shorelines, or that amendments to the facility response plan are necessary prior to approval, such as changes to the worst case discharge planning volume, the owner or operator may submit a request for reconsideration to the Regional Administrator and provide additional information and data in writing to support the request. The request and accompanying information must be submitted to the Regional Administrator within 60 days of receipt of notice of the Regional Administrator's original decision. The Regional Administrator shall consider the request and render a decision as rapidly as practicable.

(2) In the event the owner or operator of a facility believes a change in the facility's classification status is warranted because of an unplanned event or change in the facility's characteristics (i.e., substantial harm or significant and substantial harm), the owner or operator may submit a request for reconsideration to the Regional Administrator and provide additional information and data in writing to support the request. The Regional Administrator

shall consider the request and render a decision as rapidly as practicable.

(3) After a request for reconsideration under paragraph (i)(1) or (i)(2) of this section has been denied by the Regional Administrator, an owner or operator may appeal a determination made by the Regional Administrator. The appeal shall be made to the EPA Administrator and shall be made in writing within 60 days of receipt of the decision from the Regional Administrator that the request for reconsideration was denied. A complete copy of the appeal must be sent to the Regional Administrator at the time the appeal is made. The appeal shall contain a clear and concise statement of the issues and points of fact in the case. It also may contain additional information from the owner or operator, or from any other person. The EPA Administrator may request additional information from the owner or operator, or from any other person. The EPA Administrator shall render a decision as rapidly as practicable and shall notify the owner or operator of the decision.

[59 FR 34098, July 1, 1994]

§ 112.21 Facility response training and drills/exercises.

(a) The owner or operator of any facility required to prepare a facility response plan under § 112.20 shall develop and implement a facility response training program and a drill/exercise program that satisfy the requirements of this section. The owner or operator shall describe the programs in the response plan as provided in § 112.20(h)(8).

(b) The facility owner or operator shall develop a facility response training program to train those personnel involved in oil spill response activities. It is recommended that the training program be based on the USCG's Training Elements for Oil Spill Response, as applicable to facility operations. An alternative program can also be acceptable subject to approval by the Regional Administrator.

(1) The owner or operator shall be responsible for the proper instruction of facility personnel in the procedures to respond to discharges of oil and in applicable oil spill response laws, rules, and regulations.

(2) Training shall be functional in nature according to job tasks for both supervisory and nonsupervisory operational personnel.

(3) Trainers shall develop specific lesson plans on subject areas relevant to facility personnel involved in oil spill response and cleanup.

(c) The facility owner or operator shall develop a program of facility response drills/exercises, including evaluation procedures. A program that follows the National Preparedness for Response Exercise Program (PREP) (see Appendix E to this part, section 10, for availability) will be deemed satisfactory for purposes of this section. An alternative program can also be acceptable subject to approval by the Regional Administrator.

[59 FR 34101, July 1, 1994]

APPENDIX A TO PART 112—MEMORANDUM OF UNDERSTANDING BETWEEN THE SECRETARY OF TRANSPORTATION AND THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

SECTION II—DEFINITIONS

The Environmental Protection Agency and the Department of Transportation agree that for the purposes of Executive Order 11548, the term:

(1) *Non-transportation-related onshore and offshore facilities* means:

(A) Fixed onshore and offshore oil well drilling facilities including all equipment and appurtenances related thereto used in drilling operations for exploratory or development wells, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(B) Mobile onshore and offshore oil well drilling platforms, barges, trucks, or other mobile facilities including all equipment and appurtenances related thereto when such mobile facilities are fixed in position for the purpose of drilling operations for exploratory or development wells, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(C) Fixed onshore and offshore oil production structures, platforms, derricks, and rigs including all equipment and appurtenances related thereto, as well as completed wells and the wellhead separators, oil separators, and storage facilities used in the production of oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(D) Mobile onshore and offshore oil production facilities including all equipment and appurtenances related thereto as well as completed wells and wellhead equipment, piping from wellheads to oil separators, oil separators, and storage facilities used in the production of oil when such mobile facilities are fixed in position for the purpose of oil production operations, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(E) Oil refining facilities including all equipment and appurtenances related thereto as well as in-plant processing units, storage units, piping, drainage systems and waste treatment units used in the refining of oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(F) Oil storage facilities including all equipment and appurtenances related thereto as well as fixed bulk plant storage, terminal oil storage facilities, consumer storage, pumps and drainage systems used in the storage of oil, but excluding inline or breakout storage tanks needed for the continuous operation of a pipeline system and any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(G) Industrial, commercial, agricultural or public facilities which use and store oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(H) Waste treatment facilities including in-plant pipelines, effluent discharge lines, and storage tanks, but excluding waste treatment facilities located on vessels and terminal storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels and associated systems used for off-loading vessels.

(I) Loading racks, transfer hoses, loading arms and other equipment which are appurtenant to a nontransportation-related facility or terminal facility and which are used to transfer oil in bulk to or from highway vehicles or railroad cars.

(J) Highway vehicles and railroad cars which are used for the transport of oil exclusively within the confines of a nontransportation-related facility and which are not intended to transport oil in interstate or intrastate commerce.

(K) Pipeline systems which are used for the transport of oil exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce, but excluding pipeline systems used to transfer oil in bulk to or from a vessel.

(2) *Transportation-related onshore and offshore facilities* means:

(A) Onshore and offshore terminal facilities including transfer hoses, loading arms and other equipment and appurtenances used for the purpose of handling or transferring oil in bulk to or from a vessel as well as storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels, but excluding terminal waste treatment facilities and terminal oil storage facilities.

(B) Transfer hoses, loading arms and other equipment appurtenant to a non-transportation-related facility which is used to transfer oil in bulk to or from a vessel.

(C) Interstate and intrastate onshore and offshore pipeline systems including pumps and appurtenances related thereto as well as in-line or breakout storage tanks needed for the continuous operation of a pipeline system, and pipelines from onshore and offshore oil production facilities, but excluding onshore and offshore piping from wellheads to oil separators and pipelines which are used for the transport of oil exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce or to transfer oil in bulk to or from a vessel.

(D) Highway vehicles and railroad cars which are used for the transport of oil in interstate or intrastate commerce and the equipment and appurtenances related thereto, and equipment used for the fueling of locomotive units, as well as the rights-of-way on which they operate. Excluded are highway vehicles and railroad cars and motive power used exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended for use in interstate or intrastate commerce.

APPENDIX B TO PART 112—MEMORANDUM OF UNDERSTANDING AMONG THE SECRETARY OF THE INTERIOR, SECRETARY OF TRANSPORTATION, AND ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

PURPOSE

This Memorandum of Understanding (MOU) establishes the jurisdictional responsibilities for offshore facilities, including pipelines, pursuant to section 311 (j)(1)(c), (j)(5), and (j)(6)(A) of the Clean Water Act (CWA), as amended by the Oil Pollution Act of 1990 (Public Law 101–380). The Secretary of the Department of the Interior (DOI), Secretary of the Department of Transportation (DOT), and Administrator of the Environmental Protection Agency (EPA) agree to the division of responsibilities set forth below for spill prevention and control, response planning, and equipment inspection activities pursuant to those provisions.

BACKGROUND

Executive Order (E.O.) 12777 (56 FR 54757) delegates to DOI, DOT, and EPA various responsibilities identified in section 311(j) of the CWA. Sections 2(b)(3), 2(d)(3), and 2(e)(3) of E.O. 12777 assigned to DOI spill prevention and control, contingency planning, and equipment inspection activities associated with offshore facilities. Section 311(a)(11) defines the term ''offshore facility'' to include facilities of any kind located in, on, or under navigable waters of the United States. By using this definition, the traditional DOI role of regulating facilities on the Outer Continental Shelf is expanded by E.O. 12777 to include inland lakes, rivers, streams, and any other inland waters.

RESPONSIBILITIES

Pursuant to section 2(i) of E.O. 12777, DOI redelegates, and EPA and DOT agree to assume, the functions vested in DOI by sections 2(b)(3), 2(d)(3), and 2(e)(3) of E.O. 12777 as set forth below. For purposes of this MOU, the term ''coast line'' shall be defined as in the Submerged Lands Act (43 U.S.C. 1301(c)) to mean ''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.''

1. To EPA, DOI redelegates responsibility for nontransportation-related offshore facilities located landward of the coast line.

2. To DOT, DOI redelegates responsibility for transportation-related facilities, including pipelines, located landward of the coast line. The DOT retains jurisdiction for deepwater ports and their associated seaward pipelines, as delegated by E.O. 12777.

3. The DOI retains jurisdiction over facilities, including pipelines, located seaward of the coast line, except for deepwater ports and associated seaward pipelines delegated by E.O. 12777 to DOT.

EFFECTIVE DATE

This MOU is effective on the date of the final execution by the indicated signatories.

LIMITATIONS

1. The DOI, DOT, and EPA may agree in writing to exceptions to this MOU on a facility-specific basis. Affected parties will receive notification of the exceptions.

2. Nothing in this MOU is intended to replace, supersede, or modify any existing agreements between or among DOI, DOT, or EPA.

MODIFICATION AND TERMINATION

Any party to this agreement may propose modifications by submitting them in writing to the heads of the other agency/department. No modification may be adopted except with the consent of all parties. All parties shall indicate their consent to or disagreement with any proposed modification within 60 days of receipt. Upon the request of any party, representatives of all parties shall meet for the purpose of considering exceptions or modifications to this agreement. This MOU may be terminated only with the mutual consent of all parties.

Dated: November 8, 1993.
Bruce Babbitt,
Secretary of the Interior.
Dated: December 14, 1993.
Federico Peña,
Secretary of Transportation.
Dated: February 3, 1994.
Carol M. Browner,
Administrator, Environmental Protection Agency.

[59 FR 34102, July 1, 1994]

APPENDIX C TO PART 112—SUBSTANTIAL HARM CRITERIA

1.0 Introduction

The flowchart provided in Attachment C–I to this appendix shows the decision tree with the criteria to identify whether a facility ''could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters or adjoining shorelines.'' In addition, the Regional Administrator has the discretion to identify facilities that must prepare and submit facility-specific response plans to EPA.

1.1 Definitions

1.1.1 *Great Lakes* means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

1.1.2 Higher Volume Port Areas include

(1) Boston, MA;
(2) New York, NY;
(3) Delaware Bay and River to Philadelphia, PA;
(4) St. Croix, VI;
(5) Pascagoula, MS;
(6) Mississippi River from Southwest Pass, LA to Baton Rouge, LA;
(7) Louisiana Offshore Oil Port (LOOP), LA;
(8) Lake Charles, LA;
(9) Sabine-Neches River, TX;
(10) Galveston Bay and Houston Ship Channel, TX;
(11) Corpus Christi, TX;
(12) Los Angeles/Long Beach Harbor, CA;
(13) San Francisco Bay, San Pablo Bay, Carquinez Strait, and Suisun Bay to Antioch, CA;
(14) Straits of Juan de Fuca from Port Angeles, WA to and including Puget Sound, WA;
(15) Prince William Sound, AK; and
(16) Others as specified by the Regional Administrator for any EPA Region.

1.1.3 *Inland Area* means the area shoreward of the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, it means the area shoreward of the lines of demarcation (COLREG lines as defined in 33 CFR 80.740—80.850). The inland area does not include the Great Lakes.

1.1.4 *Rivers and Canals* means a body of water confined within the inland area, including the Intracoastal Waterways and other waterways artificially created for navigating that have project depths of 12 feet or less.

2.0 Description of Screening Criteria for the Substantial Harm Flowchart

A facility that has the potential to cause substantial harm to the environment in the event of a discharge must prepare and submit a facility-specific response plan to EPA in accordance with Appendix F to this part. A description of the screening criteria for the substantial harm flowchart is provided below:

2.1 *Non-Transportation-Related Facilities With a Total Oil Storage Capacity Greater Than or Equal to 42,000 Gallons Where Operations Include Over-Water Transfers of Oil.* A non-transportation-related facility with a total oil storage capacity greater than 42,000 gallons that transfers oil over water to or from vessels must submit a response plan to EPA. Daily oil transfer operations at these types of facilities occur between barges and vessels and onshore bulk storage tanks over open water. These facilities are located adjacent to navigable water.

2.2 *Lack of Adequate Secondary Containment at Facilities With a Total Oil Storage Capacity Greater Than or Equal to 1 Million Gallons.* Any facility with a total oil storage capacity greater than or equal to 1 million gallons without secondary containment sufficiently large to contain the capacity of the largest aboveground oil storage tank within each area plus sufficient freeboard to allow for precipitation must submit a response plan to EPA. Secondary containment structures that meet the standard of good engineering practice for the purposes of this part include berms, dikes, retaining walls, curbing, culverts, gutters, or other drainage systems.

2.3 *Proximity to Fish and Wildlife and Sensitive Environments at Facilities With a Total Oil Storage Capacity Greater Than or Equal to 1 Million Gallons.* A facility with a total oil storage capacity greater than or equal to 1 million gallons must submit its response plan if it is located at a distance such that a discharge from the facility could cause injury (as defined at 40 CFR 112.2) to fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's ''Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments'' (see Appendix E to this part, section 10, for availability) and the applicable Area Contingency Plan. Facility owners or operators must determine the distance at which an oil spill could cause injury to fish and wildlife and sensitive environments using the appropriate formula presented in Attachment C–III to this appendix or a comparable formula.

2.4 *Proximity to Public Drinking Water Intakes at Facilities with a Total Storage Oil Capacity Greater Than or Equal to 1 Million Gallons.* A facility with a total stor-

age capacity greater than or equal to 1 million gallons must submit its response plan if it is located at a distance such that a discharge from the facility would shut down a public drinking water intake, which is analogous to a public water system as described at 40 CFR 143.2(c). The distance at which an oil spill from an SPCC-regulated facility would shut down a public drinking water intake shall be calculated using the appropriate formula presented in Attachment C–III to this appendix or a comparable formula.

2.5 *Facilities That Have Experienced Reportable Oil Spills in an Amount Greater Than or Equal to 10,000 Gallons Within the Past 5 Years and That Have a Total Oil Storage Capacity Greater Than or Equal to 1 Million Gallons.* A facility's oil spill history within the past 5 years shall be considered in the evaluation for substantial harm. Any facility with a total oil storage capacity greater than or equal to 1 million gallons that has experienced a reportable oil spill in an amount greater than or equal to 10,000 gallons within the past 5 years must submit a response plan to EPA.

3.0 Certification for Facilities That Do Not Pose Substantial Harm

If the facility does not meet the substantial harm criteria listed in Attachment C–I to this appendix, the owner or operator shall complete and maintain at the facility the certification form contained in Attachment C–II to this appendix. In the event an alternative formula that is comparable to the one in this appendix is used to evaluate the substantial harm criteria, the owner or operator shall attach documentation to the certification form that demonstrates the reliability and analytical soundness of the comparable formula and shall notify the Regional Administrator in writing that an alternative formula was used.

4.0 References

Chow, V.T. 1959. Open Channel Hydraulics. McGraw Hill.

USCG IFR (58 FR 7353, February 5, 1993). This document is available through EPA's rulemaking docket as noted in Appendix E to this part, section 10.

ATTACHMENTS TO APPENDIX C

EC01MR92.009

ATTACHMENT C–II—CERTIFICATION OF THE APPLICABILITY OF THE SUBSTANTIAL HARM CRITERIA

Facility Name: _____

Facility Address: _____

1. Does the facility transfer oil over water to or from vessels and does the facility have a total oil storage capacity greater than or equal to 42,000 gallons?

Yes _____ No _____

2. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and does the facility lack secondary containment that is sufficiently large to contain the capacity of the largest aboveground oil storage tank plus sufficient freeboard to allow for precipitation within any aboveground oil storage tank area?

Yes _____ No _____

3. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a distance (as calculated using the appropriate formula in Attachment C–III to this appendix or a comparable formula [1]) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments? For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's ''Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments'' (see Appendix E to this part, section 10, for availability) and the applicable Area Contingency Plan.

Yes _____ No _____

4. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a distance (as calculated using the appropriate formula in Attachment C-III to this appendix or a comparable formula [1]) such that a discharge from the facility would shut down a public drinking water intake [2]?

Yes _____ No _____

5. Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and has the facility experienced a reportable oil spill in an amount greater than or equal to 10,000 gallons within the last 5 years?

Yes _____ No _____

Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals responsible for obtaining this information, I believe that the submitted information is true, accurate, and complete.

_____

Signature

_____

Name (please type or print)

_____

Title

_____

Date

ATTACHMENT C-III—CALCULATION OF THE PLANNING DISTANCE

1.0 Introduction

1.1 The facility owner or operator must evaluate whether the facility is located at a distance such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments or disrupt operations at a public drinking water intake. To quantify that distance, EPA considered oil transport mechanisms over land and on still, tidal influence, and moving navigable waters. EPA has determined that the primary concern for calculation of a planning distance is the transport of oil in navigable waters during adverse weather conditions. Therefore, two formulas have been developed to determine distances for planning purposes from the point of discharge at the facility to the potential site of impact on moving and still waters, respectively. The formula for oil transport on moving navigable water is based on the velocity of the water body and the time interval for arrival of re-

[1] If a comparable formula is used, documentation of the reliability and analytical soundness of the comparable formula must be attached to this form.

[2] For the purposes of 40 CFR part 112, public drinking water intakes are analogous to public water systems as described at 40 CFR 143.2(c).

sponse resources. The still water formula accounts for the spread of discharged oil over the surface of the water. The method to determine oil transport on tidal influence areas is based on the type of oil spilled and the distance down current during ebb tide and up current during flood tide to the point of maximum tidal influence.

1.2 EPA's formulas were designed to be simple to use. However, facility owners or operators may calculate planning distances using more sophisticated formulas, which take into account broader scientific or engineering principles, or local conditions. Such comparable formulas may result in different planning distances than EPA's formulas. In the event that an alternative formula that is comparable to one contained in this appendix is used to evaluate the criterion in 40 CFR 112.20(f)(1)(ii)(B) or (f)(1)(ii)(C), the owner or operator shall attach documentation to the response plan cover sheet contained in Appendix F to this part that demonstrates the reliability and analytical soundness of the alternative formula and shall notify the Regional Administrator in writing that an alternative formula was used.[1]

1.3 A regulated facility may meet the criteria for the potential to cause substantial harm to the environment without having to perform a planning distance calculation. For facilities that meet the substantial harm criteria because of inadequate secondary containment or oil spill history, as listed in the flowchart in Attachment C–I to this appendix, calculation of the planning distance is unnecessary. For facilities that do not meet the substantial harm criteria for secondary containment or oil spill history as listed in the flowchart, calculation of a planning distance for proximity to fish and wildlife and sensitive environments and public drinking water intakes is required, unless it is clear without performing the calculation (e.g., the facility is located in a wetland) that these areas would be impacted.

1.4 A facility owner or operator who must perform a planning distance calculation on navigable water is only required to do so for the type of navigable water conditions (i.e., moving water, still water, or tidal- influenced water) applicable to the facility. If a facility owner or operator determines that more than one type of navigable water condition applies, then the facility owner or operator is required to perform a planning distance calculation for each navigable water type to determine the greatest single distance that oil may be transported. As a result, the final planning distance for oil transport on water shall be the greatest individual distance rather than a summation of each calculated planning distance.

1.5 The planning distance formula for transport on moving waterways contains three variables: the velocity of the navigable water (v), the response time interval (t), and a conversion factor (c). The velocity, v, is determined by using the Chezy-Manning equation, which, in this case, models the flood flow rate of water in open channels. The Chezy-Manning equation contains three variables which must be determined by facility owners or operators. Manning's Roughness Coefficient (for flood flow rates), n, can be determined from Table 1 of this attachment. The hydraulic radius, r, can be estimated using the average mid-channel depth from charts provided by the sources listed in Table 2 of this attachment. The average slope of the river, s, can be determined using topographic maps that can be ordered from the U.S. Geological Survey, as listed in Table 2 of this attachment.

1.6 Table 3 of this attachment contains specified time intervals for estimating the arrival of response resources at the scene of a discharge. Assuming no prior planning, response resources should be able to arrive at the discharge site within 12 hours of the discovery of any oil discharge in Higher Volume Port Areas and within 24 hours in Great Lakes and all other river, canal, inland, and nearshore areas. The specified time intervals in Table 3 of Appendix C are to be used only to aid in the identification of whether a facility could cause substantial harm to the environment. Once it is determined that a plan must be developed for the facility, the owner or operator shall reference Appendix E to this part to determine appropriate resource levels and response times. The specified time intervals of this appendix include a 3-hour time period for deployment of boom and other response equipment. The Regional Administrator may identify additional areas as appropriate.

2.0 Oil Transport on Moving Navigable Waters

2.1 The facility owner or operator must use the following formula or a comparable formula as described in § 112.20(a)(3) to calculate the planning distance for oil transport on moving navigable water:

d=v x t x c; where

d: the distance downstream from a facility within which fish and wildlife and sensitive environments could be injured or a public drinking water intake would be shut down in the event of an oil discharge (in miles);

v: the velocity of the river/navigable water of concern (in ft/sec) as determined by Chezy-Manning's equation (see below and Tables 1 and 2 of this attachment);

t: the time interval specified in Table 3 based upon the type of water body and location (in hours); and

c: constant conversion factor 0.68 sec•mile/hr•ft (3600 sec/hr ÷ 5280 ft/mile).

2.2 Chezy-Manning's equation is used to determine velocity:

$v=1.5/n \times r^{2/3} \times s^{1/2}$; where

v=the velocity of the river of concern (in ft/sec);

n=Manning's Roughness Coefficient from Table 1 of this attachment;

r=the hydraulic radius; the hydraulic radius can be approximated for parabolic channels by multiplying the average mid-channel depth of the river (in feet) by 0.667 (sources for obtaining the mid-channel depth are listed in Table 2 of this attachment); and

s=the average slope of the river (unitless) obtained from U.S. Geological Survey topographic maps at the address listed in Table 2 of this attachment.

[1] For persistent oils or non-persistent oils, a worst case trajectory model (i.e., an alternative formula) may be substituted for the distance formulas described in still, moving, and tidal waters, subject to Regional Administrator's review of the model. An example of an alternative formula that is comparable to the one contained in this appendix would be a worst case trajectory calculation based on credible adverse winds, currents, and/or river stages, over a range of seasons, weather conditions, and river stages. Based on historical information or a spill trajectory model, the Agency may require that additional fish and wildlife and sensitive environments or public drinking water intakes also be protected.

TABLE 1.—MANNING'S ROUGHNESS COEFFICIENT FOR NATURAL STREAMS

[NOTE: Coefficients are presented for high flow rates at or near flood stage.]

Stream description	Roughness coefficient (n)
Minor Streams (Top Width <100 ft.)	
Clean:	
Straight	0.03
Winding	0.04
Sluggish (Weedy, deep pools):	
No trees or brush	0.06
Trees and/or brush	0.10
Major Streams (Top Width >100 ft.)	
Regular section:	
(No boulders/brush)	0.035
Irregular section:	
(Brush)	0.05

TABLE 2.—SOURCES OF R AND S FOR THE CHEZY-MANNING EQUATION

All of the charts and related publications for navigational waters may be ordered from:
Distribution Branch
(N/CG33)
National Ocean Service
Riverdale, Maryland 20737–1199
Phone: (301) 436–6990
There will be a charge for materials ordered and a VISA or Mastercard will be accepted.

The mid-channel depth to be used in the calculation of the hydraulic radius (r) can be obtained directly from the following sources:

Charts of Canadian Coastal and Great Lakes Waters:
Canadian Hydrographic Service
Department of Fisheries and Oceans Institute
P.O. Box 8080
1675 Russell Road
Ottawa, Ontario KIG 3H6
Canada
Phone: (613) 998–4931

Charts and Maps of Lower Mississippi River
(Gulf of Mexico to Ohio River and St. Francis, White, Big Sunflower, Atchafalaya, and other rivers):
U.S. Army Corps of Engineers
Vicksburg District
P.O. Box 60
Vicksburg, Mississippi 39180
Phone: (601) 634–5000

Charts of Upper Mississippi River and Illinois Waterway to Lake Michigan:
U.S. Army Corps of Engineers
Rock Island District
P.O. Box 2004
Rock Island, Illinois 61204
Phone: (309) 794–5552

Charts of Missouri River:
U.S. Army Corps of Engineers
Omaha District
6014 U.S. Post Office and Courthouse
Omaha, Nebraska 68102
Phone: (402) 221–3900

Charts of Ohio River:
U.S. Army Corps of Engineers
Ohio River Division
P.O. Box 1159
Cincinnati, Ohio 45201
Phone: (513) 684–3002

Charts of Tennessee Valley Authority Reservoirs, Tennessee River and Tributaries:
Tennessee Valley Authority
Maps and Engineering Section
416 Union Avenue
Knoxville, Tennessee 37902
Phone: (615) 632–2921

Charts of Black Warrior River, Alabama River, Tombigbee River, Apalachicola River and Pearl River:
U.S. Army Corps of Engineers
Mobile District
P.O. Box 2288
Mobile, Alabama 36628–0001
Phone: (205) 690–2511

The average slope of the river (s) may be obtained from topographic maps:
U.S. Geological Survey
Map Distribution
Federal Center
Bldg. 41
Box 25286
Denver, Colorado 80225

Additional information can be obtained from the following sources:
1. The State's Department of Natural Resources (DNR) or the State's Aids to Navigation office;
2. A knowledgeable local marina operator; or
3. A knowledgeable local water authority (e.g., State water commission)

2.3 The average slope of the river (s) can be determined from the topographic maps using the following steps:

(1) Locate the facility on the map.

(2) Find the Normal Pool Elevation at the point of discharge from the facility into the water (A).

(3) Find the Normal Pool Elevation of the public drinking water intake or fish and wildlife and sensitive environment located downstream (B) (Note: The owner or operator should use a minimum of 20 miles downstream as a cutoff to obtain the average slope if the location of a specific public drinking water intake or fish and wildlife and sensitive environment is unknown).

(4) If the Normal Pool Elevation is not available, the elevation contours can be used to find the slope. Determine elevation of the water at the point of discharge from the facility (A). Determine the elevation of the water at the appropriate distance downstream (B). The formula presented below can be used to calculate the slope.

(5) Determine the distance (in miles) between the facility and the public drinking water intake or fish and wildlife and sensitive environments (C).

(6) Use the following formula to find the slope, which will be a unitless value: Average Slope=[(A · B) (ft)/C (miles)] × [1 mile/5280 feet]

2.4 If it is not feasible to determine the slope and mid-channel depth by the Chezy-Manning equation, then the river velocity can be approximated on- site. A specific length, such as 100 feet, can be marked off along the shoreline. A float can be dropped into the stream above the mark, and the time required for the float to travel the distance can be used to determine the velocity in feet per second. However, this method will not yield an average velocity for the length of the stream, but a velocity only for the specific location of measurement. In addition, the flow rate will vary depending on weather conditions such as wind and rainfall. It is recommended that facility owners or operators repeat the measurement under a variety of conditions to obtain the most accurate estimate of the surface water velocity under adverse weather conditions.

2.5 The planning distance calculations for moving and still navigable waters are based on worst case discharges of persistent oils. Persistent oils are of concern because they can remain in the water for significant periods of time and can potentially exist in large quantities downstream. Owners or operators of facilities that store persistent as well as non-persistent oils may use a comparable formula. The volume of oil discharged is not included as part of the planning distance calculation for moving navigable waters. Facilities that will meet this substantial harm criterion are those with facility capacities greater than or equal to 1 million gallons. It is assumed that these facilities are capable of having an oil discharge of sufficient quantity to cause injury to fish and wildlife and sensitive environments or shut down a public drinking water intake. While owners or operators of transfer facilities that store greater than or equal to 42,000 gallons are not required to use a planning distance formula for purposes of the substantial harm criteria, they should use a planning distance calculation in the development of facility-specific response plans.

TABLE 3.—SPECIFIED TIME INTERVALS

Operating areas	Substantial harm planning time (hrs)
Higher volume port area.	12 hour arrival+3 hour deployment=15 hours.
Great Lakes ...	24 hour arrival+3 hour deployment=27 hours.
All other rivers and canals, inland, and nearshore areas.	24 hour arrival+3 hour deployment=27 hours.

2.6 *Example of the Planning Distance Calculation for Oil Transport on Moving Navigable Waters.* The following example provides a sample calculation using the planning distance formula for a facility discharging oil into the Monongahela River:

(1) Solve for v by evaluating n, r, and s for the Chezy-Manning equation:

Find the roughness coefficient, n, on Table 1 of this attachment for a regular section of a major stream with a top width greater than 100 feet. The top width of the river can be found from the topographic map.

n=0.035.

Find slope, s, where A=727 feet, B=710 feet, and C=25 miles.

Solving:

$s=[(727 \text{ ft} \cdot 1710 \text{ ft})/25 \text{ miles}] \times [1 \text{ mile}/5280 \text{ feet}]=1.3\times10^{\cdot 4}$

The average mid-channel depth is found by averaging the mid-channel depth for each mile along the length of the river between the facility and the public drinking water intake or the fish or wildlife or sensitive environment (or 20 miles downstream if applicable). This value is multiplied by 0.667 to obtain the hydraulic radius. The mid-channel depth is found by obtaining values for r and s from the sources shown in Table 2 for the Monongahela River.

Solving:

r=0.667×20 feet=13.33 feet

Solve for v using:

$v=1.5/n\times r^{2/3}\times s^{1/2}$:

$v=[1.5/0.035]\times(13.33)^{2/3}\times(1.3\times10^{\cdot 4})^{1/2}$

v=2.73 feet/second

(2) Find t from Table 3 of this attachment. The Monongahela River's resource response time is 27 hours.

(3) Solve for planning distance, d:

d=v x t x c

d=(2.73 ft/sec)×(27 hours)×(0.68 sec•mile/hr•ft)

d=50 miles

Therefore, 50 miles downstream is the appropriate planning distance for this facility.

3.0 Oil Transport on Still Water

3.1 For bodies of water including lakes or ponds that do not have a measurable velocity, the spreading of the oil over the surface must be considered. Owners or operators of facilities located next to still water bodies may use a comparable means of calculating the planning distance. If a comparable formula is used, documentation of the reliability and analytical soundness of the comparable calculation must be attached to the response plan cover sheet.

3.2 *Example of the Planning Distance Calculation for Oil Transport on Still Water.* To assist those facilities which could potentially discharge into a still body of

water, the following analysis was performed to provide an example of the type of formula that may be used to calculate the planning distance. For this example, a worst case discharge of 2,000,000 gallons is used.

(1) The surface area in square feet covered by an oil spill on still water, A1, can be determined by the following formula,[2] where V is the volume of the spill in gallons and C is a constant conversion factor:

$A_1=10^5\times V^{3/4}\times C$

C=0.1643

$A_1=10^5\times(2{,}000{,}000 \text{ gallons})^{3/4}\times(0.1643)$

$A_1=8.74\times10^8$ ft^2

(2) The spreading formula is based on the theoretical condition that the oil will spread uniformly in all directions forming a circle. In reality, the outfall of the discharge will direct the oil to the surface of the water where it intersects the shoreline. Although the oil will not spread uniformly in all directions, it is assumed that the discharge will spread from the shoreline into a semi-circle (this assumption does not account for winds or wave action).

(3) The area of a circle=πr^2

(4) To account for the assumption that oil will spread in a semi-circular shape, the area of a circle is divided by 2 and is designated as A_2.

$A_2=(\pi r^2)/2$

Solving for the radius, r, using the relationship $A_1=A_2$:

8.74×10^8 ft$^2=(\pi^2)/2$

Therefore, r=23,586 ft

r=23,586 ft÷5,280 ft/mile=4.5 miles

Assuming a 20 knot wind under storm conditions:

1 knot=1.15 miles/hour

20 knots×1.15 miles/hour/knot=23 miles/hr

Assuming that the oil slick moves at 3 percent of the wind's speed:[3]

23 miles/hour×0.03=0.69 miles/hour

(5) To estimate the distance that the oil will travel, use the times required for response resources to arrive at different geographic locations as shown in Table 3 of this attachment.

For example:

For Higher Volume Port Areas: 15 hrs×0.69 miles/hr=10.4 miles

For Great Lakes and all other areas: 27 hrs×0.69 miles/hr=18.6 miles

(6) The total distance that the oil will travel from the point of discharge, including the distance due to spreading, is calculated as follows:

Higher Volume Port Areas: d=10.4+4.5 miles or approximately 15 miles

Great Lakes and all other areas: d=18.6+4.5 miles or approximately 23 miles

4.0 Oil Transport on Tidal-Influence Areas

4.1 The planning distance method for tidal influence navigable water is based on worst case discharges of persistent and non-persistent oils. Persistent oils are of primary concern because they can potentially cause harm over a greater distance. For persistent oils discharged into tidal waters, the planning distance is 15 miles from the facility down current during ebb tide and to the point of maximum tidal influence or 15 miles, whichever is less, during flood tide.

4.2 For non-persistent oils discharged into tidal waters, the planning distance is 5 miles from the facility down current during ebb tide and to the point of maximum tidal influence or 5 miles, whichever is less, during flood tide.

4.3 *Example of Determining the Planning Distance for Two Types of Navigable Water Conditions.* Below is an example of how to determine the proper planning distance when a facility could impact two types of navigable water conditions: moving water and tidal water.

(1) Facility X stores persistent oil and is located downstream from locks along a slow moving river which is affected by tides. The river velocity, v, is determined to be 0.5 feet/second from the Chezy-Manning equation used to calculate oil transport on moving navigable waters. The specified time interval, t, obtained from Table 3 of this attachment for river areas is 27 hours. Therefore, solving for the planning distance, d:

d=v x t x c

d=(0.5 ft/sec) x (27 hours) x (0.68 sec•mile/hr•ft)

d=9.18 miles.

(2) However, the planning distance for maximum tidal influence down current during ebb tide is 15 miles, which is greater than the calculated 9.18 miles. Therefore, 15 miles downstream is the appropriate planning distance for this facility.

5.0 Oil Transport Over Land

5.1 Facility owners or operators must evaluate the potential for oil to be transported over land to navigable waters of the United States. The owner or operator must evaluate the likelihood that portions of a worst case discharge would reach navigable waters via open channel flow or from sheet flow across the land, or be prevented from reaching navigable waters when trapped in natural or man-made depressions excluding secondary containment structures.

5.2 As discharged oil travels over land, it may enter a storm drain or open concrete channel intended for drainage. It is assumed that once oil reaches such an inlet, it will flow into the receiving navigable water. During a storm event, it is highly probable that the oil will either flow into the drainage structures or follow the natural contours of the land and flow into the navigable water. Expected minimum and maximum velocities are provided as examples of open concrete channel and pipe flow. The ranges listed below reflect minimum and maximum velocities used as design criteria.[4] The calculation below demonstrates that the time required for oil to travel through a storm drain or open concrete channel to navigable water is negligible and can be considered instantaneous. The velocities are:

For open concrete channels:

maximum velocity=25 feet per second

minimum velocity=3 feet per second

For storm drains:

---

[2] Huang, J.C. and Monastero, F.C., 1982. *Review of the State-of-the-Art of Oil Pollution Models*. Final report submitted to the American Petroleum Institute by Raytheon Ocean Systems, Co., East Providence, Rhode Island.

[3] *Oil Spill Prevention & Control.* National Spill Control School, Corpus Christi State University, Thirteenth Edition, May 1990.

[4] The design velocities were obtained from Howard County, Maryland Department of Public Works' Storm Drainage Design Manual.

maximum velocity=25 feet per second
minimum velocity=2 feet per second

5.3 Assuming a length of 0.5 mile from the point of discharge through an open concrete channel or concrete storm drain to a navigable water, the travel times (distance/velocity) are:

1.8 minutes at a velocity of 25 feet per second
14.7 minutes at a velocity of 3 feet per second
22.0 minutes for at a velocity of 2 feet per second

5.4 The distances that shall be considered to determine the planning distance are illustrated in Figure C-I of this attachment. The relevant distances can be described as follows:

D1=Distance from the nearest opportunity for discharge, X_1, to a storm drain or an open concrete channel leading to navigable water.
D2=Distance through the storm drain or open concrete channel to navigable water.
D3=Distance downstream from the outfall within which fish and wildlife and sensitive environments could be injured or a public drinking water intake would be shut down as determined by the planning distance formula.
D4=Distance from the nearest opportunity for discharge, X_2, to fish and wildlife and sensitive environments not bordering navigable water.

5.5 A facility owner or operator whose nearest opportunity for discharge is located within 0.5 mile of a navigable water must complete the planning distance calculation (D3) for the type of navigable water near the facility or use a comparable formula.

5.6 A facility that is located at a distance greater than 0.5 mile from a navigable water must also calculate a planning distance (D3) if it is in close proximity (i.e., D1 is less than 0.5 mile and other factors are conducive to oil travel over land) to storm drains that flow to navigable waters. Factors to be considered in assessing oil transport over land to storm drains shall include the topography of the surrounding area, drainage patterns, man-made barriers (excluding secondary containment structures), and soil distribution and porosity. Storm drains or concrete drainage channels that are located in close proximity to the facility can provide a direct pathway to navigable waters, regardless of the length of the drainage pipe. If D1 is less than or equal to 0.5 mile, a discharge from the facility could pose substantial harm because the time to travel the distance from the storm drain to the navigable water (D2) is virtually instantaneous.

5.7 A facility's proximity to fish and wildlife and sensitive environments not bordering a navigable water, as depicted as D4 in Figure C–I of this attachment, must also be considered, regardless of the distance from the facility to navigable waters. Factors to be considered in assessing oil transport over land to fish and wildlife and sensitive environments should include the topography of the surrounding area, drainage patterns, man-made barriers (excluding secondary containment structures), and soil distribution and porosity.

5.8 If a facility is not found to pose substantial harm to fish and wildlife and sensitive environments not bordering navigable waters via oil transport on land, then supporting documentation should be maintained at the facility. However, such documentation should be submitted with the response plan if a facility is found to pose substantial harm.

EC01MR92.010

[59 FR 34102, July 1, 1994]

APPENDIX D TO PART 112—DETERMINATION OF A WORST CASE DISCHARGE PLANNING VOLUME

1.0 Instructions

1.1 An owner or operator is required to complete this worksheet if the facility meets the criteria, as presented in Appendix C to this part, or it is determined by the RA that the facility could cause substantial harm to the environment. The calculation of a worst case discharge planning volume is used for emergency planning purposes, and is required in 40 CFR 112.20 for facility owners or operators who must prepare a response plan. When planning for the amount of resources and equipment necessary to respond to the worst case discharge planning volume, adverse weather conditions must be taken into consideration. An owner or operator is required to determine the facility's worst case discharge planning volume from either Part A of this appendix for an onshore storage facility, or Part B of this appendix for an onshore production facility. The worksheet considers the provision of adequate secondary containment at a facility.

1.2 For onshore storage facilities and production facilities, permanently manifolded oil storage tanks are defined as tanks that are designed, installed, and/or operated in such a manner that the multiple tanks function as one storage unit (i.e., multiple tank volumes are equalized). In a worst case discharge scenario, a single failure could cause the discharge of the contents of more than one tank. The owner or operator must provide evidence in the response plan that tanks with common piping or piping systems are not operated as one unit. If such evidence is provided and is acceptable to the RA, the worst case discharge planning volume would be based on the capacity of the largest oil storage tank within a common secondary containment area or the largest oil storage tank within a single secondary containment area, whichever is greater. For permanently manifolded tanks that function as one oil storage unit, the worst case discharge planning volume would be based on the combined oil storage capacity of all manifolded tanks or the capacity of the largest single oil storage tank within a secondary containment area, whichever is greater. For purposes of this rule, permanently manifolded tanks that are separated by internal divisions for each tank are considered to be single tanks and individual manifolded tank volumes are not combined.

1.3 For production facilities, the presence of exploratory wells, production wells, and oil storage tanks must be considered in the calculation. Part B of this appendix takes these additional factors into consideration and provides steps for their inclusion in the total worst case discharge planning volume. Onshore oil production facilities may include all wells, flowlines, separation equipment, storage facilities, gathering lines, and auxiliary non-transportation-related equipment and facilities in a single geographical oil or gas field operated by a single operator. Although a potential worst case discharge planning volume is calculated within each section of the worksheet, the final worst case amount depends on the risk parameter that results in the greatest volume.

1.4 Marine transportation-related transfer facilities that contain fixed aboveground onshore structures used for bulk oil storage are jointly regulated by EPA and the U.S. Coast Guard (USCG), and are termed ''complexes.''

Because the USCG also requires response plans from transportation-related facilities to address a worst case discharge of oil, a separate calculation for the worst case discharge planning volume for USCG-related facilities is included in the USCG IFR (see Appendix E to this part, section 10, for availability). All complexes that are jointly regulated by EPA and the USCG must compare both calculations for worst case discharge planning volume derived by using the EPA and USCG methodologies and plan for whichever volume is greater.

PART A: WORST CASE DISCHARGE PLANNING VOLUME CALCULATION FOR ONSHORE STORAGE FACILITIES [1]

Part A of this worksheet is to be completed by the owner or operator of an SPCC-regulated facility (excluding oil production facilities) if the facility meets the criteria as presented in Appendix C to this part, or if it is determined by the RA that the facility could cause substantial harm to the environment. If you are the owner or operator of a production facility, please proceed to Part B of this worksheet.

A.1 SINGLE-TANK FACILITIES

For facilities containing only one aboveground oil storage tank, the worst case discharge planning volume equals the capacity of the oil storage tank. If adequate secondary containment (sufficiently large to contain the capacity of the aboveground oil storage tank plus sufficient freeboard to allow for precipitation) exists for the oil storage tank, multiply the capacity of the tank by 0.8.

(1) FINAL WORST CASE VOLUME: _____ GAL

(2) Do not proceed further.

A.2 SECONDARY CONTAINMENT—MULTIPLE-TANK FACILITIES

Are *all* aboveground oil storage tanks or groups of aboveground oil storage tanks at the facility *without* adequate secondary containment? [2]

_____ (Y/N)

A.2.1 If the answer is yes, the final worst case discharge planning volume equals the *total aboveground oil storage capacity at the facility.*

(1) FINAL WORST CASE VOLUME: _____ GAL

(2) Do not proceed further.

A.2.2 If the answer is no, calculate the total aboveground oil storage capacity of tanks without adequate secondary containment. If *all* aboveground oil storage tanks or groups of aboveground oil storage tanks at the facility have adequate secondary containment, ENTER ''0'' (zero).

_____ GAL

A.2.3 Calculate the capacity of the largest single aboveground oil storage tank within an adequate secondary containment area or the combined capacity of a group of aboveground oil storage tanks permanently manifolded together, whichever is greater, PLUS THE VOLUME FROM QUESTION A.2.2.

FINAL WORST CASE VOLUME: [3] _____ GAL

PART B: WORST CASE DISCHARGE PLANNING VOLUME CALCULATION FOR ONSHORE PRODUCTION FACILITIES

Part B of this worksheet is to be completed by the owner or operator of an SPCC-regulated oil production facility if the facility meets the criteria presented in Appendix C to this part, or if it is determined by the RA that the facility could cause substantial harm. A production facility consists of all wells (producing and exploratory) and related equipment in a single geographical oil or gas field operated by a single operator.

B.1 SINGLE-TANK FACILITIES

B.1.1 For facilities containing only one aboveground oil storage tank, the worst case discharge planning volume equals the capacity of the aboveground oil storage tank plus the production volume of the well with the highest output at the facility. If adequate secondary containment (sufficiently large to contain the capacity of the aboveground oil storage tank plus sufficient freeboard to allow for precipitation) exists for the storage tank, multiply the capacity of the tank by 0.8.

B.1.2 For facilities with production wells producing by pumping, if the rate of the well with the highest output is known and the number of days the facility is unattended can be predicted, then the production volume is equal to the pumping rate of the well multiplied by the greatest number of days the facility is unattended.

B.1.3 If the pumping rate of the well with the highest output is estimated or the maximum number of days the facility is unattended is estimated, then the production volume is determined from the pumping rate of the well multiplied by 1.5 times the greatest number of days that the facility has been or is expected to be unattended.

B.1.4 Attachment D–1 to this appendix provides methods for calculating the production volume for exploratory wells and production wells producing under pressure.

(1) FINAL WORST CASE VOLUME: _____ GAL

(2) Do not proceed further.

B.2 SECONDARY CONTAINMENT—MULTIPLE-TANK FACILITIES

Are *all* aboveground oil storage tanks or groups of aboveground oil storage tanks at the facility *without* adequate secondary containment?

_____ (Y/N)

B.2.1 If the answer is yes, the final worst case volume equals the total aboveground oil storage capacity without adequate secondary containment plus the production volume of the well with the highest output at the facility.

(1) For facilities with production wells producing by pumping, if the rate of the well with the highest output is known and the number of days the facility is unattended can be predicted, then the production volume is equal to the pumping rate of the well multiplied by the greatest number of days the facility is unattended.

[1] ''Storage facilities'' represent all facilities subject to this part, excluding oil production facilities.

[2] Secondary containment is defined in 40 CFR 112.7(e)(2). Acceptable methods and structures for containment are also given in 40 CFR 112.7(c)(1).

[3] All complexes that are jointly regulated by EPA and the USCG must also calculate the worst case discharge planning volume for the transportation-related portions of the facility and plan for whichever volume is greater.

(2) If the pumping rate of the well with the highest output is estimated or the maximum number of days the facility is unattended is estimated, then the production volume is determined from the pumping rate of the well multiplied by 1.5 times the greatest number of days that the facility has been or is expected to be unattended.

(3) Attachment D–1 to this appendix provides methods for calculating the production volumes for exploratory wells and production wells producing under pressure.

(A) FINAL WORST CASE VOLUME: _____ GAL

(B) Do not proceed further.

B.2.2 If the answer is no, calculate the total aboveground oil storage capacity of tanks without adequate secondary containment. If *all* aboveground oil storage tanks or groups of aboveground oil storage tanks at the facility have adequate secondary containment, ENTER ''0'' (zero).

_____ GAL

B.2.3 Calculate the capacity of the largest single aboveground oil storage tank within an adequate secondary containment area or the combined capacity of a group of aboveground oil storage tanks permanently manifolded together, whichever is greater, plus the production volume of the well with the highest output, PLUS THE VOLUME FROM QUESTION B.2.2. Attachment D–1 provides methods for calculating the production volumes for exploratory wells and production wells producing under pressure.

(1) FINAL WORST CASE VOLUME:[4] _____ GAL

(2) Do not proceed further.

ATTACHMENTS TO APPENDIX D

ATTACHMENT D–I—METHODS TO CALCULATE PRODUCTION VOLUMES FOR PRODUCTION FACILITIES WITH EXPLORATORY WELLS OR PRODUCTION WELLS PRODUCING UNDER PRESSURE

1.0 Introduction

The owner or operator of a production facility with exploratory wells or production wells producing under pressure shall compare the well rate of the highest output well (rate of well), in barrels per day, to the ability of response equipment and personnel to recover the volume of oil that could be discharged (rate of recovery), in barrels per day. The result of this comparison will determine the method used to calculate the production volume for the production facility. This production volume is to be used to calculate the worst case discharge planning volume in Part B of this appendix.

2.0 Description of Methods

2.1 Method A

If the well rate would overwhelm the response efforts (i.e., rate of well/rate of recovery ≥ 1), then the production volume would be the 30-day forecasted well rate for a well 10,000 feet deep or less, or the 45-day forecasted well rate for a well deeper than 10,000 feet.

(1) For wells 10,000 feet deep or less:

Production volume=30 days × rate of well.

(2) For wells deeper than 10,000 feet:

Production volume=45 days × rate of well.

2.2 Method B

2.2.1 If the rate of recovery would be greater than the well rate (i.e., rate of well/rate of recovery <1), then the production volume would equal the sum of two terms:

Production volume=discharge volume$_1$ + discharge volume$_2$

2.2.2 The first term represents the volume of the oil discharged from the well between the time of the blowout and the time the response resources are on scene and recovering oil (discharge volume$_1$).

Discharge volume$_1$=(days unattended+days to respond) × (rate of well)

2.2.3 The second term represents the volume of oil discharged from the well after the response resources begin operating until the spill is stopped, adjusted for the recovery rate of the response resources (discharge volume$_2$).

(1) For wells 10,000 feet deep or less:

Discharge volume$_2$=[30 days · (days unattended + days to respond)] × (rate of well) × (rate of well/rate of recovery)

(2) For wells deeper than 10,000 feet:

Discharge volume$_2$=[45 days · (days unattended + days to respond)] × (rate of well) × (rate of well/rate of recovery)

3.0 Example

3.1 A facility consists of two production wells producing under pressure, which are both less than 10,000 feet deep. The well rate of well A is 5 barrels per day, and the well rate of well B is 10 barrels per day. The facility is unattended for a maximum of 7 days. The facility operator estimates that it will take 2 days to have response equipment and personnel on scene and responding to a blowout, and that the projected rate of recovery will be 20 barrels per day.

(1) First, the facility operator determines that the highest output well is well B. The facility operator calculates the ratio of the rate of well to the rate of recovery:

10 barrels per day/20 barrels per day=0.5 Because the ratio is less than one, the facility operator will use Method B to calculate the production volume.

(2) The first term of the equation is:

Discharge volume$_1$=(7 days + 2 days) × (10 barrels per day)=90 barrels

(3) The second term of the equation is:

Discharge volume$_2$=[30 days—(7 days + 2 days)] × (10 barrels per day) × (0.5)=105 barrels

(4) Therefore, the production volume is:

Production volume=90 barrels + 105 barrels=195 barrels

3.2 If the recovery rate was 5 barrels per day, the ratio of rate of well to rate of recovery would be 2, so the facility operator would use Method A. The production volume would have been:

30 days × 10 barrels per day=300 barrels

[59 FR 34110, July 1, 1994; 59 FR 49006, Sept. 26, 1994]

[4] All complexes that are jointly regulated by EPA and the USCG must also calculate the worst case discharge planning volume for the transportation-related portions of the facility and plan for whichever volume is greater.

APPENDIX E TO PART 112—DETERMINATION AND EVALUATION OF REQUIRED RESPONSE RESOURCES FOR FACILITY RESPONSE PLANS

1.0 Purpose and Definitions

1.1 The purpose of this appendix is to describe the procedures to identify response resources to meet the requirements of § 112.20. To identify response resources to meet the facility response plan requirements of 40 CFR 112.20(h), owners or operators shall follow this appendix or, where not appropriate, shall clearly demonstrate in the response plan why use of this appendix is not appropriate at the facility and make comparable arrangements for response resources.

1.2 Definitions.

1.2.1 *Nearshore* is an operating area defined as extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, it means the area extending 12 miles from the line of demarcation (COLREG lines) defined in 49 CFR 80.740 and 80.850.

1.2.2 *Non-persistent oils* or *Group 1 oils* include:

(1) A petroleum-based oil that, at the time of shipment, consists of hydrocarbon fractions:

(A) At least 50 percent of which by volume, distill at a temperature of 340 degrees C (645 degrees F); and

(B) At least 95 percent of which by volume, distill at a temperature of 370 degrees C (700 degrees F); and

(2) A non-petroleum oil with a specific gravity less than 0.8.

1.2.3 *Non-petroleum oil* is oil of any kind that is not petroleum-based. It includes, but is not limited to, animal and vegetable oils.

1.2.4 *Ocean* means the nearshore area.

1.2.5 *Operating area* means Rivers and Canals, Inland, Nearshore, and Great Lakes geographic location(s) in which a facility is handling, storing, or transporting oil.

1.2.6 *Operating environment* means Rivers and Canals, Inland, Great Lakes, or Ocean. These terms are used to define the conditions in which response equipment is designed to function.

1.2.7 *Persistent oils* include:

(1) A petroleum-based oil that does not meet the distillation criteria for a non-persistent oil. Persistent oils are further classified based on specific gravity as follows:

(A) Group 2—specific gravity less than 0.85;

(B) Group 3—specific gravity equal to or greater than 0.85 and less than 0.95;

(C) Group 4—specific gravity equal to or greater than 0.95 and less than 1.0; or

(D) Group 5—specific gravity equal to or greater than 1.0.

(2) A non-petroleum oil with a specific gravity of 0.8 or greater. These oils are further classified based on specific gravity as follows:

(A) Group 2—specific gravity equal to or greater than 0.8 and less than 0.85;

(B) Group 3—specific gravity equal to or greater than 0.85 and less than 0.95;

(C) Group 4—specific gravity equal to or greater than 0.95 and less than 1.0; or

(D) Group 5—specific gravity equal to or greater than 1.0.

1.2.8 Other definitions are included in § 112.2 and section 1.1 of Appendix C.

2.0 Equipment Operability and Readiness

2.1 All equipment identified in a response plan must be designed to operate in the conditions expected in the facility's geographic area (i.e., operating environment). These conditions vary widely based on location and season. Therefore, it is difficult to identify a single stockpile of response equipment that will function effectively in each geographic location (i.e., operating area).

2.2 Facilities handling, storing, or transporting oil in more than one operating environment as indicated in Table 1 of this appendix must identify equipment capable of successfully functioning in each operating environment.

2.3 When identifying equipment for the response plan (based on the use of this appendix), a facility owner or operator must consider the inherent limitations of the operability of equipment components and response systems. The criteria in Table 1 of this appendix shall be used to evaluate the operability in a given environment. These criteria reflect the general conditions in certain operating environments.

2.3.1 The Regional Administrator may require documentation that the boom identified in a facility response plan meets the criteria in Table 1 of this appendix. Absent acceptable documentation, the Regional Administrator may require that the boom be tested to demonstrate that it meets the criteria in Table 1 of this appendix. Testing must be in accordance with ASTM F 715, ASTM F 989, or other tests approved by EPA as deemed appropriate (see Appendix E to this part, section 10, for general availability of documents).

2.4 Table 1 of this appendix lists criteria for oil recovery devices and boom. All other equipment necessary to sustain or support response operations in an operating environment must be designed to function in the same conditions. For example, boats that deploy or support skimmers or boom must be capable of being safely operated in the significant wave heights listed for the applicable operating environment.

2.5 A facility owner or operator shall refer to the applicable Area Contingency Plan (ACP), where available, to determine if ice, debris, and weather-related visibility are significant factors to evaluate the operability of equipment. The ACP may also identify the average temperature ranges expected in the facility's operating area. All equipment identified in a response plan must be designed to operate within those conditions or ranges.

2.6 This appendix provides information on response resource mobilization and response times. The distance of the facility from the storage location of the response resources must be used to determine whether the resources can arrive on-scene within the stated time. A facility owner or operator shall include the time for notification, mobilization, and travel of resources identified to meet the medium and Tier 1 worst case discharge requirements identified in section 4.3 of this appendix (for medium discharges) and section 5.3 of this appendix (for worst case discharges). The facility owner or operator must plan for notification and mobilization of Tier 2 and 3 response resources as necessary to meet the requirements for arrival on-scene in accordance with section 5.3 of this appendix. An on-water speed of 5 knots and a land speed of 35 miles per hour is assumed, unless the facility owner or operator can demonstrate otherwise.

2.7 In identifying equipment, the facility owner or operator shall list the storage location, quantity, and manufacturer's make and model. For oil recovery devices, the

effective daily recovery capacity, as determined using section 6 of this appendix, must be included. For boom, the overall boom height (draft and freeboard) shall be included. A facility owner or operator is responsible for ensuring that the identified boom has compatible connectors.

3.0 Determining Response Resources Required for Small Discharges

3.1 A facility owner or operator shall identify sufficient response resources available, by contract or other approved means as described in § 112.2, to respond to a small discharge. A small discharge is defined as any discharge volume less than or equal to 2,100 gallons, but not to exceed the calculated worst case discharge. The equipment must be designed to function in the operating environment at the point of expected use.

3.2 Complexes that are regulated by EPA and the USCG must also consider planning quantities for the transportation-related transfer portion of the facility. The USCG planning level that corresponds to EPA's ''small discharge'' is termed ''the average most probable discharge.'' The USCG revisions to 33 CFR part 154 define ''the average most probable discharge'' as a discharge of 50 barrels (2,100 gallons). Owners or operators of complexes must compare oil spill volumes for a small discharge and an average most probable discharge and plan for whichever quantity is greater.

3.3 The response resources shall, as appropriate, include:

3.3.1 One thousand feet of containment boom (or, for complexes with marine transfer components, 1,000 feet of containment boom or two times the length of the largest vessel that regularly conducts oil transfers to or from the facility, whichever is greater), and a means of deploying it within 1 hour of the discovery of a spill;

3.3.2 Oil recovery devices with an effective daily recovery capacity equal to the amount of oil discharged in a small discharge or greater which is available at the facility within 2 hours of the detection of an oil discharge; and

3.3.3 Oil storage capacity for recovered oily material indicated in section 9.2 of this appendix.

4.0 Determining Response Resources Required for Medium Discharges

4.1 A facility owner or operator shall identify sufficient response resources available, by contract or other approved means as described in § 112.2, to respond to a medium discharge of oil for that facility. This will require response resources capable of containing and collecting up to 36,000 gallons of oil or 10 percent of the worst case discharge, whichever is less. All equipment identified must be designed to operate in the applicable operating environment specified in Table 1 of this appendix.

4.2 Complexes that are regulated by EPA and the USCG must also consider planning quantities for the transportation-related transfer portion of the facility. The USCG planning level that corresponds to EPA's ''medium discharge'' is termed ''the maximum most probable discharge.'' The USCG revisions to 33 CFR part 154 define ''the maximum most probable discharge'' as a discharge of 1,200 barrels (50,400 gallons) or 10 percent of the worst case discharge, whichever is less. Owners or operators of complexes must compare spill volumes for a medium discharge and a maximum most probable discharge and plan for whichever quantity is greater.

4.3 Oil recovery devices identified to meet the applicable medium discharge volume planning criteria must be located such that they are capable of arriving on-scene within 6 hours in higher volume port areas and the Great Lakes and within 12 hours in all other areas. Higher volume port areas and Great Lakes areas are defined in section 1.1 of Appendix C to this part.

4.4 Because rapid control, containment, and removal of oil are critical to reduce spill impact, the owner or operator must determine response resources using an effective daily recovery capacity for oil recovery devices equal to 50 percent of the planning volume applicable for the facility as determined in section 4.1 of this appendix. The effective daily recovery capacity for oil recovery devices identified in the plan must be determined using the criteria in section 6 of this appendix.

4.5 In addition to oil recovery capacity, the plan shall, as appropriate, identify sufficient quantity of containment boom available, by contract or other approved means as described in § 112.2, to arrive within the required response times for oil collection and containment and for protection of fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's ''Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments'' (see Appendix E to this part, section 10, for availability) and the applicable ACP. While the regulation does not set required quantities of boom for oil collection and containment, the response plan shall identify and ensure, by contract or other approved means as described in § 112.2, the availability of the quantity of boom identified in the plan for this purpose.

4.6 The plan must indicate the availability of temporary storage capacity to meet section 9.2 of this appendix. If available storage capacity is insufficient to meet this level, then the effective daily recovery capacity must be derated (downgraded) to the limits of the available storage capacity.

4.7 The following is an example of a medium discharge volume planning calculation for equipment identification in a higher volume port area: The facility's largest aboveground storage tank volume is 840,000 gallons. Ten percent of this capacity is 84,000 gallons. Because 10 percent of the facility's largest tank, or 84,000 gallons, is greater than 36,000 gallons, 36,000 gallons is used as the planning volume. The effective daily recovery capacity is 50 percent of the planning volume, or 18,000 gallons per day. The ability of oil recovery devices to meet this capacity must be calculated using the procedures in section 6 of this appendix. Temporary storage capacity available on-scene must equal twice the daily recovery capacity as indicated in section 9.2 of this appendix, or 36,000 gallons per day. This is the information the facility owner or operator must use to identify and ensure the availability of the required response resources, by contract or other approved means as described in § 112.2. The facility owner shall also identify how much boom is available for use.

5.0 Determining Response Resources Required for the Worst Case Discharge to the Maximum Extent Practicable

5.1 A facility owner or operator shall identify and ensure the availability of, by contract or other approved means as described in § 112.2, sufficient response resources to respond to the worst case discharge of oil to

the maximum extent practicable. Section 7 of this appendix describes the method to determine the necessary response resources. A worksheet is provided as Attachment E–1 at the end of this appendix to simplify the procedures involved in calculating the planning volume for response resources for the worst case discharge.

5.2 Complexes that are regulated by EPA and the USCG must also consider planning for the worst case discharge at the transportation-related portion of the facility. The USCG requires that transportation-related facility owners or operators use a different calculation for the worst case discharge in the revisions to 33 CFR part 154. Owners or operators of complex facilities that are regulated by EPA and the USCG must compare both calculations of worst case discharge derived by EPA and the USCG and plan for whichever volume is greater.

5.3 Oil spill response resources identified in the response plan and available, by contract or other approved means as described in § 112.2, to meet the applicable worst case discharge planning volume must be located such that they are capable of arriving at the scene of a discharge within the times specified for the applicable response tier listed below:

	Tier 1	Tier 2	Tier 3
Higher volume port areas.	6 hrs	30 hrs	54 hrs
Great Lakes	12 hrs	36 hrs	60 hrs
All other river and canal, inland, and nearshore areas.	12 hrs	36 hrs	60 hrs

The three levels of response tiers apply to the amount of time in which facility owners or operators must plan for response resources to arrive at the scene of a spill to respond to the worst case discharge planning volume. For example, at a worst case discharge in an inland area, the first tier of response resources (i.e., that amount of on-water and shoreline cleanup capacity necessary to respond to the fraction of the worst case discharge as indicated through the series of steps described in sections 7.2 and 7.3 of this appendix) would arrive at the scene of the discharge within 12 hours; the second tier of response resources would arrive within 36 hours; and the third tier of response resources would arrive within 60 hours.

5.4 The effective daily recovery capacity for oil recovery devices identified in the response plan must be determined using the criteria in section 6 of this appendix. A facility owner or operator shall identify the storage locations of all response resources used for each tier. The owner or operator of a facility whose required daily recovery capacity exceeds the applicable contracting caps in Table 5 of this appendix shall, as appropriate, identify sources of additional equipment, their location, and the arrangements made to obtain this equipment during a response. The owner or operator of a facility whose calculated planning volume exceeds the applicable contracting caps in Table 5 of this appendix shall, as appropriate, identify sources of additional equipment equal to twice the cap listed in Tier 3 or the amount necessary to reach the calculated planning volume, whichever is lower. The resources identified above the cap shall be capable of arriving on-scene not later than the Tier 3 response times in section 5.3 of this appendix. No contract is required. While general listings of available response equipment may be used to identify additional sources (i.e., ''public'' resources vs. ''private'' resources), the response plan shall identify the specific sources, locations, and quantities of equipment that a facility owner or operator has considered in his or her planning. When listing USCG-classified oil spill removal organization(s) that have sufficient removal capacity to recover the volume above the response capacity cap for the specific facility, as specified in Table 5 of this appendix, it is not necessary to list specific quantities of equipment.

5.5 A facility owner or operator shall identify the availability of temporary storage capacity to meet section 9.2 of this appendix. If available storage capacity is insufficient, then the effective daily recovery capacity must be derated (downgraded) to the limits of the available storage capacity.

5.6 When selecting response resources necessary to meet the response plan requirements, the facility owner or operator shall, as appropriate, ensure that a portion of those resources is capable of being used in close-to-shore response activities in shallow water. For any EPA-regulated facility that is required to plan for response in shallow water, at least 20 percent of the on-water response equipment identified for the applicable operating area shall, as appropriate, be capable of operating in water of 6 feet or less depth.

5.7 In addition to oil spill recovery devices, a facility owner or operator shall identify sufficient quantities of boom that are available, by contract or other approved means as described in § 112.2, to arrive on-scene within the specified response times for oil containment and collection. The specific quantity of boom required for collection and containment will depend on the facility-specific information and response strategies employed. A facility owner or operator shall, as appropriate, also identify sufficient quantities of oil containment boom to protect fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's ''Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments'' (see Appendix E to this part, section 10, for availability), and the applicable ACP. Refer to this guidance document for the number of days and geographic areas (i.e., operating environments) specified in Table 2 of this appendix.

5.8 A facility owner or operator shall also identify, by contract or other approved means as described in § 112.2, the availability of an oil spill removal organization(s) (as described in § 112.2) capable of responding to a shoreline cleanup operation involving the calculated volume of oil and emulsified oil that might impact the affected shoreline. The volume of oil that shall, as appropriate, be planned for is calculated through the application of factors contained in Tables 2 and 3 of this appendix. The volume calculated from these tables is intended to assist the facility owner or operator to identify an oil spill removal organization with sufficient resources and expertise.

6.0 Determining Effective Daily Recovery Capacity for Oil Recovery Devices

6.1 Oil recovery devices identified by a facility owner or operator must be identified by the manufacturer, model, and effective daily recovery capacity. These capacities must be used to determine whether there is sufficient capacity to meet the applicable planning criteria for a small discharge, a medium discharge, and a worst case discharge to the maximum extent practicable.

6.2 To determine the effective daily recovery capacity of oil recovery devices, the formula listed in section 6.2.1 of this appendix shall be used. This formula considers potential limitations due to available daylight, weather, sea state, and percentage of emulsified oil in the recovered material. The RA may assign a lower efficiency factor to equipment listed in a response plan if it is determined that such a reduction is warranted.

6.2.1 The following formula shall be used to calculate the effective daily recovery capacity:

$R = T \times 24 \text{ hours} \times E$

where:

R—Effective daily recovery capacity;
T—Throughput rate in barrels per hour (nameplate capacity); and
E—20 percent efficiency factor (or lower factor as determined by the Regional Administrator).

6.2.2 For those devices in which the pump limits the throughput of liquid, throughput rate shall be calculated using the pump capacity.

6.2.3 For belt or moptype devices, the throughput rate shall be calculated using the speed of the belt or mop through the device, assumed thickness of oil adhering to or collected by the device, and surface area of the belt or mop. For purposes of this calculation, the assumed thickness of oil will be ¼ inch.

6.2.4 Facility owners or operators that include oil recovery devices whose throughput is not measurable using a pump capacity or belt/mop speed may provide information to support an alternative method of calculation. This information must be submitted following the procedures in section 6.3.2 of this appendix.

6.3 As an alternative to section 6.2 of this appendix, a facility owner or operator may submit adequate evidence that a different effective daily recovery capacity should be applied for a specific oil recovery device. Adequate evidence is actual verified performance data in spill conditions or tests using American Society of Testing and Materials (ASTM) Standard F 631–80, F 808–83 (1988), or an equivalent test approved by EPA as deemed appropriate (see Appendix E to this part, section 10, for general availability of documents).

6.3.1 The following formula must be used to calculate the effective daily recovery capacity under this alternative:

$R = D \times U$

where:

R—Effective daily recovery capacity;
D—Average Oil Recovery Rate in barrels per hour (Item 26 in F 808–83; Item 13.1.15 in F 631–80; or actual performance data); and
U—Hours per day that equipment can operate under spill conditions. Ten hours per day must be used unless a facility owner or operator can demonstrate that the recovery operation can be sustained for longer periods.

6.3.2 A facility owner or operator submitting a response plan shall provide data that supports the effective daily recovery capacities for the oil recovery devices listed. The following is an example of these calculations:

(1) A weir skimmer identified in a response plan has a manufacturer's rated throughput at the pump of 267 gallons per minute (gpm).

267 gpm=381 barrels per hour (bph)
R=381 bph×24 hr/day×0.2=1,829 barrels per day

(2) After testing using ASTM procedures, the skimmer's oil recovery rate is determined to be 220 gpm. The facility owner or operator identifies sufficient resources available to support operations for 12 hours per day.

220 gpm=314 bph
R=314 bph×12 hr/day=3,768 barrels per day

(3) The facility owner or operator will be able to use the higher capacity if sufficient temporary oil storage capacity is available. Determination of alternative efficiency factors under section 6.2 of this appendix or the acceptability of an alternative effective daily recovery capacity under section 6.3 of this appendix will be made by the Regional Administrator as deemed appropriate.

7.0 Calculating Planning Volumes for a Worst Case Discharge

7.1 A facility owner or operator shall plan for a response to the facility's worst case discharge. The planning for on-water oil recovery must take into account a loss of some oil to the environment due to evaporative and natural dissipation, potential increases in volume due to emulsification, and the potential for deposition of oil on the shoreline. The procedures for non-petroleum oils are discussed in section 7.7 of this appendix.

7.2 The following procedures must be used by a facility owner or operator in determining the required on-water oil recovery capacity:

7.2.1 The following must be determined: the worst case discharge volume of oil in the facility; the appropriate group(s) for the types of oil handled, stored, or transported at the facility [persistent (Groups 2, 3, 4, 5) or non-persistent (Group 1)]; and the facility's specific operating area. See sections 1.2.2 and 1.2.7 of this appendix for the definitions of non-persistent and persistent oils, respectively. Facilities that handle, store, or transport oil from different oil groups must calculate each group separately, unless the oil group constitutes 10 percent or less by volume of the facility's total oil storage capacity. This information is to be used with Table 2 of this appendix to determine the percentages of the total volume to be used for removal capacity planning. Table 2 of this appendix divides the volume into three categories: oil lost to the environment; oil deposited on the shoreline; and oil available for on-water recovery.

7.2.2 The on-water oil recovery volume shall, as appropriate, be adjusted using the appropriate emulsification factor found in Table 3 of this appendix. Facilities that handle, store, or transport oil from different petroleum groups must compare the on-water recovery volume for each oil group (unless the oil group constitutes 10 percent or less by volume of the facility's total storage capacity) and use the calculation that results in the largest on-water oil recovery volume to plan for the amount of response resources for a worst case discharge.

7.2.3 The adjusted volume is multiplied by the on-water oil recovery resource mobilization factor found in Table 4 of this appendix from the appropriate operating area and response tier to determine the total on-water oil recovery capacity in barrels per day that must be identified or contracted to arrive on-scene within the applicable time for each response tier. Three tiers are specified. For higher volume port areas, the contracted tiers of resources must be located such that they are capable of arriving on-scene within 6 hours for Tier 1, 30 hours for Tier 2, and 54 hours for Tier 3 of the discovery of an oil discharge.

For all other rivers and canals, inland, nearshore areas, and the Great Lakes, these tiers are 12, 36, and 60 hours.

7.2.4 The resulting on-water oil recovery capacity in barrels per day for each tier is used to identify response resources necessary to sustain operations in the applicable operating area. The equipment shall be capable of sustaining operations for the time period specified in Table 2 of this appendix. The facility owner or operator shall identify and ensure the availability, by contract or other approved means as described in § 112.2, of sufficient oil spill recovery devices to provide the effective daily oil recovery capacity required. If the required capacity exceeds the applicable cap specified in Table 5 of this appendix, then a facility owner or operator shall ensure, by contract or other approved means as described in § 112.2, only for the quantity of resources required to meet the cap, but shall identify sources of additional resources as indicated in section 5.4 of this appendix. The owner or operator of a facility whose planning volume exceeded the cap in 1993 must make arrangements to identify and ensure the availability, by contract or other approved means as described in § 112.2, for additional capacity to be under contract by 1998 or 2003, as appropriate. For a facility that handles multiple groups of oil, the required effective daily recovery capacity for each oil group is calculated before applying the cap. The oil group calculation resulting in the largest on-water recovery volume must be used to plan for the amount of response resources for a worst case discharge, unless the oil group comprises 10 percent or less by volume of the facility's total oil storage capacity.

7.3 The procedures discussed in sections 7.3.1–7.3.3 of this appendix must be used to calculate the planning volume for identifying shoreline cleanup capacity (for Group 1 through Group 4 oils).

7.3.1 The following must be determined: the worst case discharge volume of oil for the facility; the appropriate group(s) for the types of oil handled, stored, or transported at the facility [persistent (Groups 2, 3, or 4) or non-persistent (Group 1)]; and the geographic area(s) in which the facility operates (*i.e.*, operating areas). For a facility handling, storing, or transporting oil from different groups, each group must be calculated separately. Using this information, Table 2 of this appendix must be used to determine the percentages of the total volume to be used for shoreline cleanup resource planning.

7.3.2 The shoreline cleanup planning volume must be adjusted to reflect an emulsification factor using the same procedure as described in section 7.2.2 of this appendix.

7.3.3 The resulting volume shall be used to identify an oil spill removal organization with the appropriate shoreline cleanup capability.

7.4 A response plan must identify response resources with fire fighting capability. The owner or operator of a facility that handles, stores, or transports Group 1 through Group 4 oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. It is recommended that the facility owner or operator ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan must also identify an individual located at the facility to work with the fire department for Group 1 through Group 4 oil fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

7.5 The following is an example of the procedure described above in sections 7.2 and 7.3 of this appendix: A facility with a 270,000 barrel (11.3 million gallons) capacity for #6 oil (specific gravity 0.96) is located in a higher volume port area. The facility is on a peninsula and has docks on both the ocean and bay sides. The facility has four aboveground oil storage tanks with a combined total capacity of 80,000 barrels (3.36 million gallons) and no secondary containment. The remaining facility tanks are inside secondary containment structures. The largest aboveground oil storage tank (90,000 barrels or 3.78 million gallons) has its own secondary containment. Two 50,000 barrel (2.1 million gallon) tanks (that are not connected by a manifold) are within a common secondary containment tank area, which is capable of holding 100,000 barrels (4.2 million gallons) plus sufficient freeboard.

7.5.1 The worst case discharge for the facility is calculated by adding the capacity of all aboveground oil storage tanks without secondary containment (80,000 barrels) plus the capacity of the largest aboveground oil storage tank inside secondary containment. The resulting worst case discharge volume is 170,000 barrels or 7.14 million gallons.

7.5.2 Because the requirements for Tiers 1, 2, and 3 for inland and nearshore exceed the caps identified in Table 5 of this appendix, the facility owner will contract for a response to 10,000 barrels per day (bpd) for Tier 1, 20,000 bpd for Tier 2, and 40,000 bpd for Tier 3. Resources for the remaining 7,850 bpd for Tier 1, 9,750 bpd for Tier 2, and 7,600 bpd for Tier 3 shall be identified but need not be contracted for in advance. The facility owner or operator shall, as appropriate, also identify or contract for quantities of boom identified in their response plan for the protection of fish and wildlife and sensitive environments within the area potentially impacted by a worst case discharge from the facility. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's ''Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments,'' (see Appendix E to this part, section 10, for availability) and the applicable ACP. Attachment C–III to Appendix C provides a method for calculating a planning distance to fish and wildlife and sensitive environments and public drinking water intakes that may be impacted in the event of a worst case discharge.

7.6 The procedures discussed in sections 7.6.1—7.6.3 of this appendix must be used to determine appropriate response resources for facilities with Group 5 oils.

7.6.1 The owner or operator of a facility that handles, stores, or transports Group 5 oils shall, as appropriate, identify the response resources available by contract or other approved means, as described in § 112.2. The equipment identified in a response plan shall, as appropriate, include:

(1) Sonar, sampling equipment, or other methods for locating the oil on the bottom or suspended in the water column;

(2) Containment boom, sorbent boom, silt curtains, or other methods for containing the oil that may remain floating on the surface or to reduce spreading on the bottom;

(3) Dredges, pumps, or other equipment necessary to recover oil from the bottom and shoreline;

(4) Equipment necessary to assess the impact of such discharges; and

(5) Other appropriate equipment necessary to respond to a discharge involving the type of oil handled, stored, or transported.

7.6.2 Response resources identified in a response plan for a facility that handles, stores, or transports Group 5 oils under section 7.6.1 of this appendix shall be capable of being deployed (on site) within 24 hours of discovery of a discharge to the area where the facility is operating.

7.6.3 A response plan must identify response resources with fire fighting capability. The owner or operator of a facility that handles, stores, or transports Group 5 oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. It is recommended that the owner or operator ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan shall also identify an individual located at the facility to work with the fire department for Group 5 oil fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to respond to a worst case discharge. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

7.7 The procedures described in sections 7.7.1–7.7.5 of this appendix must be used to determine appropriate response plan development and evaluation criteria for facilities that handle, store, or transport non-petroleum oils. Refer to section 8 of this appendix for information on the limitations on the use of dispersants for inland and nearshore areas.

7.7.1 An owner or operator of a facility that handles, stores, or transports non-petroleum oil must provide information in his or her plan that identifies:

(1) Procedures and strategies for responding to a worst case discharge of non-petroleum oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

7.7.2 An owner or operator of a facility that handles, stores, or transports non-petroleum oil must ensure that any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) (i.e., operating environments) in which the facility operates using the criteria in Table 1 of this appendix. When evaluating the operability of equipment, the facility owner or operator must consider limitations that are identified in the appropriate ACPs, including:

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

7.7.3 The owner or operator of a facility that handles, stores, or transports non-petroleum oil must identify the response resources that are available by contract or other approved means, as described in § 112.2. The equipment described in the response plan shall, as appropriate, include:

(1) Containment boom, sorbent boom, or other methods for containing oil floating on the surface or to protect shorelines from impact;

(2) Oil recovery devices appropriate for the type of non-petroleum oil carried; and

(3) Other appropriate equipment necessary to respond to a discharge involving the type of oil carried.

7.7.4 Response resources identified in a response plan according to section 7.7.3 of this appendix must be capable of commencing an effective on-scene response within the applicable tier response times in section 5.3 of this appendix.

7.7.5 A response plan must identify response resources with fire fighting capability. The owner or operator of a facility that handles, stores, or transports non-petroleum oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. It is recommended that the owner or operator ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan must also identify an individual located at the facility to work with the fire department for non-petroleum fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

8.0 Determining the Availability of Alternative Response Methods

8.1 For dispersants to be identified in a response plan, they must be on the NCP Product Schedule that is maintained by EPA. (Some States have a list of approved dispersants for use within State waters. These State-approved dispersants are listed on the NCP Product Schedule.)

8.2 Identification of dispersant application in the plan does not imply that the use of this technique will be authorized. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable ACP. To date, dispersant application has not been approved by ACPs for inland areas or shallow nearshore areas.

9.0 Additional Equipment Necessary to Sustain Response Operations

9.1 A facility owner or operator shall, as appropriate, ensure that sufficient numbers of trained personnel and boats, aerial spotting aircraft, containment boom, sorbent materials, boom anchoring materials, and other supplies are available to sustain response operations to completion. All such equipment must be suitable for use with the primary equipment identified in the response plan. A facility owner or operator is not required to list these resources, but shall certify their availability.

9.2 A facility owner or operator shall evaluate the availability of adequate temporary storage capacity to sustain the effective daily recovery capacities from equipment identified in the plan. Because of the inefficiencies of oil spill recovery devices, response plans must identify daily storage capacity equivalent to twice the effective daily recovery capacity required on-scene. This temporary storage capacity may be reduced if a facility owner or operator can demonstrate by waste stream analysis that the efficiencies of the oil recovery devices, ability to decant waste, or the availability of alternative temporary storage or disposal locations will reduce the overall volume of oily material storage requirement.

9.3 A facility owner or operator shall ensure that his or her planning includes the capability to arrange for disposal of recovered oil products. Specific disposal procedures will be addressed in the applicable ACP.

10.0 References and Availability

10.1 All materials listed in this section are part of EPA's rulemaking docket, and are located in the Superfund Docket, Room M2615, at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number SPCC–2P). The docket is available for inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 202–260–3046. The public may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, a charge of 15 cents will be incurred for each additional page, plus a $25.00 administrative fee. Charges for copies and docket hours are subject to change.

10.2 The docket will mail copies of materials to requestors who are outside the Washington D.C. metro area. Materials may be available from other sources, as noted in this section. The ERNS/SPCC Information line at 202–260–2342 or the RCRA/Superfund Hotline at 800–424–9346 may also provide additional information on where to obtain documents. To contact the RCRA/Superfund Hotline in the Washington, DC metropolitan area, dial 703–412–9810. The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672, or, in the Washington, DC metropolitan area, 703–412–3323.

10.3 Documents Referenced

(1) National Preparedness for Response Exercise Program (PREP). The PREP draft guidelines are available from United States Coast Guard Headquarters (G–MEP–4), 2100 Second Street, SW., Washington, DC 20593. (See 58 FR 53990, October 19, 1993, Notice of Availability of PREP Guidelines).

(2) ''Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments'' (published in the FEDERAL REGISTER by DOC/NOAA at 59 FR 14713, March 29, 1994). The guidance is available in the Superfund Docket (see sections 10.1 and 10.2 of this appendix).

(3) ASTM Standards. ASTM F 715, ASTM F 989, ASTM F 631–80, ASTM F 808–83 (1988). The ASTM standards are available from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103–1187.

TABLE 1 TO APPENDIX E—RESPONSE RESOURCE OPERATING CRITERIA

Oil Recovery Devices		
Operating environment	Significant wave height [1]	Sea state
Rivers and Canals	≤ 1 foot	1
Inland	≤ 3 feet	2
Great Lakes	≤ 4 feet	2–3
Ocean	≤ 6 feet	3–4

Boom				
Boom property	Use			
	Rivers and canals	Inland	Great Lakes	Ocean
Significant Wave Height [1]	≤ 1	≤ 3	≤ 4	≤ 6
Sea State	1	2	2–3	3–4
Boom height—inches (draft plus freeboard)	6–18	18–42	18–42	≥ 42
Reserve Buoyancy to Weight Ratio	2:1	2:1	2:1	3:1 to 4:1
Total Tensile Strength—pounds	4,500	15,000–20,000.	15,000–20,000.	≥ 20,000
Skirt Fabric Tensile Strength—pounds	200	300	300	500
Skirt Fabric Tear Strength—pounds	100	100	100	125

[1] Oil recovery devices and boom *shall* be at least capable of operating in wave heights up to and including the values listed in Table 1 for each operating environment.

TABLE 2 TO APPENDIX E—REMOVAL CAPACITY PLANNING TABLE

Spill location	Rivers and canals			Nearshore/inland Great Lakes		
Sustainability of on-water oil recovery	3 days			4 days		
Oil group [1]	Percent natural dissipation	Percent recovered floating oil	Percent oil onshore	Percent natural dissipation	Percent recovered floating oil	Percent oil Onshore
1. Non-persistent oils	80	10	10	80	20	10
2. Light crudes	40	15	45	50	50	30
3. Medium crudes and fuels	20	15	65	30	50	50
4. Heavy crudes and fuels	5	20	75	10	50	70
Group 5 oils are defined in section 1.2.7 of this appendix; the response resource considerations are outlined in section 7.6 of this appendix.						

[1] Non-petroleum oils are defined in section 1.2.3 of this appendix; the response resource considerations are outlined in section 7.7 of this appendix.

TABLE 3 TO APPENDIX E—EMULSIFICATION FACTORS FOR PETROLEUM OIL GROUPS [1]

Non-Persistent Oil:	
Group 1	1.0
Persistent Oil:	
Group 2	1.8
Group 3	2.0
Group 4	1.4
Group 5 oils are defined in section 1.2.7 of this appendix; the response resource considerations are outlined in section 7.6 of this appendix.	

[1] See sections 1.2.2 and 1.2.7 of this appendix for group designations for non-persistent and persistent oils, respectively.

TABLE 4 TO APPENDIX E—ON-WATER OIL RECOVERY RESOURCE MOBILIZATION FACTORS

Operating area	Tier 1	Tier 2	Tier 3
Rivers and Canals	0.30	0.40	0.60
Inland/Nearshore Great Lakes	0.15	0.25	0.40

Note: These mobilization factors are for total resources mobilized, not incremental response resources.

TABLE 5 TO APPENDIX E—RESPONSE CAPABILITY CAPS BY OPERATING AREA

	Tier 1	Tier 2	Tier 3
February 18, 1993:			
All except Rivers & Canals, Great Lakes	10K bbls/day	20K bbls/day	40K bbls/day.
Great Lakes	5K bbls/day	10K bbls/day	20K bbls/day.
Rivers & Canals	1.5K bbls/day	3.0K bbls/day	6.0K bbls/day.
February 18, 1998:			
All except Rivers & Canals, Great Lakes	12.5K bbls/day	25K bbls/day	50K bbls/day.
Great Lakes	6.35K bbls/day	12.3K bbls/day	25K bbls/day.
Rivers & Canals	1.875K bbls/day	3.75K bbls/day	7.5K bbls/day.
February 18, 2003:			
All except Rivers & Canals, Great Lakes	TBD	TBD	TBD.
Great Lakes	TBD	TBD	TBD.
Rivers & Canals	TBD	TBD	TBD.

Note: The caps show cumulative overall effective daily recovery capacity, not incremental increases.
TBD=To Be Determined.

ATTACHMENTS TO APPENDIX E

EC01MR92.011
EC01MR92.012
EC01MR92.013
EC01MR92.014

[59 FR 34111, July 1, 1994; 59 FR 49006, Sept. 26, 1994]

APPENDIX F TO PART 112—FACILITY-SPECIFIC RESPONSE PLAN

Table of Contents

1.0 Model Facility-Specific Response Plan

(A) Owners or operators of facilities regulated under this part which pose a threat of substantial harm to the environment by discharging oil into or on navigable waters or adjoining shorelines are required to prepare and submit facility-specific response plans to EPA in accordance with the provisions in this appendix. This appendix further describes the required elements in § 112.20(h).

(B) Response plans must be sent to the appropriate EPA Regional office. Figure F–1 of this Appendix lists each EPA Regional office and the address where owners or operators must submit their response plans. Those facilities deemed by the Regional Administrator (RA) to pose a threat of significant and substantial harm to the environment will have their plans reviewed and approved by EPA. In certain cases, information required in the model response plan is similar to information currently maintained in the facility's Spill Prevention, Control, and Countermeasures (SPCC) Plan as required by 40 CFR 112.3. In these cases, owners or operators may reproduce the information and include a photocopy in the response plan.

(C) A complex may develop a single response plan with a set of core elements for all regulating agencies and separate sections for the non-transportation-related and transportation-related components, as described in § 112.20(h). Owners or operators of large facilities that handle, store, or transport oil at more than one geographically distinct location (e.g., oil storage areas at opposite ends of a single, continuous parcel of property) shall, as appropriate, develop separate sections of the response plan for each storage area.

EC01MR92.015

1.1 Emergency Response Action Plan

Several sections of the response plan shall be co-located for easy access by response personnel during an actual emergency or oil spill. This collection of sections shall be called the Emergency Response Action Plan. The Agency intends that the Action Plan contain only as much information as is necessary to combat the spill and be arranged so response actions are not delayed. The Action Plan may be arranged in a number of ways. For example, the sections of the Emergency Response Action Plan may be photocopies or condensed versions of the forms included in the associated sections of the response plan. Each Emergency Response Action Plan section may be tabbed for quick reference. The Action Plan shall be maintained in the front of the same binder that contains the complete response plan or it shall be contained in a separate binder. In the latter case, both binders shall be kept together so that the entire plan can be accessed by the qualified individual and appropriate spill response personnel. The Emergency Response Action Plan shall be made up of the following sections:

1. Qualified Individual Information (Section 1.2) partial
2. Emergency Notification Phone List (Section 1.3.1) partial
3. Spill Response Notification Form (Section 1.3.1) partial
4. Response Equipment List and Location (Section 1.3.2) complete
5. Response Equipment Testing and Deployment (Section 1.3.3) complete
6. Facility Response Team (Section 1.3.4) partial
7. Evacuation Plan (Section 1.3.5) condensed
8. Immediate Actions (Section 1.7.1) complete
9. Facility Diagram (Section 1.9) complete

1.2 Facility Information

The facility information form is designed to provide an overview of the site and a description of past activities at the facility. Much of the information required by this section may be obtained from the facility's existing SPCC Plan.

1.2.1 *Facility name and location:* Enter facility name and street address. Enter the address of corporate headquarters only if corporate headquarters are physically located at the facility. Include city, county, state, zip code, and phone number.

1.2.2 *Latitude and Longitude:* Enter the latitude and longitude of the facility. Include degrees, minutes, and seconds of the main entrance of the facility.

1.2.3 *Wellhead Protection Area:* Indicate if the facility is located in or drains into a wellhead protection area as defined by the Safe Drinking Water Act of 1986 (SDWA).[1] The response plan requirements in the Wellhead Protection Program are outlined by the State or Territory in which the facility resides.

1.2.4 *Owner/operator:* Write the name of the company or person operating the facility and the name of the person or company that owns the facility, if the two are different. List the address of the owner, if the two are different.

1.2.5 *Qualified Individual:* Write the name of the qualified individual for the entire facility. If more than one person is listed, each individual indicated in this section shall have full authority to implement the facility response plan. For each individual, list: name, position, home and work addresses (street addresses, not P.O. boxes), emergency phone number, and specific response training experience.

1.2.6 *Date of Oil Storage Start-up:* Enter the year which the present facility first started storing oil.

1.2.7 *Current Operation:* Briefly describe the facility's operations and include the Standard Industry Classification (SIC) code.

1.2.8 *Dates and Type of Substantial Expansion:* Include information on expansions that have occurred at the facility. Examples of such expansions include, but are not limited to: Throughput expansion, addition of a product line, change of a product line, and installation of additional oil storage capacity. The data provided shall include all facility historical information and detail the expansion of the facility. An example of substantial expansion is any material alteration of the facility which causes the owner or operator of the facility to re-evaluate and increase the response equipment necessary to adequately respond to a worst case discharge from the facility.

Date of Last Update: _____

FACILITY INFORMATION FORM

Facility Name: _____
Location (Street Address): _____
City: _____ State: _____ Zip: _____
County: _____ Phone Number: ( ) _____
Latitude: _____ Degrees _____ Minutes _____ Seconds
Longitude: _____ Degrees _____ Minutes _____ Seconds
Wellhead Protection Area: _____
Owner: _____
Owner Location (Street Address): _____
(if different from Facility Address)
City: _____ State:_____ Zip: _____
County: _____ Phone Number: ( ) _____
Operator (if not Owner): _____
Qualified Individual(s): (attach additional sheets if more than one)
Name: _____
Position: _____
Work Address: _____
Home Address: _____
Emergency Phone Number: ( ) _____
Date of Oil Storage Start-up: _____
Current Operations: _____

_____

_____

Date(s) and Type(s) of Substantial Expansion(s): _____

_____

(Attach additional sheets if necessary)

1.3 Emergency Response Information

(A) The information provided in this section shall describe what will be needed in an actual emergency involving the discharge of oil or a combination of hazardous substances and oil discharge. The Emergency Response Information section of the plan must include the following components:

(1) The information provided in the Emergency Notification Phone List in section 1.3.1 identifies and prioritizes the names and phone numbers of the organizations and personnel that need to be notified immediately in the event of an emergency. This section shall include all the appropriate phone numbers for the facility. These numbers must be verified each time the plan is updated. The contact list must be accessible to all facility employees to ensure that, in case of a discharge, any employee on site could immediately notify the appropriate parties.

(2) The Spill Response Notification Form in section 1.3.1 creates a checklist of information that shall be provided to the National Response Center (NRC) and other response personnel. All information on this checklist must be known at the time of notification, or be in the process of being collected. This notification form is based on a similar form used by the NRC. Note: Do not delay spill notification to collect the information on the list.

(3) Section 1.3.2 provides a description of the facility's list of emergency response equipment and location of the response equipment. When appropriate, the amount of oil that emergency response equipment can handle and any limitations (e.g., launching sites) must be described.

(4) Section 1.3.3 provides information regarding response equipment tests and deployment drills. Response equipment deployment exercises shall be conducted to ensure that response equipment is operational and the personnel who would operate the equipment in a spill response are capable of deploying and operating it. Only a representative sample of each type of response equipment needs to be deployed and operated, as long as the remainder is properly maintained. If appropriate, testing of response equipment may be conducted while it is being deployed. Facilities without facility-owned response equipment must ensure that the oil spill removal organization that is identified in the response plan to provide this response equipment certifies that the deployment exercises

[1] A wellhead protection area is defined as the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield. For further information regarding State and territory protection programs, facility owners or operators may contact the SDWA Hotline at 1–800–426–4791.

have been met. Refer to the National Preparedness for Response Exercise Program (PREP) Guidelines (see Appendix E to this part, section 10, for availability), which satisfy Oil Pollution Act (OPA) response exercise requirements.

(5) Section 1.3.4 lists the facility response personnel, including those employed by the facility and those under contract to the facility for response activities, the amount of time needed for personnel to respond, their responsibility in the case of an emergency, and their level of response training. Three different forms are included in this section. The Emergency Response Personnel List shall be composed of all personnel employed by the facility whose duties involve responding to emergencies, including oil spills, even when they are not physically present at the site. An example of this type of person would be the Building Engineer-in-Charge or Plant Fire Chief. The second form is a list of the Emergency Response Contractors (both primary and secondary) retained by the facility. Any changes in contractor status must be reflected in updates to the response plan. Evidence of contracts with response contractors shall be included in this section so that the availability of resources can be verified. The last form is the Facility Response Team List, which shall be composed of both emergency response personnel (referenced by job title/position) and emergency response contractors, included in one of the two lists described above, that will respond immediately upon discovery of an oil spill or other emergency (i.e., the first people to respond). These are to be persons normally on the facility premises or primary response contractors. Examples of these personnel would be the Facility Hazardous Materials (HAZMAT) Spill Team 1, Facility Fire Engine Company 1, Production Supervisor, or Transfer Supervisor. Company personnel must be able to respond immediately and adequately if contractor support is not available.

(6) Section 1.3.5 lists factors that must, as appropriate, be considered when preparing an evacuation plan.

(7) Section 1.3.6 references the responsibilities of the qualified individual for the facility in the event of an emergency.

(B) The information provided in the emergency response section will aid in the assessment of the facility's ability to respond to a worst case discharge and will identify additional assistance that may be needed. In addition, the facility owner or operator may want to produce a wallet-size card containing a checklist of the immediate response and notification steps to be taken in the event of an oil discharge.

1.3.1 Notification

Date of Last Update: _____

EMERGENCY NOTIFICATION PHONE LIST WHOM TO NOTIFY

Reporter's Name: _____
Date: _____
Facility Name: _____
Owner Name: _____
Facility Identification Number: _____
Date and Time of Each NRC Notification: _____

Organization	Phone No.
1. National Response Center (NRC):	1–800–424–8802
2. Qualified Individual:	_____
Evening Phone:	_____
3. Company Response Team:	_____
Evening Phone:	_____
4. Federal On-Scene Coordinator (OSC) and/or Regional Response Center (RRC):	_____
Evening Phone(s):	_____
Pager Number(s):	_____
5. Local Response Team (Fire Dept./Co-operatives):	_____
6. Fire Marshall:	_____
Evening Phone:	_____
7. State Emergency Response Commission (SERC):	_____
Evening Phone:	_____
8. State Police:	_____
9. Local Emergency Planning Committee (LEPC):	_____
10. Local Water Supply System:	_____
Evening Phone:	_____
11. Weather Report:	_____
12. Local Television/Radio Station for Evacuation Notification:	_____
13. Hospitals:	_____

SPILL RESPONSE NOTIFICATION FORM

Reporter's Last Name: _____
First: _____
M.I.: _____
Position: _____
Phone Numbers:
Day ( ) –
Evening ( ) –
Company: _____
Organization Type: _____
Address: _____
_____
City: _____
State: _____
Zip: _____

Were Materials Discharged? _____ (Y/N) Confidential? _____ (Y/N)
Meeting Federal Obligations to Report? _____ (Y/N) Date Called: _____
Calling for Responsible Party? _____ (Y/N) Time Called: _____

Incident Description

Source and/or Cause of Incident: _____

Date of Incident: _____
Time of Incident: _____ AM/PM
Incident Address/Location: _____

Nearest City:_____ State: _____ County: _____ Zip: _____
Distance from City: _____ Units of Measure: _____ Direction from City: _____
Section: _____ Township: _____ Range: _____ Borough: _____
Container Type: _____ Tank Oil Storage Capacity: _____ Units of Measure: _____
Facility Oil Storage Capacity: _____ Units of Measure: _____
Facility Latitude: _____ Degrees _____ Minutes _____ Seconds
Facility Longitude: _____ Degrees _____ Minutes _____ Seconds

Material

CHRIS Code	Discharged quantity	Unit of measure	Material Discharged in water	Quantity	Unit of measure

Response Action

Actions Taken to Correct, Control or Mitigate Incident:

Impact

Number of Injuries: _____ Number of Deaths: _____
Were there Evacuations? _____ (Y/N) Number Evacuated: _____
Was there any Damage? _____ (Y/N)
Damage in Dollars (approximate): _____
Medium Affected: _____
Description: _____
More Information about Medium: _____

Additional Information

Any information about the incident not recorded elsewhere in the report:

Caller Notifications

EPA? _____ (Y/N) USCG? _____ (Y/N) State? _____ (Y/N)
Other? _____ (Y/N) Describe: _____

1.3.2 Response Equipment List

Date of Last Update:_____

FACILITY RESPONSE EQUIPMENT LIST

1. Skimmers/Pumps—Operational Status: _____
Type, Model, and Year: _____
Type Model Year
Number: _____
Capacity: _____ gal./min.
Daily Effective Recovery Rate: _____
Storage Location(s): _____
Date Fuel Last Changed: _____
2. Boom—Operational Status: _____
Type, Model, and Year: _____
Type Model Year
Number: _____
Size (length): _____ ft.
Containment Area: _____ sq. ft.
Storage Location: _____
3. Chemicals Stored (Dispersants listed on EPA's NCP Product Schedule)

Type	Amount	Date purchased	Treatment capacity	Storage location

Type	Amount	Date purchased	Treatment capacity	Storage location

Were appropriate procedures used to receive approval for use of dispersants in accordance with the NCP (40 CFR 300.910) and the Area Contingency Plan (ACP), where applicable?_____ (Y/N).

Name and State of On-Scene Coordinator (OSC) authorizing use: _____ .

Date Authorized: _____ .

4. Dispersant Dispensing Equipment—Operational Status: _____ .

Type and year	Capacity	Storage location	Response time (minutes)

5. Sorbents—Operational Status: _____

Type and Year Purchased: _____

Amount: _____

Absorption Capacity (gal.): _____

Storage Location(s): _____

6. Hand Tools—Operational Status: _____

Type and year	Quantity	Storage location

7. Communication Equipment (include operating frequency and channel and/or cellular phone numbers)—Operational Status: _____

Type and year	Quantity	Storage location/ number

8. Fire Fighting and Personnel Protective Equipment—Operational Status: _____

Type and year	Quantity	Storage location

Type and year	Quantity	Storage location

9. Other (e.g., Heavy Equipment, Boats and Motors)—Operational Status: _____

Type and year	Quantity	Storage location

1.3.3 Response Equipment Testing/Deployment

Date of Last Update:_____

Response Equipment Testing and Deployment Drill Log

Last Inspection or Response Equipment Test Date: _____

Inspection Frequency: _____

Last Deployment Drill Date: _____

Deployment Frequency: _____

Oil Spill Removal Organization Certification (if applicable): _____

1.3.4 Personnel

Date of Last Update:_____

EMERGENCY RESPONSE PERSONNEL

Company Personnel

Name	Phone [1]	Response time	Responsibility during response action	Response training type/date
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				

[1] Phone number to be used when person is not on-site.

EMERGENCY RESPONSE CONTRACTORS

Date of Last Update: _____

Contractor	Phone	Response time	Contract responsibility [1]
1.			
2.			

3.			
4.			

[1] Include evidence of contracts/agreements with response contractors to ensure the availability of personnel and response equipment.

FACILITY RESPONSE TEAM

Date of Last Update: _____

Team member	Response time (minutes)	Phone or pager number (day/evening)
Qualified Individual:		/
		/
		/
		/
		/
		/
		/
		/
		/
		/
		/
		/
		/
		/

FACILITY RESPONSE TEAM—Continued

Date of Last Update: _____

Team member	Response time (minutes)	Phone or pager number (day/evening)
		/
		/
		/

Note: If the facility uses contracted help in an emergency response situation, the owner or operator must provide the contractors' names and review the contractors' capacities to provide adequate personnel and response equipment.

1.3.5 Evacuation Plans

1.3.5.1 Based on the analysis of the facility, as discussed elsewhere in the plan, a facility-wide evacuation plan shall be developed. In addition, plans to evacuate parts of the facility that are at a high risk of exposure in the event of a spill or other release must be developed. Evacuation routes must be shown on a diagram of the facility (see section 1.9 of this appendix). When developing evacuation plans, consideration must be given to the following factors, as appropriate:

(1) Location of stored materials;

(2) Hazard imposed by spilled material;

(3) Spill flow direction;

(4) Prevailing wind direction and speed;

(5) Water currents, tides, or wave conditions (if applicable);

(6) Arrival route of emergency response personnel and response equipment;

(7) Evacuation routes;

(8) Alternative routes of evacuation;

(9) Transportation of injured personnel to nearest emergency medical facility;

(10) Location of alarm/notification systems;

(11) The need for a centralized check-in area for evacuation validation (roll call);

(12) Selection of a mitigation command center; and

(13) Location of shelter at the facility as an alternative to evacuation.

1.3.5.2 One resource that may be helpful to owners or operators in preparing this section of the response plan is The *Handbook of Chemical Hazard Analysis Procedures* by the Federal Emergency Management Agency (FEMA), Department of Transportation (DOT), and EPA. *The Handbook of Chemical Hazard Analysis Procedures* is available from: FEMA , Publication Office, 500 C. Street, S.W., Washington, DC 20472, (202) 646–3484.

1.3.5.3 As specified in § 112.20(h)(1)(vi), the facility owner or operator must reference existing community evacuation plans, as appropriate.

1.3.6 Qualified Individual's Duties

The duties of the designated qualified individual are specified in § 112.20(h)(3)(ix). The qualified individual's duties must be described and be consistent with the minimum requirements in § 112.20(h)(3)(ix). In addition, the qualified individual must be identified with the Facility Information in section 1.2 of the response plan.

1.4 Hazard Evaluation

This section requires the facility owner or operator to examine the facility's operations closely and to predict where discharges could occur. Hazard evaluation is a widely used industry practice that allows facility owners or operators to develop a complete understanding of potential hazards and the response actions necessary to address these hazards. *The Handbook of Chemical Hazard Analysis Procedures*, prepared by the EPA, DOT, and the FEMA and the *Hazardous Materials Emergency Planning Guide* (NRT–1), prepared by the National Response Team are good references for conducting a hazard analysis. Hazard identification and evaluation will assist facility owners or operators in planning for potential discharges, thereby reducing the severity of discharge impacts that may occur in the future. The evaluation also may help the operator identify and correct potential sources of discharges. In addition, special hazards to workers and emergency response personnel's health and safety shall be evaluated, as well as the facility's oil spill history.

1.4.1 Hazard Identification

The Tank and Surface Impoundment (SI) forms, or their equivalent, that are part of this section must be completed according to the directions below. (''Surface Impoundment'' means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a seepage facility.) Similar worksheets, or their equivalent, must be developed for any other type of storage containers.

(1) List each tank at the facility with a separate and distinct identifier. Begin aboveground tank identifiers with an ''A'' and belowground tank identifiers with a ''B'', or submit multiple sheets with the aboveground tanks and belowground tanks on separate sheets.

(2) Use gallons for the maximum capacity of a tank; and use square feet for the area.

(3) Using the appropriate identifiers and the following instructions, fill in the appropriate forms:

(a) Tank or SI number—Using the aforementioned identifiers (A or B) or multiple reporting sheets, identify each tank or SI at the facility that stores oil or hazardous materials.

(b) Substance Stored—For each tank or SI identified, record the material that is stored therein. If the tank or SI is used to store more than one material, list all of the stored materials.

(c) Quantity Stored—For each material stored in each tank or SI, report the average volume of material stored on any given day.

(d) Tank Type or Surface Area/Year—For each tank, report the type of tank (e.g., floating top), and the year the tank was originally installed. If the tank has been refabricated, the year that the latest refabrication was completed must be recorded in parentheses next to the year installed. For each SI, record the surface area of the impoundment and the year it went into service.

(e) Maximum Capacity—Record the operational maximum capacity for each tank and SI. If the maximum capacity varies with the season, record the upper and lower limits.

(f) Failure/Cause—Record the cause and date of any tank or SI failure which has resulted in a loss of tank or SI contents.

(4) Using the numbers from the tank and SI forms, label a schematic drawing of the facility. This drawing shall be identical to any schematic drawings included in the SPCC Plan.

(5) Using knowledge of the facility and its operations, describe the following in writing:

(a) The loading and unloading of transportation vehicles that risk the discharge of oil or release of hazardous substances during transport processes. These operations may include loading and unloading of trucks, railroad cars, or vessels. Estimate the volume of material involved in transfer operations, if the exact volume cannot be determined.

(b) Day-to-day operations that may present a risk of discharging oil or releasing a hazardous substance. These activities include scheduled venting, piping repair or replacement, valve maintenance, transfer of tank contents

from one tank to another, etc. (not including transportation-related activities). Estimate the volume of material involved in these operations, if the exact volume cannot be determined.

(c) The secondary containment volume associated with each tank and/or transfer point at the facility. The numbering scheme developed on the tables, or an equivalent system, must be used to identify each containment area. Capacities must be listed for each individual unit (tanks, slumps, drainage traps, and ponds), as well as the facility total.

(d) Normal daily throughput for the facility and any effect on potential discharge volumes that a negative or positive change in that throughput may cause.

HAZARD IDENTIFICATION TANKS [1]

Date of Last Update: _____

Tank No.	Substance Stored (Oil and Hazardous Substance)	Quantity Stored (gallons)	Tank Type/Year	Maximum Capacity (gallons)	Failure/Cause

[1] Tank = any container that stores oil.
Attach as many sheets as necessary.

HAZARD IDENTIFICATION SURFACE IMPOUNDMENTS (SIS)

Date of Last Update: _____

SI No.	Substance Stored	Quantity Stored (gallons)	Surface Area/Year	Maximum Capacity (gallons)	Failure/Cause

Attach as many sheets as necessary.

1.4.2 Vulnerability Analysis

The vulnerability analysis shall address the potential effects (i.e., to human health, property, or the environment) of an oil spill. Attachment C–III to Appendix C to this part provides a method that owners or operators shall use to determine appropriate distances from the facility to fish and wildlife and sensitive environments. Owners or opera-

tors can use a comparable formula that is considered acceptable by the RA. If a comparable formula is used, documentation of the reliability and analytical soundness of the formula must be attached to the response plan cover sheet. This analysis must be prepared for each facility and, as appropriate, must discuss the vulnerability of:

(1) Water intakes (drinking, cooling, or other);
(2) Schools;
(3) Medical facilities;
(4) Residential areas;
(5) Businesses;
(6) Wetlands or other sensitive environments; [2]
(7) Fish and wildlife;
(8) Lakes and streams;
(9) Endangered flora and fauna;
(10) Recreational areas;
(11) Transportation routes (air, land, and water);
(12) Utilities; and
(13) Other areas of economic importance (e.g., beaches, marinas) including terrestrially sensitive environments, aquatic environments, and unique habitats.

1.4.3 Analysis of the Potential for an Oil Spill

Each owner or operator shall analyze the probability of a spill occurring at the facility. This analysis shall incorporate factors such as oil spill history, horizontal range of a potential spill, and vulnerability to natural disaster, and shall, as appropriate, incorporate other factors such as tank age. This analysis will provide information for developing discharge scenarios for a worst case discharge and small and medium discharges and aid in the development of techniques to reduce the size and frequency of spills. The owner or operator may need to research the age of the tanks and the oil spill history at the facility.

1.4.4 Facility Reportable Oil Spill History

Briefly describe the facility's reportable oil spill [3] history for the entire life of the facility to the extent that such information is reasonably identifiable, including:

(1) Date of discharge(s);
(2) List of discharge causes;
(3) Material(s) discharged;
(4) Amount discharged in gallons;
(5) Amount of discharge that reached navigable waters, if applicable;
(6) Effectiveness and capacity of secondary containment;
(7) Clean-up actions taken;
(8) Steps taken to reduce possibility of recurrence;
(9) Total oil storage capacity of the tank(s) or impoundment(s) from which the material discharged;
(10) Enforcement actions;
(11) Effectiveness of monitoring equipment; and
(12) Description(s) of how each oil spill was detected.

The information solicited in this section may be similar to requirements in 40 CFR 112.4(a). Any duplicate information required by § 112.4(a) may be photocopied and inserted.

1.5 Discharge Scenarios

In this section, the owner or operator is required to provide a description of the facility's worst case discharge, as well as a small and medium spill, as appropriate. A multi-level planning approach has been chosen because the response actions to a spill (i.e., necessary response equipment, products, and personnel) are dependent on the magnitude of the spill. Planning for lesser discharges is necessary because the nature of the response may be qualitatively different depending on the quantity of the discharge. The facility owner or operator shall discuss the potential direction of the spill pathway.

1.5.1 Small and Medium Discharges

1.5.1.1 To address multi-level planning requirements, the owner or operator must consider types of facility-specific spill scenarios that may contribute to a small or medium spill. The scenarios shall account for all the operations that take place at the facility, including but not limited to:

(1) Loading and unloading of surface transportation;
(2) Facility maintenance;
(3) Facility piping;
(4) Pumping stations and sumps;
(5) Oil storage tanks;
(6) Vehicle refueling; and
(7) Age and condition of facility and components.

1.5.1.2 The scenarios shall also consider factors that affect the response efforts required by the facility. These include but are not limited to:

(1) Size of the spill;
(2) Proximity to downgradient wells, waterways, and drinking water intakes;
(3) Proximity to fish and wildlife and sensitive environments;
(4) Likelihood that the discharge will travel offsite (i.e., topography,
drainage) ;
(5) Location of the material spilled (i.e., on a concrete pad or directly on the soil);
(6) Material discharged;
(7) Weather or aquatic conditions (i.e., river flow);
(8) Available remediation equipment;
(9) Probability of a chain reaction of failures; and
(10) Direction of spill pathway.

1.5.2 Worst Case Discharge

1.5.2.1 In this section, the owner or operator must identify the worst case discharge volume at the facility. Worksheets for production and non-production facility owners or operators to use when calculating worst case discharge are presented in Appendix D to this part. When planning for the worst case discharge response, all of the aforementioned factors listed in the small and medium discharge section of the response plan shall be addressed.

1.5.2.2 For onshore storage facilities and production facilities, permanently manifolded oil storage tanks are defined as tanks that are designed, installed, and/or operated in such a manner that the multiple tanks function as one storage unit (i.e., multiple tank volumes are equal-

[2] Refer to the DOC/NOAA ''Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments'' (See appendix E to this part, section 10, for availability).

[3] As described in 40 CFR part 110, reportable oil spills are those that: (a) violate applicable water quality standards, or (b) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

ized). In this section of the response plan, owners or operators must provide evidence that oil storage tanks with common piping or piping systems are not operated as one unit. If such evidence is provided and is acceptable to the RA, the worst case discharge volume shall be based on the combined oil storage capacity of all manifold tanks or the oil storage capacity of the largest single oil storage tank within the secondary containment area, whichever is greater. For permanently manifolded oil storage tanks that function as one storage unit, the worst case discharge shall be based on the combined oil storage capacity of all manifolded tanks or the oil storage capacity of the largest single tank within a secondary containment area, whichever is greater. For purposes of the worst case discharge calculation, permanently manifolded oil storage tanks that are separated by internal divisions for each tank are considered to be single tanks and individual manifolded tank volumes are not combined.

1.6 Discharge Detection Systems

In this section, the facility owner or operator shall provide a detailed description of the procedures and equipment used to detect discharges. A section on spill detection by personnel and a discussion of automated spill detection, if applicable, shall be included for both regular operations and after hours operations. In addition, the facility owner or operator shall discuss how the reliability of any automated system will be checked and how frequently the system will be inspected.

1.6.1 Discharge Detection by Personnel

In this section, facility owners or operators shall describe the procedures and personnel that will detect any spill or uncontrolled discharge of oil or release of a hazardous substance. A thorough discussion of facility inspections must be included. In addition, a description of initial response actions shall be addressed. This section shall reference section 1.3.1 of the response plan for emergency response information.

1.6.2 Automated Discharge Detection

In this section, facility owners or operators must describe any automated spill detection equipment that the facility has in place. This section shall include a discussion of overfill alarms, secondary containment sensors, etc. A discussion of the plans to verify an automated alarm and the actions to be taken once verified must also be included.

1.7 Plan Implementation

In this section, facility owners or operators must explain in detail how to implement the facility's emergency response plan by describing response actions to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent discharges described in section 1.5 of the response plan. This section shall include the identification of response resources for small, medium, and worst case spills; disposal plans; and containment and drainage planning. A list of those personnel who would be involved in the cleanup shall be identified. Procedures that the facility will use, where appropriate or necessary, to update their plan after an oil spill event and the time frame to update the plan must be described.

1.7.1 Response Resources for Small, Medium, and Worst Case Spills

1.7.1.1 Once the spill scenarios have been identified in section 1.5 of the response plan, the facility owner or operator shall identify and describe implementation of the response actions. The facility owner or operator shall demonstrate accessibility to the proper response personnel and equipment to effectively respond to all of the identified spill scenarios. The determination and demonstration of adequate response capability are presented in Appendix E to this part. In addition, steps to expedite the cleanup of oil spills must be discussed. At a minimum, the following items must be addressed:

(1) Emergency plans for spill response;

(2) Additional response training;

(3) Additional contracted help;

(4) Access to additional response equipment/experts; and

(5) Ability to implement the plan including response training and practice drills.

1.7.1.2A recommended form detailing immediate actions follows.

Oil Spill Response—Immediate Actions

1. Stop the product flow	Act quickly to secure pumps, close valves, etc.
2. Warn personnel	Enforce safety and security measures.
3. Shut off ignition sources.	Motors, electrical circuits, open flames, etc.
4. Initiate containment	Around the tank and/or in the water with oil boom.
5. Notify NRC	1–800–424–8802
6. Notify OSC	
7. Notify, as appropriate	

Source: FOSS, Oil Spill Response—Emergency Procedures, Revised December 3, 1992.

1.7.2 Disposal Plans

1.7.2.1 Facility owners or operators must describe how and where the facility intends to recover, reuse, decontaminate, or dispose of materials after a discharge has taken place. The appropriate permits required to transport or dispose of recovered materials according to local, State, and Federal requirements must be addressed. Materials that must be accounted for in the disposal plan, as appropriate, include:

(1) Recovered product;

(2) Contaminated soil;

(3) Contaminated equipment and materials, including drums, tank parts, valves, and shovels;

(4) Personnel protective equipment;

(5) Decontamination solutions;

(6) Adsorbents; and

(7) Spent chemicals.

1.7.2.2 These plans must be prepared in accordance with Federal (e.g., the Resource Conservation and Recovery Act [RCRA]), State, and local regulations, where applicable. A copy of the disposal plans from the facility's SPCC Plan may be inserted with this section, including any diagrams in those plans.

Material	Disposal facility	Location	RCRA permit/manifest
1.			
2.			
3.			
4.			

1.7.3 Containment and Drainage Planning

A proper plan to contain and control a spill through drainage may limit the threat of harm to human health and the environment. This section shall describe how to contain and control a spill through drainage, including:

(1) The available volume of containment (use the information presented in section 1.4.1 of the response plan);

(2) The route of drainage from oil storage and transfer areas;

(3) The construction materials used in drainage troughs;

(4) The type and number of valves and separators used in the drainage system;

(5) Sump pump capacities;

(6) The containment capacity of weirs and booms that might be used and their location (see section 1.3.2 of this appendix); and

(7) Other cleanup materials.

In addition, facility owners or operators must meet the inspection and monitoring requirements for drainage contained in 40 CFR 112.7(e). A copy of the containment and drainage plans that are required in 40 CFR 112.7(e) may be inserted in this section, including any diagrams in those plans.

Note: The general permit for stormwater drainage may contain additional requirements.

1.8 Self-Inspection, Drills/Exercises, and Response Training

The owner or operator must develop programs for facility response training and for drills/exercises according to the requirements of 40 CFR 112.21. Logs must be kept for facility drills/exercises, personnel response training, and spill prevention meetings. Much of the recordkeeping information required by this section is also contained in the SPCC Plan required by 40 CFR 112.3. These logs may be included in the facility response plan or kept as an annex to the facility response plan.

1.8.1 Facility Self-Inspection

Pursuant to 40 CFR 112.7(e)(8), each facility shall include the written procedures and records of inspections in the SPCC Plan. The inspection shall include the tanks, secondary containment, and response equipment at the facility. Records of the inspections of tanks and secondary containment required by 40 CFR 112.7(e) shall be cross-referenced in the response plan. The inspection of response equipment is a new requirement in this plan. Facility self-inspection requires two steps: (1) a checklist of things to inspect; and (2) a method of recording the actual inspection and its findings. The date of each inspection shall be noted. These records are required to be maintained for 5 years.

1.8.1.1 Tank Inspection

The tank inspection checklist presented below has been included as guidance during inspections and monitoring. Similar requirements exist in 40 CFR 112.7(e). Duplicate information from the SPCC Plan may be photocopied and inserted in this section. The inspection checklist consists of the following items:

TANK INSPECTION CHECKLIST

1. Check tanks for leaks, specifically looking for:
   A. drip marks;
   B. discoloration of tanks;
   C. puddles containing spilled or leaked material;
   D. corrosion;
   E. cracks; and
   F. localized dead vegetation.
2. Check foundation for:
   A. cracks;
   B. discoloration;
   C. puddles containing spilled or leaked material;
   D. settling;
   E. gaps between tank and foundation; and
   F. damage caused by vegetation roots.
3. Check piping for:
   A. droplets of stored material;
   B. discoloration;
   C. corrosion;
   D. bowing of pipe between supports;
   E. evidence of stored material seepage from valves or seals; and
   F. localized dead vegetation.

TANK/SURFACE IMPOUNDMENT INSPECTION LOG

Inspector	Tank or SI#	Date	Comments

TANK/SURFACE IMPOUNDMENT INSPECTION LOG—Continued

Inspector	Tank or SI#	Date	Comments

1.8.1.2 Response Equipment Inspection

Using the Emergency Response Equipment List provided in section 1.3.2 of the response plan, describe each type of response equipment, checking for the following:

Response Equipment Checklist

1. Inventory (item and quantity);
2. Storage location;
3. Accessibility (time to access and respond);
4. Operational status/condition;
5. Actual use/testing (last test date and frequency of testing); and
6. Shelf life (present age, expected replacement date).

Please note any discrepancies between this list and the available response equipment.

RESPONSE EQUIPMENT INSPECTION LOG

[Use section 1.3.2 of the response plan as a checklist]

Inspector	Date	Comments

RESPONSE EQUIPMENT INSPECTION LOG—Continued

[Use section 1.3.2 of the response plan as a checklist]

Inspector	Date	Comments

1.8.1.3 Secondary Containment Inspection

Inspect the secondary containment (as described in sections 1.4.1 and 1.7.2 of the response plan), checking the following:

Secondary Containment Checklist

1. Dike or berm system.
   A. Level of precipitation in dike/available capacity;
   B. Operational status of drainage valves;
   C. Dike or berm permeability;
   D. Debris;
   E. Erosion;
   F. Permeability of the earthen floor of diked area; and
   G. Location/status of pipes, inlets, drainage beneath tanks, etc.
2. Secondary containment
   A. Cracks;
   B. Discoloration;
   C. Presence of spilled or leaked material (standing liquid);
   D. Corrosion; and
   E. Valve conditions.
3. Retention and drainage ponds
   A. Erosion;
   B. Available capacity;
   C. Presence of spilled or leaked material;
   D. Debris; and
   E. Stressed vegetation.

During inspection, make note of discrepancies in any of the above mentioned items, and report them immediately to the proper facility personnel. Similar requirements exist in 40 CFR 112.7(e). Duplicate information from the SPCC Plan may be photocopied and inserted in this section.

1.8.2 Facility Drills/Exercises

(A) CWA section 311(j)(5), as amended by OPA, requires the response plan to contain a description of facility drills/exercises. According to 40 CFR 112.21(c), the facility owner or operator shall develop a program of facility response drills/exercises, including evaluation procedures. Following the PREP guidelines (see Appendix E to this part, section 10, for availability) would satisfy a facility's requirements for drills/exercises under this part. Alternately, under § 112.21(c), a facility owner or operator may develop a program that is not based on the PREP guidelines. Such a program is subject to approval by the Regional Administrator based on the description of the program provided in the response plan.

(B) The PREP Guidelines specify that the facility conduct internal and external drills/exercises. The internal exercises include: qualified individual notification drills, spill management team tabletop exercises, equipment deployment exercises, and unannounced exercises. External exercises include Area Exercises. Credit for an Area or Facility-specific Exercise will be given to the facility for an actual response to a spill in the area if the plan was utilized for response to the spill and the objectives of the Exercise were met and were properly evaluated, documented and self-certified.

(C) Section 112.20(h)(8)(ii) requires the facility owner or operator to provide a description of the drill/exercise program to be carried out under the response plan. Qualified Individual Notification Drill and Spill Management Team Tabletop Drill logs shall be provided in sections 1.8.2.1 and 1.8.2.2, respectively. These logs may be included in the facility response plan or kept as an annex to the facility response plan. See section 1.3.3 of this appendix for Equipment Deployment Drill Logs.

1.8.2.1 Qualified Individual Notification Drill Logs

Qualified Individual Notification Drill Log

Date: _____

Company: _____

Qualified Individual(s): _____

Emergency Scenario: _____

_____

_____

Evaluation: _____

_____

_____

_____

Changes to be Implemented: _____

_____

_____

Time Table for Implementation: _____

_____

1.8.2.2 Spill Management Team Tabletop Exercise Logs

Spill Management Team Tabletop Exercise Log

Date: _____

Company: _____

Qualified Individual(s): _____

Emergency Scenario: _____

_____

_____

Evaluation: _____

_____

_____

_____

Changes to be Implemented: _____

_____

_____

Time Table for Implementation: _____

1.8.3 Response Training

Section 112.21(a) requires facility owners or operators to develop programs for facility response training. Facility owners or operators are required by § 112.20(h)(8)(iii) to provide a description of the response training program to be carried out under the response plan. A facility's training program can be based on the USCG's Training Elements for Oil Spill Response, to the extent applicable to facility operations, or another response training program acceptable to the RA. The training elements are available from Petty Officer Daniel Caras at (202) 267–6570 or fax 267–4085/4065. Personnel response training logs and discharge prevention meeting logs shall be included in sections 1.8.3.1 and 1.8.3.2 of the response plan respectively. These logs may be included in the facility response plan or kept as an annex to the facility response plan.

1.8.3.1 Personnel Response Training Logs

PERSONNEL RESPONSE TRAINING LOG

Name	Response training/date and number of hours	Prevention training/date and number of hours

1.8.3.2 Discharge Prevention Meetings Logs

DISCHARGE PREVENTION MEETING LOG

Date: _____

Attendees: _____

_____

_____

_____

_____

_____

_____

_____

Subject/issue identified	Required action	Implementation date

1.9 Diagrams

The facility-specific response plan shall include the following diagrams. Additional diagrams that would aid in the development of response plan sections may also be included.

(1) The Site Plan Diagram shall, as appropriate, include and identify:
  (A) the entire facility to scale;
  (B) above and below ground bulk oil storage tanks;
  (C) the contents and capacities of bulk oil storage tanks;
  (D) the contents and capacity of drum oil storage areas;
  (E) the contents and capacities of surface impoundments;
  (F) process buildings;
  (G) transfer areas;
  (H) secondary containment systems (location and capacity);
  (I) structures where hazardous materials are stored or handled, including materials stored and capacity of storage;
  (J) location of communication and emergency response equipment;
  (K) location of electrical equipment which contains oil; and
  (L) for complexes only, the interface(s) (i.e., valve or component) between the portion of the facility regulated by EPA and the portion(s) regulated by other Agencies. In most cases, this interface is defined as the last valve inside secondary containment before piping leaves the secondary containment area to connect to the transportation-related portion of the facility (i.e., the structure used or intended to be used to transfer oil to or from a vessel or pipeline). In the absence of secondary containment, this interface is the valve manifold adjacent to the tank nearest the transfer structure as described above. The interface may be defined differently at a specific facility if agreed to by the RA and the appropriate Federal official.

(2) The Site Drainage Plan Diagram shall, as appropriate, include:
  (A) major sanitary and storm sewers, manholes, and drains;
  (B) weirs and shut-off valves;
  (C) surface water receiving streams;
  (D) fire fighting water sources;
  (E) other utilities;
  (F) response personnel ingress and egress;
  (G) response equipment transportation routes; and
  (H) direction of spill flow from discharge points.

(3) The Site Evacuation Plan Diagram shall, as appropriate, include:
  (A) site plan diagram with evacuation route(s); and
  (B) location of evacuation regrouping areas.

1.10 Security

According to 40 CFR 112.7(e)(9), facilities are required to maintain a certain level of security, as appropriate. In this section, a description of the facility security shall be provided and include, as appropriate:

(1) emergency cut-off locations (automatic or manual valves);
(2) enclosures (e.g., fencing, etc.);
(3) guards and their duties, day and night;
(4) lighting;
(5) valve and pump locks; and
(6) pipeline connection caps.

The SPCC Plan contains similar information. Duplicate information may be photocopied and inserted in this section.

2.0 Response Plan Cover Sheet

A three-page form has been developed to be completed and submitted to the RA by owners or operators who are required to prepare and submit a facility-specific response plan. The cover sheet (Attachment F–1) must accompany the response plan to provide the Agency with basic information concerning the facility. This section will describe the Response Plan Cover Sheet and provide instructions for its completion.

2.1 General Information

Owner/Operator of Facility: Enter the name of the owner of the facility (if the owner is the operator). Enter the operator of the facility if otherwise. If the owner/operator of the facility is a corporation, enter the name of the facility's principal corporate executive. Enter as much of the name as will fit in each section.

(1) *Facility Name:* Enter the proper name of the facility.

(2) *Facility Address:* Enter the street address, city, State, and zip code.

(3) *Facility Phone Number:* Enter the phone number of the facility.

(4) *Latitude and Longitude:* Enter the facility latitude and longitude in degrees, minutes, and seconds.

(5) *Dun and Bradstreet Number:* Enter the facility's Dun and Bradstreet number if available (this information may be obtained from public library resources).

(6) *Standard Industrial Classification (SIC) Code:* Enter the facility's SIC code as determined by the Office of Management and Budget (this information may be obtained from public library resources).

(7) *Largest Oil Storage Tank Capacity:* Enter the capacity in GALLONS of the largest aboveground oil storage tank at the facility.

(8) *Maximum Oil Storage Capacity:* Enter the total maximum capacity in GALLONS of all aboveground oil storage tanks at the facility.

(9) *Number of Oil Storage Tanks:* Enter the number of all aboveground oil storage tanks at the facility.

(10) *Worst Case Discharge Amount:* Using information from the worksheets in Appendix D, enter the amount of the worst case discharge in GALLONS.

(11) *Facility Distance to Navigable Waters:* Mark the appropriate line for the nearest distance between an opportunity for discharge (i.e., oil storage tank, piping, or flowline) and a navigable water.

2.2 Applicability of Substantial Harm Criteria

Using the flowchart provided in Attachment C–I to Appendix C to this part, mark the appropriate answer to each question. Explanations of referenced terms can be found in Appendix C to this part. If a comparable formula to the ones described in Attachment C–III to Appendix C to this part is used to calculate the planning distance, documentation of the reliability and analytical soundness of the formula must be attached to the response plan cover sheet.

2.3 Certification

Complete this block after all other questions have been answered.

3.0 Acronyms

ACP: Area Contingency Plan
ASTM: American Society of Testing Materials
bbls: Barrels
bpd: Barrels per Day
bph: Barrels per Hour
CHRIS: Chemical Hazards Response Information System
CWA: Clean Water Act
DOI: Department of Interior
DOC: Department of Commerce
DOT: Department of Transportation
EPA: Environmental Protection Agency
FEMA: Federal Emergency Management Agency
FR: Federal Register
gal: Gallons
gpm: Gallons per Minute
HAZMAT: Hazardous Materials
LEPC: Local Emergency Planning Committee
MMS: Minerals Management Service (part of DOI)
NCP: National Oil and Hazardous Substances Pollution Contingency Plan
NOAA: National Oceanic and Atmospheric Administration (part of DOC)
NRC: National Response Center
NRT: National Response Team
OPA: Oil Pollution Act of 1990
OSC: On-Scene Coordinator
PREP: National Preparedness for Response Exercise Program
RA: Regional Administrator
RCRA: Resource Conservation and Recovery Act
RRC: Regional Response Centers
RRT: Regional Response Team
RSPA: Research and Special Programs Administration
SARA: Superfund Amendments and Reauthorization Act
SERC: State Emergency Response Commission
SDWA: Safe Drinking Water Act of 1986
SI: Surface Impoundment
SIC: Standard Industrial Classification
SPCC: Spill Prevention, Control, and Countermeasures
USCG: United States Coast Guard

4.0 References

CONCAWE. 1982. Methodologies for Hazard Analysis and Risk Assessment in the Petroleum Refining and Storage Industry. Prepared by CONCAWE's Risk Assessment Ad-hoc Group.

U.S. Department of Housing and Urban Development. 1987. Siting of HUD-Assisted Projects Near Hazardous Facilities: Acceptable Separation Distances from Explosive and Flammable Hazards. Prepared by the Office of Environment and Energy, Environmental Planning Division, Department of Housing and Urban Development. Washington, DC.

U.S. DOT, FEMA and U.S. EPA. Handbook of Chemical Hazard Analysis Procedures.

U.S. DOT, FEMA and U.S. EPA. Technical Guidance for Hazards Analysis: Emergency Planning for Extremely Hazardous Substances.

The National Response Team. 1987. Hazardous Materials Emergency Planning Guide. Washington, DC.

The National Response Team. 1990. Oil Spill Contingency Planning, National Status: A Report to the President. Washington, DC. U.S. Government Printing Office.

Offshore Inspection and Enforcement Division. 1988. Minerals Management Service, Offshore Inspection Program: National Potential Incident of Noncompliance (PINC) List. Reston, VA.

ATTACHMENTS TO APPENDIX F

ATTACHMENT F–1—RESPONSE PLAN COVER SHEET

This cover sheet will provide EPA with basic information concerning the facility. It must accompany a submitted facility response plan. Explanations and detailed instructions can be found in Appendix F. Please type or write legibly in blue or black ink. Public reporting burden for the collection of this information is estimated to vary from 1 hour to 270 hours per response in the first year, with an average of 5 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate of this information, including suggestions for reducing this burden to: Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington D.C. 20503.

GENERAL INFORMATION

Owner/Operator of Facility:

Facility Name:

Facility Address (street address or route):

City, State, and U.S. Zip Code:

Facility Phone No.:

Latitude (Degrees: North):

degrees, minutes, seconds

Dun & Bradstreet Number: [1]

Largest Aboveground Oil Storage Tank Capacity (Gallons):

Number of Aboveground Oil Storage Tanks:

Longitude (Degrees: West):

degrees, minutes, seconds

Standard Industrial Classification (SIC) Code: [1]

Maximum Oil Storage Capacity (Gallons):

Worst Case Oil Discharge Amount (Gallons):

[1] These numbers may be obtained from public library resources.

Facility Distance to Navigable Water. Mark the appropriate line. ———————————————

0–¼ mile ____ ¼–½ mile ____ ½–1 mile ____ >1 mile ____

APPLICABILITY OF SUBSTANTIAL HARM CRITERIA

Does the facility transfer oil over-water[2] to or from vessels and does the facility have a total oil storage capacity greater than or equal to 42,000 gallons?

Yes ———————————————

No ———————————————

Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and, within any storage area, does the facility lack secondary containment[2] that is sufficiently large to contain the capacity of the largest aboveground oil storage tank plus sufficient freeboard to allow for precipitation?

Yes ———————————————

No ———————————————

Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a distance[2] (as calculated using the appropriate formula in Appendix C or a comparable formula) such that a discharge from the facility could cause injury to fish and wildlife and sensitive environments?[3]

Yes ———————————————

No ———————————————

Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and is the facility located at a distance[2] (as calculated using the appropriate formula in Appendix C or a comparable formula) such that a discharge from the facility would shut down a public drinking water intake?[2] ———————————————

Yes ———————————————

No ———————————————

Does the facility have a total oil storage capacity greater than or equal to 1 million gallons and has the facility experienced a reportable oil spill[2] in an amount greater than or equal to 10,000 gallons within the last 5 years?

Yes ———————————————

No ———————————————

CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals responsible for obtaining information, I believe that the submitted information is true, accurate, and complete.

Signature: ———————————————

Name (Please type or print): ———————————————

Title: ———————————————

Date: ———————————————

[59 FR 34122, July 1, 1994; 59 FR 49006, Sept. 26, 1994]

[2] Explanations of the above-referenced terms can be found in Appendix C to this part. If a comparable formula to the ones contained in Attachment C–III is used to establish the appropriate distance to fish and wildlife and sensitive environments or public drinking water intakes, documentation of the reliability and analytical soundness of the formula must be attached to this form.

[3] For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's ''Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments'' (see Appendix E to this part, section 10, for availability) and the applicable ACP.

PART 113—LIABILITY LIMITS FOR SMALL ONSHORE STORAGE FACILITIES

Subpart A—Oil Storage Facilities

Sec.

AUTHORITY: Sec. 311(f)(2), 86 Stat. 867 (33 U.S.C. 1251 (1972)).

SOURCE: 38 FR 25440, Sept. 13, 1973, unless otherwise noted.

Subpart A—Oil Storage Facilities

§ 113.1 Purpose.

This subpart establishes size classifications and associated liability limits for small onshore oil storage facilities with fixed capacity of 1,000 barrels or less.

§ 113.2 Applicability.

This subpart applies to all onshore oil storage facilities with fixed capacity of 1,000 barrels or less. When a discharge to the waters of the United States occurs from such facilities and when removal of said discharge is performed by the United States Government pursuant to the provisions of subsection 311(c)(1) of the Act, the liability of the owner or operator and the facility will be limited to the amounts specified in § 113.4.

§ 113.3 Definitions.

As used in this subpart, the following terms shall have the meanings indicated below:

(a) *Aboveground* storage facility means a tank or other container, the bottom of which is on a plane not more than 6 inches below the surrounding surface.

(b) *Act* means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1151, *et seq.*

(c) *Barrel* means 42 United States gallons at 60 degrees Fahrenheit.

(d) *Belowground* storage facility means a tank or other container located other than as defined as ''Aboveground''.

(e) *Discharge* includes, but is not limited to any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

(f) *Onshore Oil Storage Facility* means any facility (excluding motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States, other than submerged land.

(g) *On-Scene Coordinator* is the single Federal representative designated pursuant to the National Oil and Hazardous Substances Pollution Contingency Plan and identified in approved Regional Oil and Hazardous Substances Pollution Contingency Plans.

(h) *Oil* means oil of any kind or in any form, including but no limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(i) *Remove* or *removal* means the removal of the oil from the water and shorelines or the taking of such other actions as the Federal On-Scene Coordinator may determine to be necessary to minimize or mitigate damage to the public health or welfare, including but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

Additionally, the terms not otherwise defined herein shall have the meanings assigned them by section 311(a) of the Act.

§ 113.4 Size classes and associated liability limits for fixed onshore oil storage facilities, 1,000 barrels or less capacity.

Unless the United States can show that oil was discharged as a result of willful negligence or willful misconduct within the privity and knowledge of the owner or operator, the following limits of liability are established for fixed onshore facilities in the classes specified:

(a) Aboveground storage.

Size class	Capacity (barrels)	Limit (dollars)
I	Up to 10	4,000
II	11 to 170	60,000
III	171 to 500	150,000
IV	501 to 1,000	200,000

(b) Belowground storage.

Size class	Capacity (barrels)	Limit (dollars)
I	Up to 10	5,200
II	11 to 170	78,000
III	171 to 500	195,000
IV	501 to 1,000	260,000

§ 113.5 Exclusions.

This subpart does not apply to:

(a) Those facilities whose average daily oil throughout is more than their fixed oil storage capacity.

(b) Vehicles and rolling stock.

§ 113.6 Effect on other laws.

Nothing herein shall be construed to limit the liability of any facility under State or local law or under any Federal law other than section 311 of the Act, nor shall the liability of any facility for any charges or damages under State or local law reduce its liability to the Federal Government under section 311 of the Act, as limited by this subpart.

PART 116—DESIGNATION OF HAZARDOUS SUBSTANCES

Sec.
116.1 Applicability.
116.2 Abbreviations.
116.3 Definitions.
116.4 Designation of hazardous substances.

AUTHORITY: Secs. 311(b)(2)(A) and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

§ 116.1 Applicability.

This regulation designates hazardous substances under section 311(b)(2)(A) of the Federal Water Pollution Control Act (the Act). The regulation applies to discharges of substances designated in Table 116.4.

[43 FR 10474, Mar. 13, 1978]

§ 116.2 Abbreviations.

ppm=parts per million
mg=milligram(s)
kg=kilogram(s)
mg/l=milligrams(s) per liter= (approx.) ppm
mg/kg=milligram(s) per kilogram= (approx.) ppm

[43 FR 10474, Mar. 13, 1978]

§ 116.3 Definitions.

As used in this part, all terms shall have the meaning defined in the Act and as given below:

The Act means the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500), and as further amended by the Clean Water Act of 1977 (Pub. L. 95–217), 33 U.S.C. 1251 et seq.; and as further amended by the Clean Water Act Amendments of 1978 (Pub. L. 95–676);

Animals means appropriately sensitive animals which carry out respiration by means of a lung structure permitting gaseous exchange between air and the circulatory system;

Aquatic animals means appropriately sensitive wholly aquatic animals which carry out respiration by means of a gill structure permitting gaseous exchange between the water and the circulatory system;

Aquatic flora means plant life associated with the aquatic eco-system including, but not limited to, algae and higher plants;

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;

Discharge includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems;

LC50 means that concentration of material which is lethal to one-half of the test population of aquatic animals upon continuous exposure for 96 hours or less.

Mixture means any combination of two or more elements and/or compounds in solid, liquid, or gaseous form except where such substances have undergone a chemical reaction so as to become inseparable by physical means.

Navigable waters is defined in section 502(7) of the Act to mean ''waters of the United States, including the territorial seas,'' and includes, but is not limited to:

(1) All waters which are presently used, or were used in the past, or may be susceptible to use as a means to transport interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, and including adjacent wetlands; the term *wetlands* as used in this regulation shall include those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevelance of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas; the term *adjacent* means bordering, contiguous or neighboring;

(2) Tributaries of navigable waters of the United States, including adjacent wetlands;

(3) Interstate waters, including wetlands; and

(4) All other waters of the United States such as intrastate lakes, rivers, streams, mudflats, sandflats and wetlands, the use, degradation or destruction of which affect interstate commerce including, but not limited to:

(i) Intrastate lakes, rivers, streams, and wetlands which are utilized by interstate travelers for recreational or other purposes; and

(ii) Intrastate lakes, rivers, streams, and wetlands from which fish or shellfish are or could be taken and sold in interstate commerce; and

(iii) Intrastate lakes, rivers, streams, and wetlands which are utilized for industrial purposes by industries in interstate commerce.

Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean

Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Offshore facility means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

Onshore facility means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

Otherwise subject to the jurisdiction of the United States means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party.

A discharge *in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976),* means: (1) A discharge into any waters beyond the contiguous zone from any vessel or onshore or offshore facility, which vessel or facility is subject to or is engaged in activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, and (2) any discharge into any waters beyond the contiguous zone which contain, cover, or support any natural resource belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

Public vessel means a vessel owned or bareboat-chartered and operated by the United States, or a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

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 3 miles.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

[43 FR 10474, Mar. 13, 1978; 43 FR 27533, June 26, 1978, as amended at 44 FR 10266, Feb. 16, 1979; 58 FR 45039, Aug. 25, 1993]

§ 116.4 Designation of hazardous substances.

The elements and compounds appearing in Tables 116.4 A and B are designated as hazardous substances in accordance with section 311(b)(2)(A) of the Act. This designation includes any isomers and hydrates, as well as any solutions and mixtures containing these substances. Synonyms and Chemical Abstract System (CAS) numbers have been added for convenience of the user only. In case of any disparity the common names shall be considered the designated substance.

TABLE 116.4A—LIST OF HAZARDOUS SUBSTANCES

Common name	CAS No.	Synonyms	Isomers	CAS No.
Acetaldehyde	75070	Ethanal, ethyl aldehyde, acetic aldehyde		
Acetic acid	64197	Glacial acetic acid, vinegar acid		
Acetic anhydride	108247	Acetic oxide, acetyl oxide		
Acetone cyanohydrin	75865	2-methyllactonitrile, alpha-hydroxyisobutyronitrile.		
Acetyl bromide	506967			
Acetyl chloride	79367			
Acrolein	107028	2-propenal, acrylic aldehyde, acrylaldehyde, acraldehyde.		
Acrylonitrile	107131	Cyanoethylene, Fumigrain, Ventox, propeneitrile, vinyl cyanide.		
Adipic acid	124049	Hexanedioic acid		
Aldrin	309002	Octalene, HHDN		
Allyl alcohol	107186	2-propen-1-ol, 1-propenol-3, vinyl carbinol		
Allyl chloride	107051	3-chloropropene, 3-chloropropylene, Chlorallylene.		
Aluminum sulfate	10043013	Alum		
Ammonia	7664417			
Ammonium acetate	631618	Acetic acid ammonium, salt		
Ammonium benzoate	1863634			
Ammonium bicarbonate	1066337	Acid ammonium carbonate, ammonium hydrogen carbonate.		
Ammonium bichromate	7789095			
Ammonium bifluoride	1341497	Acid ammonium fluoride, ammonium hydrogen fluoride.		
Ammonium bisulfite	10192300			

TABLE 116.4A—LIST OF HAZARDOUS SUBSTANCES—Continued

Common name	CAS No.	Synonyms	Isomers	CAS No.
Ammonium carbamate	1111780	Ammonium aminoformate		
Ammonium carbonate	506876			
Ammonium chloride	12125029	Ammonium muriate, sal ammoniac, salmiac, Amchlor.		
Ammonium chromate	7788989			
Ammonium citrate dibasic	3012655	Diammonium citrate, citric acid diammonium salt.		
Ammonium fluoborate	13826830	Ammonium fluoroborate, ammonium borofluoride.		
Ammonium fluoride	12125018	Neutral ammonium fluoride		
Ammonium hydroxide	1336216			
Ammonium oxalate	6009707			
	5972736			
	14258492			
Ammonium silicofluoride	16919190	Ammonium fluosilicate		
Ammonium sulfamate	7773060	Ammate, AMS, ammonium amidosulfate		
Ammonium sulfide	12135761			
Ammonium sulfite	10196040			
	10192300			
Ammonium tartrate	3164292	Tartaric acid ammonium salt		
	14307438			
Ammonium thiocyanate	1762954	Ammonium rhodanide, ammonium sulfocyanate, ammonium sulfocyanide.		
Amly acetate	628637	Amylacetic ester	iso-	123922
		Pear oil	sec-	626380
		Banana oil	tert-	625161
Aniline	62533	Aniline oil, phenylamine, aminobenzene, aminophen, kyanol.		
Antimony pentachloride	7647189			
Antimony potassium tartrate	28300745	Tartar emetic, tartrated antimony, tartarized antimony, potassium antimonyltartrate.		
Antimony tribromide	7789619			
Antimony trichloride	10025919	Butter of antimony		
Antimony trifluoride	7783564	Antimony fluoride		
Antimony trioxide	1309644	Diantimony trioxide, flowers of antimony		
Arsenic disulfide	1303328	Red arsenic sulfide		
Arsenic pentoxide	1303282	Arsenic acid anhydride, arsenic oxide		
Arsenic trichloride	7784341	Arsenic chloride, arsenious chloride, arsenous chloride, butter of arsenic.		
Arsenic trioxide	1327533	Arsenious acid, arsenious oxide, white arsenic		
Arsenic trisulfide	1303339	Arsenious sulfide, yellow arsenic sulfide		
Barium cyanide	542621			
Benzene	71432	Cyclohexatriene, benzol		
Benzoic acid	65850	Benzenecarboxylic acid, phenylformic acid, dracylic acid.		
Benzonitrile	100470	Phenyl cyanide, cyanobenzene		
Benzoyl chloride	98884	Benzenecarbonyl chloride		
Benzyl chloride	100447			
Beryllium chloride	7787475			
Beryllium fluoride	7787497			
Beryllium nitrate	7787555			
	13597994			
Butyl acetate	123864	Acetic acid butyl ester	iso-	110190
			sec-	105464
			tert-	540885
Butylamine	109739	1-aminobutane	iso-	78819
			sec-	513495
			sec-	13952846
			tert-	75649
n/butyl phthalate	84742	1.2-benzenedicarboxylic acid, dibutyl ester, dibutyl phthalate.		
Butyric acid	107926	Butanoic acid, ethylacetic acid	iso-	79312
Cadmium acetate	543908			
Cadmium bromide	7789426			
Cadmium chloride	10108642			
Calcium arsenate	7778441	Tricalcium orthoarsenate		
Calcium arsenite	52740166			
Calcium carbide	75207	Carbide, acetylenogen		
Calcium chromate	13765190	Calcium chrome yellow, geblin, yellow ultramarine.		
Calcium cyanide	592018			
Calcium dodecylbenzenesulfonate	26264062			

TABLE 116.4A—LIST OF HAZARDOUS SUBSTANCES—Continued

Common name	CAS No.	Synonyms	Isomers	CAS No.
Calcium hypochlorite	7778543			
Captan	133062	Orthocide-406, SR–406, Vancide-89		
Carbaryl	63252	Sevin		
Carbofuran	1563662	Furadan		
Carbon disulfide	75150	Carbon bisulfide, dithiocarbonic anhydride		
Carbon tetrachloride	56235	Tetrachloromethane Perchloromethane		
Chlordane	57749	Toxichlor, chlordan		
Chlorine	75003			
Chlorobenzene	108907	Monochlorobenzene, benzene chloride		
Chloroform	67663	Trichloromethane		
Chlorpyrifos	2921882	Dursban		
Chlorosulfonic acid	7790945	Sulfuric chlorohydrin		
Chromic acetate	1066304			
Chromic acid	11115745	Chromic anhydride, chromium trioxide		
Chromic sulfate	10101538			
Chromous chloride	10049055			
Cobaltous bromide	7789437	Cobalt bromide		
Coabaltous formate	544183	Cobalt formate		
Cobaltous sulfamate	14017415	Cobalt sulfamate		
Coumaphos	56724	Co-Ral		
Cresol	1319773	Cresylic acid	m-	108394
		Hydroxytoluene	o-	95487
			p-	106445
Crotonaldehyde	4170303	2-butenal propylene aldelhyde		
Cupric acetate	142712	Copper acetate, crystalized verdigris		
Cupric acetoarsenite	12002038	Copper acetoarsenite, copper acetate arsenite, Paris green.		
Cupric chloride	7447394	Copper chloride		
Cupric nitrate	3251238	Copper nitrate		
Cupric oxalate	5893663	Copper oxalate		
Cupric sulfate	7758987	Copper sulfate		
Cupric sulfate, ammoniated	10380297	Ammoniated copper sulfate		
Cupric tartrate	815827	Copper tartrate		
Cyanogen chloride	506774			
Cyclohexane	110827	Hexahydrobenzene, hexamethylene, hexanaphthene.		
2,4-D acid	94757	2,4-dichlorophenoxyacetic acid		
2,4-D ester	94111	2,4-dichlorophenoxyacetic acid ester		
	94791			
	94804			
	1320189			
	1928387			
	1928616			
	1929733			
	2971382			
	25168267			
	53467111			
DDT	50293	p,p′-DDT		
Diazinon	333415	Dipofene, Diazitol, Basudin, Spectracide		
Dicamba	1918009	2-methoxy-3,6-dichlorobenzoic acid		
Dichlobenil	1194656	2,6-dichlorobenzonitrile, 2,6-DBN		
Dichlone	117806	Phygon, dichloronaphthoquinone		
Dichlorobenzene	25321226	Di-chloricide	Ortho	95501
		Paramoth (Para)	Para	106467
Dichloropropane	26638197	Propylene dichloride	1,1	78999
			1,2	78875
			1,3	142289
Dichloropropene	26952238		1,3	542756
			2,3	78886
Dichloropropene-dichloropropane (mixture).	8003198	D-D mixture Vidden D		
2,2-Dichloropropionic acid	75990	Dalapon		
Dichlorvos	62737	2,2-dichlorovinyl dimethyl phosphate, Vapona		
Dicofol	115322	Di(p-chlorophenyl)-trichloromethylcarbinol, DTMC, dicofol.		
Dieldrin	60571	Alvit		
Diethylamine	109897			
Dimethylamine	124403			
Dinitrobenzene (mixed)	25154545	Dinitrobenzol	m-	99650
			o-	528290
			p-	100254
Dinitrophenol	51285	Aldifen	(2,5-)	329715

TABLE 116.4A—LIST OF HAZARDOUS SUBSTANCES—Continued

Common name	CAS No.	Synonyms	Isomers	CAS No.
			(2,4-).	
			(2,6-)	573568
Dinitrotoluene	25321146	DNT	2,4	121142
			2,6	606202
			3,4	610399
Diquat	85007	Aquacide		
	2764729	Dextrone, Reglone, Diquat dibromide		
Disulfoton	298044	Di-syston		
Diuron	330541	DCMU, DMU		
Dodecylbenzenesulfonic acid	27176870			
Endosulfan	115297	Thiodan		
Endrin	72208	Mendrin, Compound 269		
Epichlorohydrin	106898	-chloropropylene oxide		
Ethion	563122	Nialate, ethyl methylene, phosphorodithioate		
Ethylbenzene	100414	Phenylethane		
Ethylenediamine	107153	1,2-diaminoethane		
Ethylenediamine-tetraacetic acid (EDTA).	60004	Edetic acid, Havidote, (ethylenedinitrilo)-tetraacetic acid.		
Ethylene dibromide	106934	1,2-dibromoethane acetylene dibromide sym-dibromoethylene.		
Ethylene dichloride	107062	1,2-dichloroethane sym-bichloroethane		
Ferric ammonium citrate	1185575	Ammonium ferric citrate		
Ferric ammonium oxalate	2944674	Ammonium ferric oxalate		
	55488874			
Ferric chloride	7705080	Flores martis, iron trichloride		
Ferric fluoride	7783508			
Ferric nitrate	10421484	Iron nitrate		
Ferric sulfate	10028225	Ferric persulfate, ferric sesquisulfate, ferric tersulfate.		
Ferrous ammonium sulfate	10045893	Mohr's salt, iron ammonium sulfate		
Ferrous chloride	7758943	Iron chloride, iron dichloride, iron protochloride		
Ferrous sulfate	7720787	Green vitriol		
	7782630	Iron vitriol, iron sulfate, iron protosulfate		
Formaldehyde	50000	Methyl aldehyde, methanal, formalin		
Formic acid	64186	Methanoic acid		
Fumaric acid	110178	Trans-butenedioic acid, trans-1,2-ethylenedicarboxylic acid, boletic acid, allomaleic acid.		
Furfural	98011	2-furaldehyde, pyromucic aldehyde		
Guthion	86500	Gusathion, azinphos-methyl		
Heptachlor	76448	Velsicol-104, Drinox, Heptagran		
Hexachlorocyclopentadiene	77474	Perchlorocyclopentadiene		
Hydrochloric acid	7647010	Hydrogen chloride, muriatic acid		
Hydrofluoric acid	7664393	Fluohydric acid		
Hydrogen cyanide	74908	Hydrocyanic acid		
Hydrogen sulfide	7783064	Hydrosulfuric acid sulfur hydride		
Isoprene	78795	2-methyl-1,3-butadiene		
Isopropanolamine dodecylbenzenesulfonate.	42504461			
Kepone	143500	Chlordecone 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-1,3,4-metheno-2H-cyclobuta(cd)pentalen-2-one.		
Lead acetate	301042	Sugar of lead		
Lead arsenate	7784409			
	7645252			
	10102484			
Lead chloride	7758954			
Lead fluoborate	13814965	Lead fluoroborate		
Lead fluoride	7783462	Lead difluoride, plumbous fluoride		
Lead iodide	10101630			
Lead nitrate	10099748			
Lead stearate	7428480	Stearic acid lead salt		
	1072351			
	52652592			
Lead sulfate	7446142			
Lead sulfide	1314870	Galena		
Lead thiocyanate	592870	Lead sulfocyanate		
Lindane	58899	Gamma-BHC, gamma-benzene hexachloride		
Lithium chromate	14307358			
Malathion	121755	Phospothion		
Maleic acid	110167	Cis-butenedioic acid, cis-1,2-ethylenedicarboxylic acid, toxilic acid.		

TABLE 116.4A—LIST OF HAZARDOUS SUBSTANCES—Continued

Common name	CAS No.	Synonyms	Isomers	CAS No.
Maleic anhydride	108316	2,5-furandione, cis-butenedioic anhydride, toxilic anhydride.		
Mercaptodimethur	203657	Mesurol		
Mercuric cyanide	592041	Mercury cyanide		
Mercuric nitrate	10045940	Mercury nitrate, mercury pernitrate		
Mercuric sulfate	7783359	Mercury sulfate, mercury persulfate		
Mercuric thiocyanate	592858	Mercury thiocyanate, mercuric sulfocyanate, mercuric sulfocyanide.		
Mercurous nitrate	7782867			
	10415755	Mercury protonitrate		
Methoxychlor	72435	DMDT, methoxy-DDT		
Methyl mercaptan	74931	Methanethiol, mercaptomethane, methyl sulfhydrate, thiomethyl alcohol.		
Methyl methacrylate	80626	Methacrylic acid methyl ester, methyl-2-methyl-2-propenoate.		
Methyl parathion	298000	Nitrox-80		
Mevinphos	7786347	Phosdrin		
Mexacarbate	315184	Zectran		
Monoethylamine	75047	Ethylamine, aminoethane		
Monomethylamine	74895	Methylamine, aminomethane		
Naled	300765	Dibrom		
Naphthalene	91203	White tar, tar camphor, naphthalin		
Naphthenic acid	1338245	Cyclohexanecarboxylic acid, hexahydrobenzoic acid.		
Nickel ammonium sulfate	15699180	Ammonium nickel sulfate		
Nickel chloride	37211055	Nickelous chloride		
	7718549			
Nickel hydroxide	12054487	Nickelous hydroxide		
Nickel nitrate	14216752			
Nickel sulfate	7786814	Nickelous sulfate		
Nitric acid	7697372	Aqua fortis		
Nitrobenzene	98953	Nitrobenzol, oil of mirbane		
Nitrogen dioxide	10102440	Nitrogen tetraoxide		
Nitrophenol (mixed)	25154556	Mononitrophenol	m-	554847
			o-	88755
			p-	100027
Nitrotoluene	1321126		Ortho	88722
			Meta	99081
			Para	99990
Paraformaldehyde	30525894	Paraform, Formagene, Triformol, polymerized formaldehyde, polyoxymethylene.		
Parathion	56382	DNTP, Niran		
Pentachlorophenol	87865	PCP, Penta		
Phenol	108952	Carbolic acid, phenyl hydroxide, hydroxybenzene, oxybenzene.		
Phosgene	75445	Diphosgene, carbonyl chloride, chloroformyl chloride.		
Phosphoric acid	7664382	Orthophosphoric acid		
Phosphorus	7723140	Black phosphorus, red phosphorus, white phosphorus, yellow phosphorus.		
Phosphorus oxychloride	10025873	Phosphoryl chloride, phosphorus chloride		
Phosphorus pentasulfide	1314803	Phosphoric sulfide, thiophosphoric anhydride, phosphorus persulfide.		
Phosphorus trichloride	7719122	Phosphorous chloride		
Polychorinated biphenyls	1336363	PCB, Aroclor, polychlorinated diphenyls		
Potassium arsenate	7784410			
Potassium arsenite	10124502	Potassium metaarsenite		
Potassium bichromate	7778509	Potassium dichromate		
Potassium chromate	7789006			
Potassium cyanide	151508			
Potassium hydroxide	1310583	Potassium hydrate, caustic potash, potassa		
Potassium permanganate	7722647	Chameleon mineral		
Propargite	2312358	Omite		
Propionic acid	79094	Propanoic acid, methylacetic acid, ethylformic acid.		
Propionic anhydride	123626	Propanoic anhydride, methylacetic anhydride		
Propylene oxide	75569	Propene oxide		
Pyrethrins	121299	Pyrethrin I		
	121211	Pyrethrin II		
Quinoline	91225	1-benzazine, benzo(b)pyridine, leuocoline, chinoleine, leucol.		
Resorcinol	108463	Resorcin, 1,3-benzenediol, meta-dihydroxybenzene.		

TABLE 116.4A—LIST OF HAZARDOUS SUBSTANCES—Continued

Common name	CAS No.	Synonyms	Isomers	CAS No.
Selenium oxide	7446084	Selenium dioxide		
Silver nitrate	7761888	Nitric acid silver (1+) salt lunar caustic		
Sodium	7440235	Natrium		
Sodium arsenate	7631892	Disodium arsenate		
Sodium arsenite	7784465	Sodium metaarsenite		
Sodium bichromate	10588019	Sodium dichromate		
Sodium bifluoride	1333831			
Sodium bisulfite	7631905	Sodium acid sulfite, sodium hydrogen sulfite		
Sodium chromate	7775113			
Sodium cyanide	143339			
Sodium dodecylbenzene-sulfonate	25155300			
Sodium fluoride	7681494	Villiaumite		
Sodium hydrosulfide	16721805	Sodium hydrogen sulfide		
Sodium hydroxide	1310732	Caustic soda, soda lye, sodium hydrate		
Sodium hypochlorite	7681529	Bleach		
	10022705			
Sodium methylate	124414	Sodium methoxide		
Sodium nitrite	7632000			
Sodium phosphate, dibasic	7558794			
	10039324			
	10140655			
Sodium phosphate, tribasic	7785844			
	7601549			
	10101890			
	10361894			
	7758294			
	10124568			
Sodium selenite	10102188			
	7782823			
Strontium chromate	7789062			
Strychnine	57249			
Styrene	100425	Vinylbenzene, phenylethylene, styrol, styrolene, cinnamene, cinnamol.		
Sulfuric acid	7664939	Oil of vitriol, oleum		
Sulfur monochloride	12771083	Sulfur chloride		
2,4,5-T acid	93765	2,4,5-trichlorophenoxyacetic acid		
2,4,5-T amines	6369966	Acetic acid (2,4,5-trichlorophenoxy)-compound with N,N-dimethylmethanamine (1:1).		
	6369977	Acetic acid (2,4,5-trichlorophenoxy)-compound with N-methylmethanamine (1:1).		
	1319728	Acetic acid (2,4,5-trichlorophenoxy)-compound with 1-amino-2-propanol (1:1).		
	3813147	Acetic acid (2,4,5-trichlorophenoxy)-compound with 2,2'2''-nitrilotris [ethanol] (1:1).		
2,4,5-T esters	2545597	2,4,5-trichlorophenoxyacetic esters		
	93798			
	61792072			
	1928478			
	25168154			
2,4,5–T salts	13560991	Acetic acid (2,4,5–trichlorophenoxy)-sodium salt.		
TDE	72548	DDD		
2,4,5–TP acid	93721	Propanoic acid 2–(2,4,5–trichlorophenoxy)		
2,4,5–TP esters	32534955	Propanoic acid, 2–(2,4,5–trichlorophenoxy)-, isooctyl ester.		
Tetraethyl lead	78002	Lead tetraethyl, TEL		
Tetraethyl pyrophosphate	107493	TEPP		
Thallium sulfate	10031591			
	7446186			
Toluene	108883	Toluol, methylbenzene, phenylmethane, Methacide.		
Toxaphene	8001352	Camphechlor		
Trichlorfon	52686	Dipterex		
		Dylox		
Trichlorethylene	79016	Ethylene trichloride		
Trichlorophenol	25167822	Collunosol, Dowicide 2 or 2S, Omal, Phenachlor.	(2,3,4-)	15950660
			(2,3,5-)	933788
			(2,3,6-)	933755
			(2,4,5-)	95954
			(2,4,6-)	88062
			(3,4,5-)	609198
Triethanolamine dodecylbenzenesulfonate.	27323417			

TABLE 116.4A—LIST OF HAZARDOUS SUBSTANCES—Continued

Common name	CAS No.	Synonyms	Isomers	CAS No.
Triethylamine	121448			
Trimethylamine	75503	TMA		
Uranyl acetate	541093			
Uranyl nitrate	10102064			
	36478769			
Vanadium pentoxide	1314621	Vanadic anhydride, vanadic acid anhydride		
Vanadyl sulfate	27774136	Vanadic sulfate, vanadium sulfate		
Vinyl acetate	108054	Acetic acid ethylene ether		
Vinylidene chloride	75354	1,1–dichlorethylene		
		1,1–dichloroethene		
Xylene (mixed)	1330207	Dimethylbenzene	m-	108383
		Xylol	o-	95476
			p-	106423
Xylenol	1300716	Dimethylphenol, hydroxydimethylbenzene		
Zinc acetate	557346			
Zinc ammonium chloride	14639975			
	14639986			
	52628258			
Zinc borate	1332076			
Zinc bromide	7699458			
Zinc carbonate	3486359			
Zinc chloride	7646857	Butter of zinc		
Zinc cyanide	557211			
Zinc fluoride	7783495			
Zinc formate	557415			
Zinc hydrosulfite	7779864			
Zinc nitrate	7779886			
Zinc phenolsulfonate	127822	Zinc sulfocarbolate		
Zinc phosphide	1314847			
Zinc silicofluoride	16871719	Zinc fluosilicate		
Zinc sulfate	7733020	White vitriol, zinc vitriol, white copperas		
Zirconium nitrate	13746899			
Zirconium potassium fluoride	16923958			
Zirconium sulfate	14644612	Disulfatozirconic acid		
Zirconium tetrachloride	10026116			

TABLE 116.4B—LIST OF HAZARDOUS SUBSTANCES BY CAS NUMBER

CAS No.	Common name
50000	Formaldehyde
50293	DDT
51285	2,4-Dinitrophenol
52686	Trichlorfon
56382	Parathion
56724	Coumaphos
57249	Strychnine
57749	Chlordane
58899	Lindane
60004	Ethylenediaminetetraacetic acid (EDTA)
60571	Dieldrin
62533	Aniline
62737	Dichlorvos
63252	Carbaryl
64186	Formic acid
64197	Acetic acid
65850	Benzoic acid
67663	Chloroform
71432	Benzene
72208	Endrin
72435	Methoxychlor
72548	TDE
74895	Monomethylamine
74908	Hydrogen cyanide
74931	Methyl mercaptan
75047	Monoethylamine
75070	Acetaldehyde
75150	Carbon disulfide
75207	Calcium carbide

TABLE 116.4B—LIST OF HAZARDOUS SUBSTANCES BY CAS NUMBER—Continued

CAS No.	Common name
75445	Phosgene
75503	Trimethylamine
75649	tert-Butylamine
75865	Acetone cyanohydrin
75990	2,2-Dichloropropionic acid
76448	Heptachlor
78002	Tetraethyl lead
78795	Isoprene
78819	iso-Butylamine
79094	Propionic acid
79312	iso-Butyric acid
79367	Acetyl chloride
80626	Methyl methacrylate
85007	Diquat
86500	Guthion
87865	Pentachlorophenol
88755	o-Nitrophenol
91203	Naphthalene
91225	Quinoline
93765	2,4,5–T acid
93798	2,4,5-T ester
94111	2,4–D ester
94757	2,4–D acid
94791	2,4–D ester
94804	2,4–D Butyl ester
95476	o-Xylene
95487	o–Cresol
98011	Furfural
98884	Benzoyl chloride
98953	Nitrobenzene

TABLE 116.4B—LIST OF HAZARDOUS SUBSTANCES BY CAS NUMBER—Continued

CAS No.	Common name
99650	m-Dinitrobenzene
100027	p-Nitrophenol
100254	p-Dinitrobenzene
100414	Ethylbenzene
100425	Styrene
100447	Benzyl chloride
100470	Benzonitrile
105464	sec-Butyl acetate
106423	p-Xylene
106445	p-Cresol
107028	Acrolein
107051	Allyl chloride
107131	Acrylonitrile
107153	Ethylenediamine
107186	Allyl alcohol
107493	Tetraethyl pyrophosphate
107926	n-Butyric acid
108054	Vinyl acetate
108247	Acetic anhydride
108316	Maleic anhydride
108383	m-Xylene
108394	m-Cresol
108463	Resorcinol
108883	Toluene
108907	Chlorobenzene
108952	Phenol
109739	n-Butylamine
109897	Diethylamine
110167	Maleic acid
110178	Fumaric acid
110190	iso-Butyl acetate
110827	Cyclohexane
115297	Endosulfan
115322	Dicofol
117806	Dichlone
121211	Pyrethrin
121299	Pyrethrin
121448	Triethylamine
121755	Malathion
123626	Propionic anhydride
123864	n-Butyl acetate
123922	iso-Amyl acetate
124403	Dimethylamine
124414	Sodium methylate
127822	Zinc phenolsulfonate
133062	Captan
142712	Cupric acetate
143339	Sodium cyanide
151508	Potassium cyanide
298000	Methyl parathion
298044	Disulfoton
300765	Naled
301042	Lead acetate
309002	Aldrin
315184	Mexacarbate
329715	2,5-Dinitrophenol
330541	Diuron
333415	Diazinon
506774	Cyanogen chloride
506876	Ammonium carbonate
506967	Acetyl bromide
513495	sec-Butylamine
528290	o-Dinitrobenzene
540885	tert-Butyl acetate
541093	Uranyl acetate
542621	Barium cyanide
543908	Cadmium acetate
544183	Cobaltous formate
554847	m-Nitrophenol
557211	Zinc cyanide
557346	Zinc acetate

TABLE 116.4B—LIST OF HAZARDOUS SUBSTANCES BY CAS NUMBER—Continued

CAS No.	Common name
557415	Zinc formate
563122	Ethion
573568	2,6-Dinitrophenol
592018	Calcium cyanide
592041	Mercuric cyanide
592858	Mercuric thiocyanate
592870	Lead thiocyanate
625161	tert-Amyl acetate
626380	sec-Amyl acetate
628637	n-Amyl acetate
631618	Ammonium acetate
815827	Cupric tartrate
1066304	Chromic acetate
1066337	Ammonium bicarbonate
1072351	Lead stearate
1111780	Ammonium carbamate
1185575	Ferric ammonium citrate
1194656	Dichlobenil
1300716	Xylenol
1303282	Arsenic pentoxide
1303328	Arsenic disulfide
1303339	Arsenic trisulfide
1309644	Antimony trioxide
1310583	Potassium hydroxide
1310732	Sodium hydroxide
1314621	Vanadium pentoxide
1314803	Phosphorus pentasulfide
1314847	Zinc phosphide
1314870	Lead sulfide
1319773	Cresol (mixed)
1320189	2,4-D ester
1327533	Arsenic trioxide
1330207	Xylene
1332076	Zinc borate
1333831	Sodium bifluoride
1336216	Ammonium hydroxide
1336363	Polychlorinated biphenyls
1338245	Naphthenic acid
1341497	Ammonium bifluoride
1762954	Ammonium thiocyanate
1863634	Ammonium benzoate
1918009	Dicamba
1928387	2,4-D esters
1928478	2,4,5-T ester
1928616	2,4-D ester
1929733	2,4-D ester
2545597	2,4,5-T ester
2764729	Diquat
2921882	Chlorpyrifos
2944674	Ferric ammonium oxalate
2971382	2,4-D ester
3012655	Ammonium citrate, dibasic
3164292	Ammonium tartrate
3251238	Cupric nitrate
3486359	Zinc carbonate
5893663	Cupric oxalate
5972736	Ammonium oxalate
6009707	Ammonium oxalate
6369966	2,4,5-T ester
7428480	Lead stearate
7440235	Sodium
7446084	Selenium oxide
7446142	Lead sulfate
7447394	Cupric chloride
7558794	Sodium phosphate, dibasic
7601549	Sodium phosphate, tribasic
7631892	Sodium arsenate
7631905	Sodium bisulfite
7632000	Sodium nitrite
7645252	Lead arsenate
7646857	Zinc chloride

TABLE 116.4B—LIST OF HAZARDOUS SUBSTANCES BY CAS NUMBER—Continued

CAS No.	Common name
7647010	Hydrochloric acid
7647189	Antimony pentachloride
7664382	Phosphoric acid
7664393	Hydrofluoric acid
7664417	Ammonia
7664939	Sulfuric acid
7681494	Sodium fluoride
7681529	Sodium hypochlorite
7697372	Nitric acid
7699458	Zinc bromide
7705080	Ferric chloride
7718549	Nickel chloride
7719122	Phosphorus trichloride
7720787	Ferrous sulfate
7722647	Potassium permanganate
7723140	Phosphorus
7733020	Zinc sulfate
7758294	Sodium phosphate, tribasic
7758943	Ferrous chloride
7758954	Lead chloride
7758987	Cupric sulfate
7773060	Ammonium sulfamate
7775113	Sodium chromate
7778441	Calcium arsenate
7778509	Potassium bichromate
7778543	Calcium hypochlorite
7779864	Zinc hydrosulfite
7779886	Zinc nitrate
7782505	Chlorine
7782630	Ferrous sulfate
7782823	Sodium selenite
7782867	Mercurous nitrate
7783359	Mercuric sulfate
7783462	Lead fluoride
7783495	Zinc fluoride
7783508	Ferric fluoride
7783564	Antimony trifluoride
7784341	Arsenic trichloride
7784409	Lead arsenate
7784410	Potassium arsenate
7784465	Sodium arsenite
7785844	Sodium phosphate, tribasic
7786347	Mevinphos
7786814	Nickel sulfate
7787475	Beryllium chloride
7787497	Beryllium fluoride
7787555	Beryllium nitrate
7788989	Ammonium chromate
7789006	Potassium chromate
7789062	Strontium chromate
7789095	Ammonium bichromate
7789426	Cadmium bromide
7789437	Cobaltous bromide
7789619	Antimony tribromide
7790945	Chlorosulfonic acid
8001352	Toxaphene
10022705	Sodium hypochlorite
10025873	Phosphorus oxychloride
10025919	Antimony trichloride
10026116	Zirconium tetrachloride
10028225	Ferric sulfate
10028247	Sodium phosphate, dibasic
10039324	Sodium phosphate, dibasic
10043013	Aluminum sulfate
10045893	Ferrous ammonium sulfate
10045940	Mercuric nitrate
10049055	Chromous chloride
10099748	Lead nitrate
10101538	Chromic sulfate
10101630	Lead iodide
10101890	Sodium phosphate, tribasic

TABLE 116.4B—LIST OF HAZARDOUS SUBSTANCES BY CAS NUMBER—Continued

CAS No.	Common name
10102064	Uranyl nitrate
10102188	Sodium selenite
10102440	Nitrogen dioxide
10102484	Lead arsenate
10108642	Cadmium chloride
10124502	Potassium arsenite
10124568	Sodium phosphate, tribasic
10140655	Sodium phosphate, dibasic
10192300	Ammonium bisulfite
10196040	Ammonium sulfite
10361894	Sodium phosphate, tribasic
10380297	Cupric sulfate, ammoniated
10415755	Mercurous nitrate
10421484	Ferric nitrate
10588019	Sodium bichromate
11115745	Chromic acid
12002038	Cupric acetoarsenite
12054487	Nickel hydroxide
12125018	Ammonium fluoride
12125029	Ammonium chloride
12135761	Ammonium sulfide
12771083	Sulfur chloride
13597994	Beryllium nitrate
13746899	Zirconium nitrate
13765190	Calcium chromate
13814965	Lead fluoborate
13826830	Ammonium fluoborate
13952846	sec-Butylamine
14017415	Cobaltous sulfamate
14216752	Nickel nitrate
14258492	Ammonium oxalate
14307358	Lithium chromate
14307438	Ammonium tartrate
14639975	Zinc ammonium chloride
14639986	Zinc ammonium chloride
14644612	Zirconium sulfate
15699180	Nickel ammonium sulfate
16721805	Sodium hydrosulfide
16871719	Zinc silicofluoride
16919190	Ammonium silicofluoride
16923958	Zirconium potassium fluoride
25154545	Dinitrobenzene
25154556	Nitrophenol
25155300	Sodium dodecylbenzenesulfonate
25167822	Trichlorophenol
25168154	2,4,5-T ester
25168267	2,4-D ester
26264062	Calcium dodecylbenzenesulfonate
27176870	Dodecylbenzenesulfonic acid
27323417	Triethanolamine dodecylbenzenesulfonate
27774136	Vanadyl sulfate
28300745	Antimony potassium tartrate
30525894	Paraformaldehyde
36478769	Uranyl nitrate
37211055	Nickel chloride
42504461	Dodecylbenzenesulfonate isopropanolamine
52628258	Zinc ammonium chloride
52740166	Calcium arsenite
53467111	2,4-D ester
55488874	Ferric ammonium oxalate
61792072	2,4,5-T ester

[43 FR 10474, Mar. 13, 1978; 43 FR 27533, June 26, 1978, as amended at 44 FR 10268, Feb. 16, 1979; 44 FR 65400, Nov. 13, 1979; 44 FR 66602, Nov. 20, 1979; 54 FR 33482, Aug. 14, 1989]

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

Subpart A—General Provisions

Subpart B—Applicability

Subpart C—Notice of Discharge of a Reportable Quantity

AUTHORITY: Secs. 311 and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), (''the Act'') and Executive Order 11735, superseded by Executive Order 12777, 56 FR 54757.

SOURCE: 44 FR 50776, Aug. 29, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 117.1 Definitions.

As used in this part, all terms shall have the meanings stated in 40 CFR part 116.

(a) *Reportable quantities* means quantities that may be harmful as set forth in § 117.3, the discharge of which is a violation of section 311(b)(3) and requires notice as set forth in § 117.21.

(b) *Administrator* means the Administrator of the Environmental Protection Agency (''EPA'').

(c) *Mobile source* means any vehicle, rolling stock, or other means of transportation which contains or carries a reportable quantity of a hazardous substance.

(d) *Public record* means the NPDES permit application or the NPDES permit itself and the ''record for final permit'' as defined in 40 CFR 124.122.

(e) *National Pretreatment Standard* or *Pretreatment Standard* means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with section 307 (b) and (c) of the Act, which applies to industrial users of a publicly owned treatment works. It further means any State or local pretreatment requirement applicable to a discharge and which is incorporated into a permit issued to a publicly owned treatment works under section 402 of the Act.

(f) *Publicly Owned Treatment Works* or *POTW* means a treatment works as defined by section 212 of the Act, which is owned by a State or municipality (as defined by section 502(4) of the Act). This definition includes any sewers that convey wastewater to such a treatment works, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. The term also means the municipality as defined in section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

(g) *Remove* or *removal* refers to removal of the oil or hazardous substances from the water and shoreline or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

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

(i) *Navigable waters* means ''waters of the United States, including the territorial seas.'' This term includes:

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

(2) Interstate waters, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams, (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

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

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

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

(4) All impoundments of waters otherwise defined as navigable waters under this paragraph;

(5) Tributaries of waters identified in paragraphs (i) (1) through (4) of this section, including adjacent wetlands; and

(6) Wetlands adjacent to waters identified in paragraphs (i) (1) through (5) of this section (''Wetlands'' means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally included playa lakes, swamps, marshes, bogs, and

similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds): *Provided*, That waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

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

[44 FR 50776, Aug. 29, 1979, as amended at 58 FR 45039, Aug. 25, 1993]

§ 117.2 Abbreviations.

NPDES equals National Pollutant Discharge Elimination System. RQ equals reportable quantity.

§ 117.3 Determination of reportable quantities.

Each substance in Table 117.3 that is listed in Table 302.4, 40 CFR part 302, is assigned the reportable quantity listed in Table 302.4 for that substance.

TABLE 117.3—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT

NOTE: The first number under the column headed ''RQ'' is the reportable quantity in pounds. The number in parentheses is the metric equivalent in kilograms. For convenience, the table contains a column headed ''Category'' which lists the code letters ''X'', ''A'', ''B'', ''C'', and ''D'' associated with reportable quantities of 1, 10, 100, 1000, and 5000 pounds, respectively.

TABLE 117.3—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT

Material	Category	RQ in pounds (kilograms)
Acetaldehyde	C	1,000 (454)
Acetic acid	D	5,000 (2,270)
Acetic anhydride	D	5,000 (2,270)
Acetone cyanohydrin	A	10 (4.54)
Acetyl bromide	D	5,000 (2,270)
Acetyl chloride	D	5,000 (2,270)
Acrolein	X	1 (0.454)
Acrylonitrile	B	100 (45.4)
Adipic acid	D	5,000 (2,270)
Aldrin	X	1 (0.454)
Allyl alcohol	B	100 (45.4)
Allyl chloride	C	1,000 (454)
Aluminum sulfate	D	5,000 (2,270)
Ammonia	B	100 (45.4)
Ammonium acetate	D	5,000 (2,270)
Ammonium benzoate	D	5,000 (2,270)
Ammonium bicarbonate	D	5,000 (2,270)
Ammonium bichromate	A	10 (4.54)
Ammonium bifluoride	B	100 (45.4)
Ammonium bisulfite	D	5,000 (2,270)
Ammonium carbamate	D	5,000 (2,270)
Ammonium carbonate	D	5,000 (2,270)
Ammonium chloride	D	5,000 (2,270)
Ammonium chromate	A	10 (4.54)
Ammonium citrate dibasic	D	5,000 (2,270)
Ammonium fluoborate	D	5,000 (2,270)
Ammonium fluoride	B	100 (45.4)
Ammonium hydroxide	C	1,000 (454)
Ammonium oxalate	D	5,000 (2,270)
Ammonium silicofluoride	C	1,000 (454)
Ammonium sulfamate	D	5,000 (2,270)
Ammonium sulfide	B	100 (45.4)
Ammonium sulfite	D	5,000 (2,270)
Ammonium tartrate	D	5,000 (2,270)
Ammonium thiocyanate	D	5,000 (2,270)
Amyl acetate	D	5,000 (2,270)
Aniline	D	5,000 (2,270)
Antimony pentachloride	C	1,000 (454)
Antimony potassium tartrate	B	100 (45.4)
Antimony tribromide	C	1,000 (454)
Antimony trichloride	C	1,000 (454)
Antimony trifluoride	C	1,000 (454)

TABLE 117.3—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT—Continued

Material	Category	RQ in pounds (kilograms)
Antimony trioxide	C	1,000 (454)
Arsenic disulfide	X	1 (0.454)
Arsenic pentoxide	X	1 (0.454)
Arsenic trichloride	X	1 (0.454)
Arsenic trioxide	X	1 (0.454)
Arsenic trisulfide	X	1 (0.454)
Barium cyanide	A	10 (4.54)
Benzene	A	10 (4.54)
Benzoic acid	D	5,000 (2,270)
Benzonitrile	D	5,000 (2,270)
Benzoyl chloride	C	1,000 (454)
Benzyl chloride	B	100 (45.4)
Beryllium chloride	X	1 (0.454)
Beryllium fluoride	X	1 (0.454)
Beryllium nitrate	X	1 (0.454)
Butyl acetate	D	5,000 (2,270)
Butylamine	C	1,000 (454)
n-Butyl phthalate	A	10 (4.54)
Butyric acid	D	5,000 (2,270)
Cadmium acetate	A	10 (4.54)
Cadmium bromide	A	10 (4.54)
Cadmium chloride	A	10 (4.54)
Calcium arsenate	X	1 (0.454)
Calcium arsenite	X	1 (0.454)
Calcium carbide	A	10 (4.54)
Calcium chromate	A	10 (4.54)
Calcium cyanide	A	10 (4.54)
Calcium dodecylbenzenesulfonate	C	1,000 (454)
Calcium hypochlorite	A	10 (4.54)
Captan	A	10 (4.54)
Carbaryl	B	100 (45.4)
Carbofuran	A	10 (4.54)
Carbon disulfide	B	100 (45.4)
Carbon tetrachloride	A	10 (4.54)
Chlordane	X	1 (0.454)
Chlorine	A	10 (4.54)
Chlorobenzene	B	100 (45.4)
Chloroform	A	10 (4.54)
Chlorosulfonic acid	C	1,000 (454)
Chlorpyrifos	X	1 (0.454)
Chromic acetate	C	1,000 (454)
Chromic acid	A	10 (4.54)
Chromic sulfate	C	1,000 (454)
Chromous chloride	C	1,000 (454)
Cobaltous bromide	C	1,000 (454)
Cobaltous formate	C	1,000 (454)
Cobaltous sulfamate	C	1,000 (454)
Coumaphos	A	10 (4.54)
Cresol	B	100 (45.4)
Crotonaldehyde	B	100 (45.4)
Cupric acetate	B	100 (45.4)
Cupric acetoarsenite	X	1 (0.454)
Cupric chloride	A	10 (4.54)
Cupric nitrate	B	100 (45.4)
Cupric oxalate	B	100 (45.4)
Cupric sulfate	A	10 (4.54)
Cupric sulfate, ammoniated	B	100 (45.4)
Cupric tartrate	B	100 (45.4)
Cyanogen chloride	A	10 (4.54)
Cyclohexane	C	1,000 (454)
2,4-D Acid	B	100 (45.4)
2,4-D Esters	B	100 (45.4)
DDT	X	1 (0.454)
Diazinon	X	1 (0.454)
Dicamba	C	1,000 (454)
Dichlobenil	B	100 (45.4)
Dichlone	X	1 (0.454)
Dichlorobenzene	B	100 (45.4)
Dichloropropane	C	1,000 (454)
Dichloropropene	B	100 (45.4)
Dichloropropene-Dichloropropane (mixture)	B	100 (45.4)

TABLE 117.3—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT—Continued

Material	Category	RQ in pounds (kilograms)
2,2-Dichloropropionic acid	D	5,000 (2,270)
Dichlorvos	A	10 (4.54)
Dicofol	A	10 (4.54)
Dieldrin	X	1 (0.454)
Diethylamine	B	100 (45.4)
Dimethylamine	C	1,000 (454)
Dinitrobenzene (mixed)	B	100 (45.4)
Dinitrophenol	A	10 (45.4)
Dinitrotoluene	A	10 (4.54)
Diquat	C	1,000 (454)
Disulfoton	X	1 (0.454)
Diuron	B	100 (45.4)
Dodecylbenzenesulfonic acid	C	1,000 (454)
Endosulfan	X	1 (0.454)
Endrin	X	1 (0.454)
Epichlorohydrin	B	100 (45.4)
Ethion	A	10 (4.54)
Ethylbenzene	C	1,000 (454)
Ethylenediamine	D	5,000 (2,270)
Ethylenediamine-tetraacetic acid (EDTA)	D	5,000 (2,270)
Ethylene dibromide	X	1 (0.454)
Ethylene dichloride	B	100 (45.4)
Ferric ammonium citrate	C	1,000 (454)
Ferric ammonium oxalate	C	1,000 (454)
Ferric chloride	C	1,000 (454)
Ferric fluoride	B	100 (45.4)
Ferric nitrate	C	1,000 (454)
Ferric sulfate	C	1,000 (454)
Ferrous ammonium sulfate	C	1,000 (454)
Ferrous chloride	B	100 (45.4)
Ferrous sulfate	C	1,000 (454)
Formaldehyde	B	100 (45.4)
Formic acid	D	5,000 (2,270)
Fumaric acid	D	5,000 (2,270)
Furfural	D	5,000 (2,270)
Guthion	X	1 (0.454)
Heptachlor	X	1 (0.454)
Hexachlorocyclopentadiene	A	10 (4.54)
Hydrochloric acid	D	5,000 (2,270)
Hydrofluoric acid	B	100 (45.4)
Hydrogen cyanide	A	10 (4.54)
Hydrogen sulfide	B	100 (45.4)
Isoprene	B	100 (45.4)
Isopropanolamine dodecylbenzenesulfonate	C	1,000 (454)
Kepone	X	1 (0.454)
Lead acetate	A	10 (4.54)
Lead arsenate	X	1 (0.454)
Lead chloride	A	10 (4.54)
Lead fluoborate	A	10 (4.54)
Lead fluoride	A	10 (4.54)
Lead iodide	A	10 (4.54)
Lead nitrate	A	10 (4.54)
Lead stearate	A	10 (4.54)
Lead sulfate	A	10 (4.54)
Lead sulfide	A	10 (4.54)
Lead thiocyanate	A	10 (4.54)
Lindane	X	1 (0.454)
Lithium chromate	A	10 (4.54)
Malathion	B	100 (45.4)
Maleic acid	D	5,000 (2,270)
Maleic anhydride	D	5,000 (2,270)
Mercaptodimethur	A	10 (4.54)
Mercuric cyanide	X	1 (0.454)
Mercuric nitrate	A	10 (4.54)
Mercuric sulfate	A	10 (4.54)
Mercuric thiocyanate	A	10 (4.54)
Mercurous nitrate	A	10 (4.54)
Methoxychlor	X	1 (0.454)
Methyl mercaptan	B	100 (45.4)
Methyl methacrylate	C	1,000 (454)
Methyl parathion	B	100 (45.4)

TABLE 117.3—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT—Continued

Material	Category	RQ in pounds (kilograms)
Mevinphos	A	10 (4.54)
Mexacarbate	C	1,000 (454)
Monoethylamine	B	100 (45.4)
Monomethylamine	B	100 (45.4)
Naled	A	10 (4.54)
Naphthalene	B	100 (45.4)
Naphthenic acid	B	100 (45.4)
Nickel ammonium sulfate	B	100 (45.4)
Nickel chloride	B	100 (45.4)
Nickel hydroxide	A	10 (4.54)
Nickel nitrate	B	100 (45.4)
Nickel sulfate	B	100 (45.4)
Nitric acid	C	1,000 (454)
Nitrobenzene	C	1,000 (454)
Nitrogen dioxide	A	10 (4.54)
Nitrophenol (mixed)	B	100 (45.4)
Nitrotoluene	C	1,000 (454)
Paraformaldehyde	C	1,000 (454)
Parathion	A	10 (4.54)
Pentachlorophenol	A	10 (4.54)
Phenol	C	1,000 (454)
Phosgene	A	10 (4.54)
Phosphoric acid	D	5,000 (2,270)
Phosphorus	X	1 (0.454)
Phosphorus oxychloride	C	1,000 (454)
Phosphorus pentasulfide	B	100 (45.4)
Phosphorus trichloride	C	1,000 (454)
Polychlorinated biphenyls	X	1 (0.454)
Potassium arsenate	X	1 (0.454)
Potassium arsenite	X	1 (0.454)
Potassium bichromate	A	10 (4.54)
Potassium chromate	A	10 (4.54)
Potassium cyanide	A	10 (4.54)
Potassium hydroxide	C	1,000 (454)
Potassium permanganate	B	100 (45.4)
Propargite	A	10 (4.54)
Propionic acid	D	5,000 (2,270)
Propionic anhydride	D	5,000 (2,270)
Propylene oxide	B	100 (45.4)
Pyrethrins	X	1 (0.454)
Quinoline	D	5,000 (2,270)
Resorcinol	D	5,000 (2,270)
Selenium oxide	A	10 (4.54)
Silver nitrate	X	1 (0.454)
Sodium	A	10 (4.54)
Sodium arsenate	X	1 (0.454)
Sodium arsenite	X	1 (0.454)
Sodium bichromate	A	10 (4.54)
Sodium bifluoride	B	100 (45.4)
Sodium bisulfite	D	5,000 (2,270)
Sodium chromate	A	10 (4.54)
Sodium cyanide	A	10 (4.54)
Sodium dodecylbenzenesulfonate	C	1,000 (454)
Sodium fluoride	C	1,000 (454)
Sodium hydrosulfide	D	5,000 (2,270)
Sodium hydroxide	C	1,000 (454)
Sodium hypochlorite	B	100 (45.4)
Sodium methylate	C	1,000 (454)
Sodium nitrite	B	100 (45.4)
Sodium phosphate, dibasic	D	5,000 (2,270)
Sodium phosphate, tribasic	D	5,000 (2,270)
Sodium selenite	B	100 (45.4)
Strontium chromate	A	10 (4.54)
Strychnine	A	10 (4.54)
Styrene	C	1,000 (454)
Sulfuric acid	C	1,000 (454)
Sulfur monochloride	C	1,000 (454)
2,4,5-T acid	C	1,000 (454)
2,4,5-T amines	D	5,000 (2,270)
2,4,5-T esters	C	1,000 (454)
2,4,5-T salts	C	1,000 (454)

TABLE 117.3—REPORTABLE QUANTITIES OF HAZARDOUS SUBSTANCES DESIGNATED PURSUANT TO SECTION 311 OF THE CLEAN WATER ACT—Continued

Material	Category	RQ in pounds (kilograms)
TDE	X	1 (0.454)
2,4,5-TP acid	B	100 (45.4)
2,4,5-TP acid esters	B	100 (45.4)
Tetraethyl lead	A	10 (4.54)
Tetraethyl pyrophosphate	A	10 (4.54)
Thallium sulfate	B	100 (45.4)
Toluene	C	1,000 (454)
Toxaphene	X	1 (0.454)
Trichlorfon	B	100 (45.4)
Trichloroethylene	B	100 (45.4)
Trichlorophenol	A	10 (4.54)
Triethanolamine dodecylbenzenesulfonate	C	1,000 (454)
Triethylamine	D	5,000 (2,270)
Trimethylamine	B	100 (45.4)
Uranyl acetate	B	100 (45.4)
Uranyl nitrate	B	100 (45.4)
Vanadium pentoxide	C	1,000 (454)
Vanadyl sulfate	C	1,000 (454)
Vinyl acetate	D	5,000 (2,270)
Vinylidene chloride	B	100 (45.4)
Xylene (mixed)	B	100 (45.4)
Xylenol	C	1,000 (454)
Zinc acetate	C	1,000 (454)
Zinc ammonium chloride	C	1,000 (454)
Zinc borate	C	1,000 (454)
Zinc bromide	C	1,000 (454)
Zinc carbonate	C	1,000 (454)
Zinc chloride	C	1,000 (454)
Zinc cyanide	A	10 (4.54)
Zinc fluoride	C	1,000 (454)
Zinc formate	C	1,000 (454)
Zinc hydrosulfite	C	1,000 (454)
Zinc nitrate	C	1,000 (454)
Zinc phenolsulfonate	D	5,000 (2,270)
Zinc phosphide	B	100 (45.4)
Zinc silicofluoride	D	5,000 (2,270)
Zinc sulfate	C	1,000 (454)
Zirconium nitrate	D	5,000 (2,270)
Zirconium potassium fluoride	C	1,000 (454)
Zirconium sulfate	D	5,000 (2,270)
Zirconium tetrachloride	D	5,000 (2,270)

[50 FR 13513, Apr. 4, 1985, as amended at 51 FR 34547, Sept. 29, 1986; 54 FR 33482, Aug. 14, 1989; 58 FR 35327, June 30, 1993; 60 FR 30937, June 12, 1995]

Subpart B—Applicability

§ 117.11 General applicability.

This regulation sets forth a determination of the reportable quantity for each substance designated as hazardous in 40 CFR part 116. The regulation applies to quantities of designated substances equal to or greater than the reportable quantities, when discharged into or upon the navigable waters of the United States, adjoining shorelines, into or upon the contiguous zone, or beyond the contiguous zone as provided in section 311(b)(3) of the Act, except to the extent that the owner or operator can show such that discharges are made:

(a) In compliance with a permit issued under the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 *et seq.*);

(b) In compliance with approved water treatment plant operations as specified by local or State regulations pertaining to safe drinking water;

(c) Pursuant to the label directions for application of a pesticide product registered under section 3 or section 24 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*), or pursuant to the terms and conditions of an experimental use permit issued under section 5 of FIFRA, or pursuant to an exemption granted under section 18 of FIFRA;

(d) In compliance with the regulations issued under section 3004 or with permit conditions issued pursuant to section 3005 of the Resource Conservation and Recovery Act (90 Stat. 2795; 42 U.S.C. 6901);

(e) In compliance with instructions of the On-Scene Coordinator pursuant to 40 CFR part 1510

(the National Oil and Hazardous Substances Pollution Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances) or in accordance with applicable removal regulations as required by section 311(j)(1)(A);

(f) In compliance with a permit issued under § 165.7 of Title 14 of the State of California Administrative Code;

(g) From a properly functioning inert gas system when used to provide inert gas to the cargo tanks of a vessel;

(h) From a permitted source and are excluded by § 117.12 of this regulation;

(i) To a POTW and are specifically excluded or reserved in § 117.13; or

(j) In compliance with a permit issued under section 404(a) of the Clean Water Act or when the discharges are exempt from such requirements by section 404(f) or 404(r) of the Act (33 U.S.C. 1344(a), (f), (r)).

§ 117.12 Applicability to discharges from facilities with NPDES permits.

(a) This regulation does not apply to:

(1) Discharges in compliance with a permit under section 402 of this Act;

(2) Discharges resulting from circumstances identified, reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit;

(3) Continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of the relevant operating or treatment systems; or

(b) A discharge is ''in compliance with a permit issued under section 402 of this Act'' if the permit contains an effluent limitation specifically applicable to the substance discharged or an effluent limitation applicable to another waste parameter which has been specifically identified in the permit as intended to limit such substance, and the discharge is in compliance with the effluent limitation.

(c) A discharge results ''from circumstances identified, reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Act, and subject to a condition in such permit,'' whether or not the discharge is in compliance with the permit, where:

(1) The permit application, the permit, or another portion of the public record contains documents that specifically identify:

(i) The substance and the amount of the substance; and

(ii) The origin and source of the substance; and

(iii) The treatment which is to be provided for the discharge either by:

(A) An on-site treatment system separate from any treatment system treating the permittee's normal discharge; or

(B) A treatment system designed to treat the permittee's normal discharge and which is additionally capable of treating the identified amount of the identified substance; or

(C) Any combination of the above; and

(2) The permit contains a requirement that the substance and amounts of the substance, as identified in § 117.12(c)(1)(i) and § 117.12(c)(1)(ii) be treated pursuant to § 117.12(c)(1)(iii) in the event of an on-site release; and

(3) The treatment to be provided is in place.

(d) A discharge is a ''continuous or anticipated intermittent discharge from a point source, identified in a permit or permit application under section 402 of this Act, and caused by events occurring within the scope of the relevant operating or treatment systems,'' whether or not the discharge is in compliance with the permit, if:

(1) The hazardous substance is discharged from a point source for which a valid permit exists or for which a permit application has been submitted; and

(2) The discharge of the hazardous substance results from:

(i) The contamination of noncontact cooling water or storm water, provided that such cooling water or storm water is not contaminated by an on-site spill of a hazardous substance; or

(ii) A continuous or anticipated intermittent discharge of process waste water, and the discharge originates within the manufacturing or treatment systems; or

(iii) An upset or failure of a treatment system or of a process producing a continuous or anticipated intermittent discharge where the upset or failure results from a control problem, an operator error, a system failure or malfunction, an equipment or system startup or shutdown, an equipment wash, or a production schedule change, provided that such upset or failure is not caused by an on-site spill of a hazardous substance.

[44 FR 50776, Aug. 29, 1979, as amended at 44 FR 58910, Oct. 12, 1979]

§ 117.13 Applicability to discharges from publicly owned treatment works and their users.

(a) [Reserved]

(b) These regulations apply to all discharges of reportable quantities to a POTW, where the discharge originates from a mobile source, except where such source has contracted with, or otherwise received written permission from the owners or operators of the POTW to discharge that quantity, and the mobile source can show that prior to

accepting the substance from an industrial discharger, the substance had been treated to comply with any effluent limitation under sections 301, 302 or 306 or pretreatment standard under section 307 applicable to that facility.

§ 117.14 Demonstration projects.

Notwithstanding any other provision of this part, the Administrator of the Environmental Protection Agency may, on a case-by-case basis, allow the discharge of designated hazardous substances in connection with research or demonstration projects relating to the prevention, control, or abatement of hazardous substance pollution. The Administrator will allow such a discharge only where he determines that the expected environmental benefit from such a discharge will outweigh the potential hazard associated with the discharge.

Subpart C—Notice of Discharge of a Reportable Quantity

§ 117.21 Notice.

Any person in charge of a vessel or an onshore or an offshore facility shall, as soon as he has knowledge of any discharge of a designated hazardous substance from such vessel or facility in quantities equal to or exceeding in any 24-hour period the reportable quantity determined by this part, immediately notify the appropriate agency of the United States Government of such discharge. Notice shall be given in accordance with such procedures as the Secretary of Transportation has set forth in 33 CFR 153.203. This provision applies to all discharges not specifically excluded or reserved by another section of these regulations.

§ 117.23 Liabilities for removal.

In any case where a substance designated as hazardous in 40 CFR part 116 is discharged from any vessel or onshore or offshore facility in a quantity equal to or exceeding the reportable quantity determined by this part, the owner, operator or person in charge will be liable, pursuant to section 311 (f) and (g) of the Act, to the United States Government for the actual costs incurred in the removal of such substance, subject only to the defenses and monetary limitations enumerated in section 311 (f) and (g) of the Act.

The Administrator may act to mitigate the damage to the public health or welfare caused by a discharge and the cost of such mitigation shall be considered a cost incurred under section 311(c) for the removal of that substance by the United States Government.

PART 121—STATE CERTIFICATION OF ACTIVITIES REQUIRING A FEDERAL LICENSE OR PERMIT

Subpart A—General

Subpart B—Determination of Effect on Other States

Subpart C—Certification by the Administrator

Subpart D—Consultations

AUTHORITY: Sec. 21 (b) and (c), 84 Stat. 91 (33 U.S.C. 1171(b) (1970)); Reorganization Plan No. 3 of 1970.

SOURCE: 36 FR 22487, Nov. 25, 1971, unless otherwise noted. Redesignated at 37 FR 21441, Oct. 11, 1972 and 44 FR 32899, June 7, 1979.

Subpart A—General

§ 121.1 Definitions.

As used in this part, the following terms shall have the meanings indicated below:

(a) *License or permit* means any license or permit granted by an agency of the Federal Government to conduct any activity which may result in any discharge into the navigable waters of the United States.

(b) *Licensing or permitting agency* means any agency of the Federal Government to which application is made for a license or permit.

(c) *Administrator* means the Administrator, Environmental Protection Agency.

(d) *Regional Administrator* means the Regional designee appointed by the Administrator, Environmental Protection Agency.

(e) *Certifying agency* means the person or agency designated by the Governor of a State, by statute, or by other governmental act, to certify compliance with applicable water quality standards. If an interstate agency has sole authority to so certify for the area within its jurisdiction, such interstate agency shall be the certifying agency. Where a State agency and an interstate agency have concurrent authority to certify, the State agency shall be the certifying agency. Where water quality standards have been promulgated by the Administrator pursuant to section 10(c)(2) of the Act, or where no State or interstate agency has authority to certify, the Administrator shall be the certifying agency.

(f) *Act* means the Federal Water Pollution Control Act, 33 U.S.C. 1151, *et seq.*

(g) *Water quality standards* means standards established pursuant to section 10(c) of the Act, and State-adopted water quality standards for navigable waters which are not interstate waters.

§ 121.2 Contents of certification.

(a) A certification made by a certifying agency shall include the following:

(1) The name and address of the applicant;

(2) A statement that the certifying agency has either (i) examined the application made by the applicant to the licensing or permitting agency (specifically identifying the number or code affixed to such application) and bases its certification upon an evaluation of the information contained in such application which is relevant to water quality considerations, or (ii) examined other information furnished by the applicant sufficient to permit the certifying agency to make the statement described in paragraph (a)(3) of this section;

(3) A statement that there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;

(4) A statement of any conditions which the certifying agency deems necessary or desirable with respect to the discharge of the activity; and

(5) Such other information as the certifying agency may determine to be appropriate.

(b) The certifying agency may modify the certification in such manner as may be agreed upon by the certifying agency, the licensing or permitting agency, and the Regional Administrator.

§ 121.3 Contents of application.

A licensing or permitting agency shall require an applicant for a license or permit to include in the form of application such information relating to water quality considerations as may be agreed upon by the licensing or permitting agency and the Administrator.

Subpart B—Determination of Effect on Other States

§ 121.11 Copies of documents.

(a) Upon receipt from an applicant of an application for a license or permit without an accompanying certification, the licensing or permitting agency shall either: (1) Forward one copy of the application to the appropriate certifying agency and two copies to the Regional Administrator, or (2) forward three copies of the application to the Regional Administrator, pursuant to an agreement between the licensing or permitting agency and the Administrator that the Regional Administrator will transmit a copy of the application to the appropriate certifying agency. Upon subsequent receipt from an applicant of a certification, the licensing or permitting agency shall forward a copy of such certification to the Regional Administrator, unless such certification shall have been made by the Regional Administrator pursuant to § 121.24.

(b) Upon receipt from an applicant of an application for a license or permit with an accompanying certification, the licensing or permitting agency shall forward two copies of the application and certification to the Regional Administrator.

(c) Only those portions of the application which relate to water quality considerations shall be forwarded to the Regional Administrator.

§ 121.12 Supplemental information.

If the documents forwarded to the Regional Administrator by the licensing or permitting agency pursuant to § 121.11 do not contain sufficient information for the Regional Administrator to make the determination provided for in § 121.13, the Regional Administrator may request, and the licensing or permitting agency shall obtain from the applicant and forward to the Regional Administrator, any supplemental information as may be required to make such determination.

§ 121.13 Review by Regional Administrator and notification.

The Regional Administrator shall review the application, certification, and any supplemental information provided in accordance with §§ 121.11 and 121.12 and if the Regional Administrator determines there is reason to believe that a discharge may affect the quality of the waters of any State or States other than the State in which the discharge originates, the Regional Administrator shall, no later than 30 days of the date of receipt of the application and certification from the licensing or permitting agency as provided in § 121.11, so notify each affected State, the licensing or permitting agency, and the applicant.

§ 121.14 Forwarding to affected State.

The Regional Administrator shall forward to each affected State a copy of the material provided in accordance with § 121.11.

§ 121.15 Hearings on objection of affected State.

When a licensing or permitting agency holds a public hearing on the objection of an affected State, notice of such objection, including the grounds for such objection, shall be forwarded to the Regional Administrator by the licensing or permitting agency no later than 30 days prior to such hearing. The Regional Administrator shall at such hearing submit his evaluation with respect to such objection and his recommendations as to whether and under what conditions the license or permit should be issued.

§ 121.16 Waiver.

The certification requirement with respect to an application for a license or permit shall be waived upon:

(a) Written notification from the State or interstate agency concerned that it expressly waives its authority to act on a request for certification; or

(b) Written notification from the licensing or permitting agency to the Regional Administrator of the failure of the State or interstate agency concerned to act on such request for certification within a reasonable period of time after receipt of such request, as determined by the licensing or permitting agency (which period shall generally be considered to be 6 months, but in any event shall not exceed 1 year).

In the event of a waiver hereunder, the Regional Administrator shall consider such waiver as a substitute for a certification, and as appropriate, shall conduct the review, provide the notices, and perform the other functions identified in §§ 121.13, 121.14, and 121.15. The notices required by § 121.13 shall be provided not later than 30 days after the date of receipt by the Regional Administrator of either notification referred to herein.

Subpart C—Certification by the Administrator

§ 121.21 When Administrator certifies.

Certification by the Administrator that the discharge resulting from an activity requiring a license or permit will not violate applicable water quality standards will be required where:

(a) Standards have been promulgated, in whole or in part, by the Administrator pursuant to section 10(c)(2) of the Act: *Provided, however,* That the Administrator will certify compliance only with

respect to those water quality standards promulgated by him; or

(b) Water quality standards have been established, but no State or interstate agency has authority to give such a certification.

§ 121.22 Applications.

An applicant for certification from the Administrator shall submit to the Regional Administrator a complete description of the discharge involved in the activity for which certification is sought, with a request for certification signed by the applicant. Such description shall include the following:

(a) The name and address of the applicant;

(b) A description of the facility or activity, and of any discharge into navigable waters which may result from the conduct of any activity including, but not limited to, the construction or operation of the facility, including the biological, chemical, thermal, and other characteristics of the discharge, and the location or locations at which such discharge may enter navigable waters;

(c) A description of the function and operation of equipment or facilities to treat wastes or other effluents which may be discharged, including specification of the degree of treatment expected to be attained;

(d) The date or dates on which the activity will begin and end, if known, and the date or dates on which the discharge will take place;

(e) A description of the methods and means being used or proposed to monitor the quality and characteristics of the discharge and the operation of equipment or facilities employed in the treatment or control of wastes or other effluents.

§ 121.23 Notice and hearing.

The Regional Administrator will provide public notice of each request for certification by mailing to State, County, and municipal authorities, heads of State agencies responsible for water quality improvement, and other parties known to be interested in the matter, including adjacent property owners and conservation organizations, or may provide such notice in a newspaper of general circulation in the area in which the activity is proposed to be conducted if the Regional Administrator deems mailed notice to be impracticable. Interested parties shall be provided an opportunity to comment on such request in such manner as the Regional Administrator deems appropriate. All interested and affected parties will be given reasonable opportunity to present evidence and testimony at a public hearing on the question whether to grant or deny certification if the Regional Administrator determines that such a hearing is necessary or appropriate.

§ 121.24 Certification.

If, after considering the complete description, the record of a hearing, if any, held pursuant to § 121.23, and such other information and data as the Regional Administrator deems relevant, the Regional Administrator determines that there is reasonable assurance that the proposed activity will not result in a violation of applicable water quality standards, he shall so certify. If the Regional Administrator determines that no water quality standards are applicable to the waters which might be affected by the proposed activity, he shall so notify the applicant and the licensing or permitting agency in writing and shall provide the licensing or permitting agency with advice, suggestions, and recommendations with respect to conditions to be incorporated in any license or permit to achieve compliance with the purpose of this Act. In such case, no certification shall be required.

§ 121.25 Adoption of new water quality standards.

(a) In any case where:

(1) A license or permit was issued without certification due to the absence of applicable water quality standards; and

(2) Water quality standards applicable to the waters into which the licensed or permitted activity may discharge are subsequently established; and

(3) The Administrator is the certifying agency because:

(i) No State or interstate agency has authority to certify; or

(ii) Such new standards were promulgated by the Administrator pursuant to section 10(c)(2) of the Act; and

(4) The Regional Administrator determines that such uncertified activity is violating water quality standards;

Then the Regional Administrator shall notify the licensee or permittee of such violation, including his recommendations as to actions necessary for compliance. If the licensee or permittee fails within 6 months of the date of such notice to take action which in the opinion of the Regional Administrator will result in compliance with applicable water quality standards, the Regional Administrator shall notify the licensing or permitting agency that the licensee or permittee has failed, after reasonable notice, to comply with such standards and that suspension of the applicable license or permit is required by section 21(b)(9)(B) of the Act.

(b) Where a license or permit is suspended pursuant to paragraph (a) of this section, and where the licensee or permittee subsequently takes action

which in the Regional Administrator's opinion will result in compliance with applicable water quality standards, the Regional Administrator shall then notify the licensing or permitting agency that there is reasonable assurance that the licensed or permitted activity will comply with applicable water quality standards.

§ 121.26 Inspection of facility or activity before operation.

Where any facility or activity has received certification pursuant to § 121.24 in connection with the issuance of a license or permit for construction, and where such facility or activity is not required to obtain an operating license or permit, the Regional Administrator or his representative, prior to the initial operation of such facility or activity, shall be afforded the opportunity to inspect such facility or activity for the purpose of determining if the manner in which such facility or activity will be operated or conducted will violate applicable water quality standards.

§ 121.27 Notification to licensing or permitting agency.

If the Regional Administrator, after an inspection pursuant to § 121.26, determines that operation of the proposed facility or activity will violate applicable water quality standards, he shall so notify the applicant and the licensing or permitting agency, including his recommendations as to remedial measures necessary to bring the operation of the proposed facility into compliance with such standards.

§ 121.28 Termination of suspension.

Where a licensing or permitting agency, following a public hearing, suspends a license or permit after receiving the Regional Administrator's notice and recommendation pursuant to § 121.27, the applicant may submit evidence to the Regional Administrator that the facility or activity or the operation or conduct thereof has been modified so as not to violate water quality standards. If the Regional Administrator determines that water quality standards will not be violated, he shall so notify the licensing or permitting agency.

Subpart D—Consultations

§ 121.30 Review and advice.

The Regional Administrator may, and upon request shall, provide licensing and permitting agencies with determinations, definitions and interpretations with respect to the meaning and content of water quality standards where they have been federally approved under section 10 of the Act, and findings with respect to the application of all applicable water quality standards in particular cases and in specific circumstances relative to an activity for which a license or permit is sought. The Regional Administrator may, and upon request shall, also advise licensing and permitting agencies as to the status of compliance by dischargers with the conditions and requirements of applicable water quality standards. In cases where an activity for which a license or permit is sought will affect water quality, but for which there are no applicable water quality standards, the Regional Administrator may advise licensing or permitting agencies with respect to conditions of such license or permit to achieve compliance with the purpose of the Act.

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

Subpart A—Definitions and General Program Requirements

Subpart B—Permit Application and Special NPDES Program Requirements

Subpart C—Permit Conditions

Subpart D—Transfer, Modification, Revocation and Reissuance, and Termination of Permits

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

SOURCE: 48 FR 14153, Apr. 1, 1983, unless otherwise noted.

Subpart A—Definitions and General Program Requirements

§ 122.1 Purpose and scope.

(a) *Coverage.* (1) These regulations contain provisions for the *National Pollutant Discharge Elimination System* (NPDES) Program under section 318, 402, and 405 of the *Clean Water Act* (CWA) (Pub. L. 92–500, as amended by Pub. L. 95–217, Pub. L. 95–576, Pub. L. 96–483, Pub. L. 97–117, and Pub. L. 100–4; 33 U.S.C.1251 *et seq.*)

(2) These regulations cover basic EPA permitting requirements (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), and procedures for EPA processing of permit

applications and appeals (part 124). Part 124 is also applicable to other EPA permitting programs, as detailed in that part.

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

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

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

(ii) Concentrated aquatic animal production facilities as defined in § 122.24;

(iii) Discharges into aquaculture projects as set forth in § 122.25;

(iv) Discharges of storm water as set forth in § 122.26; and

(v) Silvicultural point sources as defined in § 122.27.

(3) 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 in accordance with paragraph (a)(1) of this section, unless all requirements implementing section 405(d) of 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.

(4) 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 § 122.1, where he or she 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.

(c) *State programs.* Certain requirements set forth in part 122 and 124 are made applicable to approved State programs by reference in part 123. These references are set forth in § 123.25. If a section or paragraph of part 122 or 124 is applicable to States, through reference in § 123.25, that fact is signaled by the following words at the end of the section or paragraph heading: *(Applicable to State programs, see § 123.25*). If these words are absent, the section (or paragraph) applies only to EPA administered permits.

(d) *Relation to other requirements*—(1) *Permit application forms.* Applicants for EPA issued permits must submit their applications on EPA's permit application forms when available. Most of the information requested on these application forms is required by these regulations. The basic information required in the general form (Form 1) and the additional information required for NPDES applications (Forms 2 a through d) are listed in § 122.21. Applicants for State issued permits must use State forms which must require at a minimum the information listed in these sections.

(2) *Technical regulations.* The NPDES permit program has separate additional regulations. These separate regulations are used by permit issuing authorities to determine what requirements must be placed in permits if they are issued. These separate regulations are located at 40 CFR parts 125, 129, 133, 136, 40 CFR subchapter N (parts 400 through 460), and 40 CFR part 503.

(e) *Public participation.* This rule establishes 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 requirements carry out the purposes of the public participation requirements of 40 CFR part 25 (Public Participation), and supersede the requirements of that part as they apply to actions covered under parts 122, 123, and 124.

(f) *State authorities.* Nothing in part 122, 123, or 124 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program.

[48 FR 14153, Apr. 1, 1983, as amended at 54 FR 18781, May 2, 1989; 55 FR 48062, Nov. 16, 1990; 58 FR 9413, Feb. 19, 1993; 60 FR 33931, June 29, 1995]

§ 122.2 Definitions.

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

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

Applicable standards and limitations means all State, interstate, and federal standards and limitations to which a ''discharge,'' a ''sewage sludge use or disposal practice,'' or a related activity is

subject under the CWA, including ''effluent limitations,'' water quality standards, standards of performance, toxic effluent standards or prohibitions, ''best management practices,'' pretreatment standards, and ''standards for sewage sludge use or disposal'' under sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

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

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

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

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

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

BMPs means ''best management practices.''

Class I sludge management facility means any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including such POTWs located in a State that has elected to assume local program responsibilities pursuant to 40 CFR 403.10(e)) and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

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

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

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

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

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

Direct discharge means the ''discharge of a pollutant.''

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

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

Discharge of a pollutant means:

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

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

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

and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any ''indirect discharger.''

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

DMR means ''Discharge Monitoring Report.''

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

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

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

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

EPA means the United States ''Environmental Protection Agency.''

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

Federal Indian reservation means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

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

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

Indian Tribe means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

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

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

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

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

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

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

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

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

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

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

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

This definition includes an ''indirect discharger'' which commences discharging into ''waters of the United States'' after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a ''site'' for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after Au-

gust 13, 1979, at a ''site'' under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area or biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122(a) (1) through (10).

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

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

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

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

NPDES means ''National Pollutant Discharge Elimination System.''

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

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

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

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

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

(a) Sewage from vessels; or

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

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

POTW means ''publicly owned treatment works.''

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

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

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

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

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

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

Regional Administrator means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the au-

thorized representative of the Regional Administrator.

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

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

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

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

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

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

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

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

Sludge-only facility means any ''treatment works treating domestic sewage'' whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405(d) of the CWA, and is required to obtain a permit under § 122.1(b)(3) of this part.

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

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

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

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

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

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

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

Variance means any mechanism or provision under section 301 or 316 of CWA or under 40 CFR part 125, or in the applicable ''effluent limitations guidelines'' which allows modification to or waiver of the generally applicable effluent limi-

tation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on sections 301(c), 301(g), 301(h), 301(i), or 316(a) of CWA.

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

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

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

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

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

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

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

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

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

(f) The territorial sea; and

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

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.] Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

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

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

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

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

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

§ 122.3 Exclusions.

The following discharges do not require NPDES permits:

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

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

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

(d) Any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR part 300 (The National Oil and Hazardous

[1] EDITORIAL NOTE: The words ''This revision'' refer to the document published at 48 FR 14153, Apr. 1, 1983.

Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

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

(f) Return flows from irrigated agriculture.

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

[48 FR 14153, Apr. 1, 1983, as amended at 54 FR 254, 258, Jan. 4, 1989]

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

No permit may be issued:

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

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

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

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

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

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

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

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

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

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

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

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

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

[48 FR 14153, Apr. 1, 1983, as amended at 50 FR 6940, Feb. 19, 1985]

§ 122.5 Effect of a permit.

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

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

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

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

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

§ 122.6 Continuation of expiring permits.

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

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

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

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

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

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

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

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

(4) Take other actions authorized by these regulations.

(d) *State continuation.* (1) An EPA-issued permit does not continue in force beyond its expiration date under Federal law if at that time a State is the permitting authority. States authorized to administer the NPDES program may continue either EPA or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit.

[48 FR 14153, Apr. 1, 1983, as amended at 50 FR 6940, Feb. 19, 1985]

§ 122.7 Confidentiality of information.

(a) In accordance with 40 CFR part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words ''confidential business information'' on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2 (Public Information).

(b) *Applicable to State programs, see § 123.25.* Claims of confidentiality for the following information will be denied:

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

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

(c) *Applicable to State programs, see § 123.25.* Information required by NPDES application forms provided by the Director under § 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

Subpart B—Permit Application and Special NPDES Program Requirements

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

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

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

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

of storm water, other than those dischargers identified by § 122.26(a)(1), shall apply for and obtain a permit according to the application requirements in § 122.26(g).

(2) *Permits under section 405(f) of CWA.* (i) Any existing ''treatment works treating domestic sewage'' required to have, or requesting site-specific pollutant limits as provided in 40 CFR part 503, must submit the permit application information required by paragraph (d)(3)(ii) of this section within 180 days after publication of a standard applicable to its sewage sludge use or disposal practice(s). After this 180 day period, ''treatment works treating domestic sewage'' may only apply for site-specific pollutant limits for good cause and such requests must be made within 180 days of becoming aware that good cause exists.

(ii) Any ''treatment works treating domestic sewage'' with a currently effective NPDES permit, not addressed under paragraph (c)(2)(i) of this section, must submit the application information required by paragraph (d)(3)(ii) of this section at the time of its next NPDES permit renewal application. Such information must be submitted in accordance with paragraph (d) of this section.

(iii) Any other existing ''treatment works treating domestic sewage'' not addressed under paragraphs (c)(2) (i) or (ii) of this section must submit the information listed in paragraphs (c)(2)(iii) (A)–(E) of this section, to the Director within 1 year after publication of a standard applicable to its sewage sludge use or disposal practice(s). The Director shall determine when such ''treatment works treating domestic sewage'' must apply for a permit.

(A) Name, mailing address and location of the ''treatment works treating domestic sewage;''

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

(C) A description of the sewage sludge use or disposal practices (including, where applicable, the location of any sites where sewage sludge is transferred for treatment, use, or disposal, as well as the name of the applicator or other contractor who applies the sewage sludge to land, if different from the ''treatment works treating domestic sewage,'' and the name of any distributors if the sewage sludge is sold or given away in a bag or similar enclosure for application to the land, if different from the ''treatment works treating domestic sewage'');

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

(E) The most recent data the ''treatment works treating domestic sewage'' may have on the quality of the sewage sludge.

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

(v) Any ''treatment works treating domestic sewage'' that commences operations after promulgation of an applicable ''standard for sewage sludge use or disposal'' shall submit an application to the Director at least 180 days prior to the date proposed for commencing operations.

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

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

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

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

(ii) In addition to any other applicable requirements in this part, all POTWs and other ''treatment works treating domestic sewage,'' including ''sludge-only facilities,'' must submit with their applications the information listed at 40 CFR 501.15 (a)(2) within the time frames established in paragraph (c)(2) of this section.

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

(f) *Information requirements.* All applicants for NPDES permits shall provide the following information to the Director, using the application form provided by the Director (additional information

required of applicants is set forth in paragraphs (g) through (k) of this section).

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

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

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

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

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

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

(i) Hazardous Waste Management program under RCRA.

(ii) UIC program under SDWA.

(iii) NPDES program under CWA.

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

(v) Nonattainment program under the Clean Air Act.

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

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

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

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

(7) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

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

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

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

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

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

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

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

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

(7) *Effluent characteristics.* Information on the discharge of pollutants specified in this paragraph (except information on storm water discharges which is to be provided as specified in § 122.26).

When ''quantitative data'' for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in paragraphs (g)(7) (iii) and (iv) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges under § 122.26(d) may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Director). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in § 122.26(c)(1). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in § 122.26 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The Director may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR part 136, and additional time for submitting data on a case-by-case basis. An applicant is expected to ''know or have reason to believe'' that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

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

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

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

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

(A) The organic toxic pollutants in the fractions designated in table I of appendix D of this part for the applicant's industrial category or categories

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

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

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

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

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

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

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

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

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

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

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

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

(10) [Reserved]

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

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

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

to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

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

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

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

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

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

(A) Biochemical Oxygen Demand (BOD_5).

(B) Total Suspended Solids (TSS).

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

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

(E) Oil and Grease.

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

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

(H) Ammonia (as N).

(I) Discharge Flow.

(J) pH.

(K) Temperature (Winter and Summer).

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

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

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

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

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

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

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

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

(1) For concentrated animal feeding operations:

(i) The type and number of animals in open confinement and housed under roof.

(ii) The number of acres used for confinement feeding.

(iii) The design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.

(2) For concentrated aquatic animal production facilities:

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

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

(iii) The name of the receiving water and the source of intake water.

(iv) For each species of aquatic animals, the total yearly and maximum harvestable weight.

(v) The calendar month of maximum feeding and the total mass of food fed during that month.

(j) *Application requirements for new and existing POTWs.* (1) The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the Director:

(i) All POTWs with design influent flows equal to or greater than one million gallons per day;

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

(2) In addition to the POTWs listed in paragraph (j)(1) of this section, the Director may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

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

(ii) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);

(iii) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW;

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

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

(3) For POTWs required under paragraph (j)(1) or (j)(2) of this section to conduct toxicity testing, POTWs shall use EPA's methods or other established protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. Such testing must have been conducted since the last NPDES permit reissuance or permit modification under 40 CFR 122.62(a), whichever occurred later.

(4) All POTWs with approved pretreatment programs shall provide the following information to the Director: a written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1).

(k) *Application requirements for new sources and new discharges.* New manufacturing, commercial, mining and silvicultural dischargers applying for NPDES permits (except for new discharges of facilities subject to the requirements of paragraph (h) of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of § 122.26(c)(1) and this section (except as provided by § 122.26(c)(1)(ii)) shall provide the following information to the Director, using the application forms provided by the Director:

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

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

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

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

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

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

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

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

(A) Biochemical Oxygen Demand (BOD).

(B) Chemical Oxygen Demand (COD).

(C) Total Organic Carbon (TOC).

(D) Total Suspended Solids (TSS).

(E) Flow.

(F) Ammonia (as N).

(G) Temperature (winter and summer).

(H) pH.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The Regional Administrator shall issue a public notice in accordance with § 124.10 of the new source determination under paragraph (k)(2) of this section. If the Regional Administrator has determined that the facility is a new source, the notice shall state that the applicant must comply with the environmental review requirements of 40 CFR 6.600 *et seq.*

(4) Any interested person may challenge the Regional Administrator's initial new source determination by requesting an evidentiary hearing under subpart E of part 124 within 30 days of is-

suance of the public notice of the initial determination. If all parties to the evidentiary hearing on the determination agree, the Regional Administrator may defer the hearing until after a final permit decision is made, and consolidate the hearing on the determination with any hearing on the permit.

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

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

(A) For a request from best practicable control technology currently available (BPT), by the close of the public comment period under § 124.10.

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

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

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

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

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

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

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

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

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

(B) Submitting a completed request no later than the close of the public comment period under § 124.10 demonstrating that the requirements of § 124.13 and the applicable requirements of part 125 have been met. Notwithstanding this provision, the complete application for a request under section 301(g) shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period).

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

(3)–(4) [Reserved]

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

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

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

(1) *Discharges into marine waters.* A request for a modification under CWA section 301(h) of requirements of CWA section 301(b)(1)(B) for discharges into marine waters must be filed in ac-

cordance with the requirements of 40 CFR part 125, subpart G.

(2) [Reserved]

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

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

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

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

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

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

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

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

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

This revision continues that suspension.] [1]

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

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

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

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

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

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

This revision continues that suspension.] [1]

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 31842, Aug. 8, 1984; 49 FR 38046, Sept. 26, 1984; 50 FR 6940, 6941, Feb. 19, 1985; 50 FR 35203, Aug. 29, 1985; 51 FR 26991, July 28, 1986; 53 FR 4158, Feb. 12, 1988; 53 FR 33007, Sept. 6, 1988; 54 FR 254, Jan. 4, 1989; 54 FR 18782, May 2, 1989; 55 FR 30128, July 24, 1990; 55 FR 48062, Nov. 16, 1990; 58 FR 9413, Feb. 19, 1993; 60 FR 17956, Apr. 7, 1995; 60 FR 33931, June 29, 1995; 60 FR 40235, Aug. 7, 1995]

[1] EDITORIAL NOTE: The words ''This revision'' refer to the document published at 48 FR 14153, Apr. 1, 1983.

[1] EDITORIAL NOTE: The words ''This revision'' refer to the document published at 48 FR 14153, Apr. 1, 1983.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[48 FR 14153, Apr. 1, 1983, as amended at 48 FR 39619, Sept. 1, 1983; 49 FR 38047, Sept. 29, 1984; 50 FR 6941, Feb. 19, 1985; 55 FR 48063, Nov. 16, 1990]

§ 122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Concentrated animal feeding operations are point sources subject to the NPDES permit program.

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

(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(2) Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(3) *Concentrated animal feeding operation* means an ''animal feeding operation'' which meets the criteria in appendix B of this part, or which the Director designates under paragraph (c) of this section.

(c) *Case-by-case designation of concentrated animal feeding operations.* (1) The Director may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the United States. In making this designation the Director shall consider the following factors:

(i) The size of the animal feeding operation and the amount of wastes reaching waters of the United States;

(ii) The location of the animal feeding operation relative to waters of the United States;

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

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

(v) Other relevant factors.

(2) No animal feeding operation with less than the numbers of animals set forth in appendix B of this part shall be designated as a concentrated animal feeding operation unless:

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

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

(3) A permit application shall not be required from a concentrated animal feeding operation designated under this paragraph until the Director has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

§ 122.24 Concentrated aquatic animal production facilities (applicable to State NPDES programs, see § 123.25).

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

(b) *Defintion. Concentrated aquatic animal production facility* means a hatchery, fish farm, or other facility which meets the criteria in appendix C of this part, or which the Director designates under paragraph (c) of this section.

(c) *Case-by-case designation of concentrated aquatic animal production facilities.* (1) The Director may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the United States. In making this designation the Director shall consider the following factors:

(i) The location and quality of the receiving waters of the United States;

(ii) The holding, feeding, and production capacities of the facility;

(iii) The quantity and nature of the pollutants reaching waters of the United States; and

(iv) Other relevant factors.

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

§ 122.25 Aquaculture projects (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Discharges into aquaculture projects, as defined in this section, are subject to the NPDES permit program through section 318 of CWA, and in accordance with 40 CFR part 125, subpart B.

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

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

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* (1) Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

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

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

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

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

(v) A discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at § 122.2.

The Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director may consider the following factors:

(A) The location of the discharge with respect to waters of the United States as defined at 40 CFR 122.2.

(B) The size of the discharge;

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

(D) Other relevant factors.

(2) The Director may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

(3) *Large and medium municipal separate storm sewer systems.* (i) Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems.

(ii) The Director may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

(iii) The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:

(A) Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

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

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

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

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

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

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

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

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

(4) *Discharges through large and medium municipal separate storm sewer systems.* In addition to meeting the requirements of paragraph (c) of

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

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

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

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

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

(iii) Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(7) *Combined sewer systems.* Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain NPDES permits in accordance with the procedures of § 122.21 and are not subject to the provisions of this section.

(8) Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operator of the discharge is eligible for funding under title II, title III or title VI of the Clean Water Act. *See* 40 CFR part 35, subpart I, appendix A(b)H.2.j.

(9) On and after October 1, 1994, dischargers composed entirely of storm water, that are not otherwise already required by paragraph (a)(1) of this section to obtain a permit, shall be required to apply for and obtain a permit according to the application requirements in paragraph (g) of this section. The Director may not require a permit for discharges of storm water as provided in paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at §§ 122.2 and 122.3.

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

(2) *Illicit discharge* means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit (other than the NPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

(3) *Incorporated place* means the District of Columbia, or a city, town, township, or village that is incorporated under the laws of the State in which it is located.

(4) *Large municipal separate storm sewer system* means all municipal separate storm sewers that are either:

(i) Located in an incorporated place with a population of 250,000 or more as determined by the latest Decennial Census by the Bureau of Census (appendix F); or

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

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

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

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

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

(D) The nature of the receiving waters; and

(E) Other relevant factors; or

(iv) The Director may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraph (b)(4) (i), (ii), (iii) of this section.

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

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

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

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

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

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

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

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

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

(D) The nature of the receiving waters; or

(E) Other relevant factors; or

(iv) The Director may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraphs (b)(7) (i), (ii), (iii) of this section.

(8) *Municipal separate storm sewer* means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;

(ii) Designed or used for collecting or conveying storm water;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

(9) *Outfall* means a *point source* as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States.

(10) *Overburden* means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(11) *Runoff coefficient* means the fraction of total rainfall that will appear at a conveyance as runoff.

(12) *Significant materials* includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

(13) *Storm water* means storm water runoff, snow melt runoff, and surface runoff and drainage.

(14) *Storm water discharge associated with industrial activity* means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR part 122. For the categories of industries identified in paragraphs (b)(14) (i) through (x) of this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (b)(14)(xi) of this section, the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State, or municipally owned or operated that meet the description of the facilities listed in this paragraph (b)(14)(i)–(xi) of this section) include those facilities designated under the provisions of paragraph (a)(1)(v) of this section. The following categories of facilities are considered to be engaging in ''industrial activity'' for purposes of this subsection:

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

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 31l, 32 (except 323), 33, 344l, 373;

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

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

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

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

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

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle

rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(14) (i)–(vii) or (ix)–(xi) of this section are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and which are not otherwise included within categories (ii)–(x));

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

(c) *Application requirements for storm water discharges associated with industrial activity*—(1) *Individual application.* Dischargers of storm water associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Director is evaluating for designation (*see* 40 CFR 124.52(c)) under paragraph (a)(1)(v) of this section and is not a municipal separate storm sewer, and which is not part of a group application described under paragraph (c)(2) of this section, shall submit an NPDES application in accordance with the requirements of § 122.21 as modified and supplemented by the provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Form 1 and Form 2F. Applicants for discharges composed of storm water and non-storm water shall submit Form 1, Form 2C, and Form 2F. Applicants for new sources or new discharges (as defined in § 122.2 of this part) composed of storm water and non-storm water shall submit Form 1, Form 2D, and Form 2F.

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

(A) A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

(B) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

(C) A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a NPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the

method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

(D) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

(E) Quantitative data based on samples collected during storm events and collected in accordance with § 122.21 of this part from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(*1*) Any pollutant limited in an effluent guideline to which the facility is subject;

(*2*) Any pollutant listed in the facility's NPDES permit for its process wastewater (if the facility is operating under an existing NPDES permit);

(*3*) Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(*4*) Any information on the discharge required under paragraph § 122.21(g)(7) (iii) and (iv) of this part;

(*5*) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

(*6*) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

(F) Operators of a discharge which is composed entirely of storm water are exempt from the requirements of § 122.21 (g)(2), (g)(3), (g)(4), (g)(5), (g)(7)(i), (g)(7)(ii), and (g)(7)(v); and

(G) Operators of new sources or new discharges (as defined in § 122.2 of this part) which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in paragraph (c)(1)(i)(E) of this section instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in paragraph (c)(1)(i)(E) of this section within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the NPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of § 122.21 (k)(3)(ii), (k)(3)(iii), and (k)(5).

(ii) The operator of an existing or new storm water discharge that is associated with industrial activity solely under paragraph (b)(14)(x) of this section, is exempt from the requirements of § 122.21(g) and paragraph (c)(1)(i) of this section. Such operator shall provide a narrative description of:

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

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

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

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

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

(F) The name of the receiving water.

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

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

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

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

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

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

(2) *Group application for discharges associated with industrial activity.* In lieu of individual applications or notice of intent to be covered by a general permit for storm water discharges associated with industrial activity, a group application may be filed by an entity representing a group of applicants (except facilities that have existing individual NPDES permits for storm water) that are part of the same subcategory (*see* 40 CFR subchapter N, part 405 to 471) or, where such grouping is inapplicable, are sufficiently similar as to be appropriate for general permit coverage under § 122.28 of this part. The part 1 application shall be submitted to the Office of Water Enforcement and Permits, U.S. EPA, 401 M Street, SW., Washington, DC 20460 (EN–336) for approval. Once a part 1 application is approved, group applicants are to submit Part 2 of the group application to the Office of Water Enforcement and Permits. A group application shall consist of:

(i) *Part 1.* Part 1 of a group application shall:

(A) Identify the participants in the group application by name and location. Facilities participating in the group application shall be listed in nine subdivisions, based on the facility location relative to the nine precipitation zones indicated in appendix E to this part.

(B) Include a narrative description summarizing the industrial activities of participants of the group application and explaining why the participants, as a whole, are sufficiently similar to be a covered by a general permit;

(C) Include a list of significant materials stored exposed to precipitation by participants in the group application and materials management practices employed to diminish contact by these materials with precipitation and storm water runoff;

(D) For groups of more than 1,000 members, identify at least 100 dischargers participating in the group application from which quantitative data will be submitted. For groups of 100 or more members, identify a minimum of ten percent of the dischargers participating in the group application from which quantitative data will be submitted. For groups of between 21 and 99 members identify a minimum of ten dischargers participating in the group application from which quantitative data will be submitted. For groups of 4 to 20 members, identify a minimum of 50 percent of the dischargers participating in the group application from which quantitative data will be submitted. For groups with more than 10 members, either a minimum of two dischargers from each precipitation zone indicated in appendix E of this part in which ten or more members of the group are located, or one discharger from each precipitation zone indicated in appendix E of this part in which nine or fewer members of the group are located, must be identified to submit quantitative data. For groups of 4 to 10 members, at least one facility in each precipitation zone indicated in appendix E of this part in which members of the group are located must be identifed to submit quantitative data. A description of why the facilities selected to perform sampling and analysis are representative of the group as a whole in terms of the information provided in paragraphs (c)(1)(i)(B) and (c)(1)(i)(C) of this section, shall accompany this section. Different factors impacting the nature of the storm water discharges, such as the processes used and material management, shall be represented, to the extent feasible, in a manner roughly equivalent to their proportion in the group.

(ii) *Part 2.* Part 2 of a group application shall contain quantitative data (NPDES Form 2F), as modified by paragraph (c)(1) of this section, so that when part 1 and part 2 of the group application are taken together, a complete NPDES application (Form 1, Form 2C, and Form 2F) can be evaluated for each discharger identified in paragraph (c)(2)(i)(D) of this section.

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

(1) *Part 1.* Part 1 of the application shall consist of;

(i) *General information.* The applicants' name, address, telephone number of contact person, ownership status and status as a State or local government entity.

(ii) *Legal authority.* A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in paragraph (d)(2)(i) of this section, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

(iii) *Source identification.* (A) A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any Publicly Owned Treatment

Works serving the same area as the municipal separate storm sewer system.

(B) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

(*1*) The location of known municipal storm sewer system outfalls discharging to waters of the United States;

(*2*) A description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(*3*) The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(*4*) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES permit;

(*5*) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

(*6*) The identification of publicly owned parks, recreational areas, and other open lands.

(iv) *Discharge characterization.* (A) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

(B) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

(C) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

(*1*) Assessed and reported in section 305(b) reports submitted by the State, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

(*2*) Listed under section 304(l)(1)(A)(i), section 304(l)(1)(A)(ii), or section 304(l)(1)(B) of the CWA that is not expected to meet water quality standards or water quality goals;

(*3*) Listed in State Nonpoint Source Assessments required by section 319(a) of the CWA that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

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

(*5*) Areas of concern of the Great Lakes identified by the International Joint Commission;

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

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

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

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

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

Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

(*1*) A grid system consisting of perpendicular north-south and east-west lines spaced ¼ mile apart shall be overlayed on a map of the municipal storm sewer system, creating a series of cells;

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

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

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

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

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

(*7*) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in paragraphs (d)(1)(iv)(D) (*1*) through (*6*) of this section, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced ¼ mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

(E) *Characterization plan.* Information and a proposed program to meet the requirements of paragraph (d)(2)(iii) of this section. Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under paragraph (d)(2)(iii)(A) of this section, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (*see* paragraph (d)(1)(iv)(C) of this section) to the extent practicable.

(v) *Management programs.* (A) A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to: Procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under State law as well as local requirements.

(B) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

(vi) *Fiscal resources.* (A) A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.

(2) *Part 2.* Part 2 of the application shall consist of:

(i) *Adequate legal authority.* A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

(A) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

(B) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

(C) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

(D) Control through interagency agreements among coapplicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(E) Require compliance with conditions in ordinances, permits, contracts or orders; and

(F) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

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

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

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

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

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

(*3*) For samples collected and described under paragraphs (d)(2)(iii) (A)(*1*) and (A)(*2*) of this section, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of appendix D of 40 CFR part 122, and for the following pollutants:

Total suspended solids (TSS)
Total dissolved solids (TDS)
COD
BOD_5
Oil and grease
Fecal coliform
Fecal streptococcus
pH
Total Kjeldahl nitrogen
Nitrate plus nitrite
Dissolved phosphorus
Total ammonia plus organic nitrogen
Total phosphorus

(*4*) Additional limited quantitative data required by the Director for determining permit conditions (the Director may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness);

(B) Estimates of the annual pollutant load of the cumulative discharges to waters of the United States from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the United States from all identified municipal outfalls during a storm event (as described under § 122.21(c)(7)) for BOD_5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modelling, data analysis, and calculation methods;

(C) A proposed schedule to provide estimates for each major outfall identified in either paragraph (d)(2)(ii) or (d)(1)(iii)(B)(*1*) of this section of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under paragraph (d)(2)(iii)(A) of this section; and

(D) A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of

instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

(iv) *Proposed management program.* A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each coapplicant. Proposed programs may impose controls on a systemwide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(A) A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(*1*) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

(*2*) A description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. (Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in paragraph (d)(2)(iv)(D) of this section;

(*3*) A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of deicing activities;

(*4*) A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible;

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

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

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

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

(*2*) A description of procedures to conduct ongoing field screening activities during the life of

the permit, including areas or locations that will be evaluated by such field screens;

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

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

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

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

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

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

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

(*2*) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph (d)(2)(iv)(C) of this section, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES permit for a facility; oil and grease, COD, pH, BOD_5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under 40 CFR 122.21(g)(7) (iii) and (iv).

(D) A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

(*1*) A description of procedures for site planning which incorporate consideration of potential water quality impacts;

(*2*) A description of requirements for non-structural and structural best management practices;

(*3*) A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(*4*) A description of appropriate educational and training measures for construction site operators.

(v) *Assessment of controls.* Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

(vi) *Fiscal analysis.* For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under paragraphs (d)(2) (iii) and (iv) of this section. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

(vii) Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination.

(viii) Where requirements under paragraph (d)(1)(iv)(E), (d)(2)(ii), (d)(2)(iii)(B) and (d)(2)(iv) of this section are not practicable or are not applicable, the Director may exclude any operator of a discharge from a municipal separate storm sewer which is designated under paragraph (a)(1)(v), (b)(4)(ii) or (b)(7)(ii) of this section from such requirements. The Director shall not exclude the operator of a discharge from a municipal separate storm sewer identified in appendix F, G, H or I of part 122, from any of the permit application requirements under this paragraph except where authorized under this section.

(e) *Application deadlines under paragraph (a)(1).* Any operator of a point source required to obtain a permit under paragraph (a)(1) of this section that does not have an effective NPDES permit

covering its storm water outfalls shall submit an application in accordance with the following deadlines:

(1) *Individual applications.* (i) Except as provided in paragraph (e)(1)(ii) of this section, for any storm water discharge associated with industrial activity identified in paragraphs (b)(14) (i) through (xi) of this section, that is not part of a group application as described in paragraph (c)(2) of this section or which is not authorized by a storm water general permit, a permit application made pursuant to paragraph (C) of this section shall be submitted to the Director by October 1, 1992;

(ii) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, powerplant, or uncontrolled sanitary landfill, permit application requirements are contained in paragraph (g) of this section.

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

(i) *Part 1.* (A) Except as provided in paragraph (e)(2)(i)(B) of this section, part 1 of the application shall be submitted to the Director, Office of Wastewater Enforcement and Compliance by September 30, 1991;

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

(C) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications requirements are reserved.

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

(iii) *Part 2.* (A) Except as provided in paragraph (e)(2)(iii)(B) of this section, part 2 of the application shall be submittted to the Director, Office of Wastewater Enforcement and Compliance by October 1, 1992;

(B) Any municipality with a population of less than 250,000 shall not be required to submit a part 1 application before May 17, 1993.

(C) For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications requirements are reserved.

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

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

(v) A facility listed under paragraph (b)(14) (i)–(xi) of this section may add on to a group application submitted in accordance with paragraph (e)(2)(i) of this section at the discretion of the Office of Water Enforcement and Permits, and only upon a showing of good cause by the facility and the group applicant; the request for the addition of the facility shall be made no later than February 18, 1992; the addition of the facility shall not cause the percentage of the facilities that are required to submit quantitative data to be less than 10%, unless there are over 100 facilities in the group that are submitting quantitative data; approval to become part of group application must be obtained from the group or the trade association representing the individual facilities.

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

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

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

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

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

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

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

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

(5) A permit application shall be submitted to the Director within 60 days of notice, unless permission for a later date is granted by the Director (*see* 40 CFR 124.52(c)), for:

(i) A storm water discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the

United States (see paragraph (a)(1)(v) of this section);

(ii) A storm water discharge subject to paragraph (c)(1)(v) of this section.

(6) Facilities with existing NPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. Facilities with permits for storm water discharges associated with industrial activity which expire on or after May 18, 1992 shall submit a new application in accordance with the requirements of 40 CFR 122.21 and 40 CFR 122.26(c) (Form 1, Form 2F, and other applicable Forms) 180 days before the expiration of such permits.

(7) The Director shall issue or deny permits for discharges composed entirely of storm water under this section in accordance with the following schedule:

(i)(A) Except as provided in paragraph (e)(7)(i)(B) of this section, the Director shall issue or deny permits for storm water discharges associated with industrial activity no later than October 1, 1993, or, for new sources or existing sources which fail to submit a complete permit application by October 1, 1992, one year after receipt of a complete permit application;

(B) For any municipality with a population of less than 250,000 which submits a timely Part I group application under paragraph (e)(2)(i)(B) of this section, the Director shall issue or deny permits for storm water discharges associated with industrial activity no later than May 17, 1994, or, for any such municipality which fails to submit a complete Part II group permit application by May 17, 1993, one year after receipt of a complete permit application;

(ii) The Director shall issue or deny permits for large municipal separate storm sewer systems no later than November 16, 1993, or, for new sources or existing sources which fail to submit a complete permit application by November 16, 1992, one year after receipt of a complete permit application;

(iii) The Director shall issue or deny permits for medium municipal separate storm sewer systems no later than May 17, 1994, or, for new sources or existing sources which fail to submit a complete permit application by May 17, 1993, one year after receipt of a complete permit application.

(f) *Petitions.* (1) Any operator of a municipal separate storm sewer system may petition the Director to require a separate NPDES permit (or a permit issued under an approved NPDES State program) for any discharge into the municipal separate storm sewer system.

(2) Any person may petition the Director to require a NPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

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

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

(5) The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition.

(g) *Application requirements for discharges composed entirely of storm water under Clean Water Act section 402(p)(6).* Any operator of a point source required to obtain a permit under paragraph (a)(9) of this section shall submit an application in accordance with the following requirements.

(1) *Application deadlines.* The operator shall submit an application in accordance with the following deadlines:

(i) A discharger which the Director determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States shall apply for a permit to the Director within 180 days of receipt of notice, unless permission for a later date is granted by the Director (*see* 40 CFR 124.52(c)); or

(ii) All other dischargers shall apply to the Director no later than August 7, 2001.

(2) *Application requirements.* The operator shall submit an application in accordance with the following requirements, unless otherwise modified by the Director:

(i) *Individual application for non-municipal discharges.* The requirements contained in paragraph (c)(1) of this section.

(ii) *Application requirements for municipal separate storm sewer discharges.* The requirements contained in paragraph (d) of this section.

(iii) *Notice of intent to be covered by a general permit issued by the Director.* The requirements contained in 40 CFR 122.28(b)(2).

[55 FR 48063, Nov. 16, 1990, as amended at 56 FR 12100, Mar. 21, 1991; 56 FR 56554, Nov. 5, 1991; 57 FR 11412, Apr. 2, 1992; 57 FR 60447, Dec. 18, 1992; 60 FR 17956, Apr. 7, 1995; 60 FR 19464, Apr. 18, 1995; 60 FR 40235, Aug. 7, 1995]

§ 122.27 Silvicultural activities (applicable to State NPDES programs, see § 123.25).

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

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

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

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

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

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

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

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

(ii) Sewer districts or sewer authorities;

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

(iv) State highway systems;

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

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

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

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

(i) Storm water point sources; or

(ii) A category of point sources other than storm water point sources, or a category of ''treatment works treating domestic sewage,'' if the sources or ''treatment works treating domestic sewage'' all:

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

(B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;

(C) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;

(D) Require the same or similar monitoring; and

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

(b) *Administration.* (1) *In general.* General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of part 124 or corresponding State regulations. Special procedures for issuance are found at § 123.44 for States and § 124.58 for EPA.

(2) *Authorization to discharge, or authorization to engage in sludge use and disposal practices.* (i) Except as provided in paragraphs (b)(2)(v) and (b)(2)(vi) of this section, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Director a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with paragraph (b)(2)(v) of this section, contains a provision that a notice of intent is not required or the Director notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with

paragraph (b)(2)(vi) of this section. A complete and timely, notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of §§ 122.6, 122.21 and 122.26.

(ii) The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s). General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. All notices of intent shall be signed in accordance with § 122.22.

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

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

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

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

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

(A) The discharger or ''treatment works treating domestic sewage'' is not in compliance with the conditions of the general NPDES permit;

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

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

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

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

(F) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general NPDES permit; or

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

(*1*) The location of the discharge with respect to waters of the United States;

(*2*) The size of the discharge;

(*3*) The quantity and nature of the pollutants discharged to waters of the United States; and

(*4*) Other relevant factors;

(ii) *For EPA issued general permits only,* the Regional Administrator may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in paragraph (b)(3)(i) of this section, only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES permit the general permit

as it applies to the individual permittee shall automatically terminate. The Director may grant additional time upon request of the applicant.

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

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

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

(c) *Offshore oil and gas facilities* (Not applicable to State programs). (1) The Regional Administrator shall, except as provided below, issue general permits covering discharges from offshore oil and gas exploration and production facilities within the Region's jurisdiction. Where the offshore area includes areas, such as areas of biological concern, for which separate permit conditions are required, the Regional Administrator may issue separate general permits, individual permits, or both. The reason for separate general permits or individual permits shall be set forth in the appropriate fact sheets or statements of basis. Any statement of basis or fact sheet for a draft permit shall include the Regional Administrator's tentative determination as to whether the permit applies to ''new sources,'' ''new dischargers,'' or existing sources and the reasons for this determination, and the Regional Administrator's proposals as to areas of biological concern subject either to separate individual or general permits. For Federally leased lands, the general permit area should generally be no less extensive than the lease sale area defined by the Department of the Interior.

(2) Any interested person, including any prospective permittee, may petition the Regional Administrator to issue a general permit. Unless the Regional Administrator determines under paragraph (c)(1) of this section that no general permit is appropriate, he shall promptly provide a project decision schedule covering the issuance of the general permit or permits for any lease sale area for which the Department of the Interior has published a draft environmental impact statement. The project decision schedule shall meet the requirements of § 124.3(g), and shall include a schedule providing for the issuance of the final general permit or permits not later than the date of the final notice of sale projected by the Department of the Interior or six months after the date of the request, whichever is later. The Regional Administrator may, at his discretion, issue a project decision schedule for offshore oil and gas facilities in the territorial seas.

(3) Nothing in this paragraph (c) shall affect the authority of the Regional Administrator to require an individual permit under § 122.28(b)(3)(i) (A) through (G).

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

[48 FR 14153, Apr. 1, 1983, as amended at 48 FR 39619, Sept. 1, 1983; 49 FR 38048, Sept. 26, 1984; 50 FR 6940, Feb. 19, 1985; 54 FR 18782, May 2, 1989; 55 FR 48072, Nov. 16, 1990; 57 FR 11412 and 11413, Apr. 2, 1992]

§ 122.29 New sources and new dischargers.

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

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

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

(4) *Site* is defined in § 122.2;

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

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

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

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

(iii) Its processes are substantially independent of an existing source at the same site. In determin-

ing whether these processes are substantially independent, the Director shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.

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

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

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

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

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

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

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

(c) *Requirement for an environmental impact statement.* (1) The issuance of an NPDES permit to new source:

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

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

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

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

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

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

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

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

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

(ii) Ten years from the date the source begins to discharge process or other nonconstruction related wastewater; or

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

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

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

(ii) Additional permit conditions in accordance with § 125.3 controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes per-

mit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

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

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

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

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 38048, Sept. 26, 1984; 50 FR 4514, Jan. 31, 1985; 50 FR 6941, Feb. 19, 1985]

Subpart C—Permit Conditions

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

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

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

(1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

(2) The Clean Water Act provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed $25,000 per day for each violation. The Clean Water Act provides that any person who *negligently* violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500 to $25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who *knowingly* violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000 to $50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more

than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.

(3) Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Administrative penalties for Class I violations are not to exceed $10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $25,000. Penalties for Class II violations are not to exceed $10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $125,000.

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

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

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

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

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

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

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

(i) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

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

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

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

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

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

(2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

(3) Records of monitoring information shall include:

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

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

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

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

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(4) Monitoring results must be conducted according to test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal,

approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, unless other test procedures have been specified in the permit.

(5) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

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

(2) The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

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

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

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

(iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;

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

(3) *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See § 122.61; in some cases, modification or revocation and reissuance is mandatory.)

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

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.

(ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

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

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

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

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

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

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

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the

Director in the permit to be reported within 24 hours. (See § 122.44(g).)

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

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

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

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

(ii) *Severe property damage* means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

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

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

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

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

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

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

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

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

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

(2) *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (n)(3) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

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

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

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

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

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

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

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

[48 FR 14153, Apr. 1, 1983, as amended at 48 FR 39620, Sept. 1, 1983; 49 FR 38049, Sept. 26, 1984; 50 FR 4514, Jan. 31, 1985; 50 FR 6940, Feb. 19, 1985; 54 FR 255, Jan. 4, 1989; 54 FR 18783, May 2, 1989]

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

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

(a) *Existing manufacturing, commercial, mining, and silvicultural dischargers.* In addition to the reporting requirements under § 122.41(1), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:

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

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

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

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

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

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

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

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

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

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

(b) *Publicly owned treatment works.* All POTWs must provide adequate notice to the Director of the following:

(1) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA if it were directly discharging those pollutants; and

(2) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

(3) For purposes of this paragraph, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

(c) *Municipal separate storm sewer systems.* The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under § 122.26(a)(1)(v) of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

(1) The status of implementing the components of the storm water management program that are established as permit conditions;

(2) Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with § 122.26(d)(2)(iii) of this part; and

(3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under § 122.26(d)(2)(iv) and (d)(2)(v) of this part;

(4) A summary of data, including monitoring data, that is accumulated throughout the reporting year;

(5) Annual expenditures and budget for year following each annual report;

(6) A summary describing the number and nature of enforcement actions, inspections, and public education programs;

(7) Identification of water quality improvements or degradation;

(d) *Storm water discharges.* The initial permits for discharges composed entirely of storm water issued pursuant to § 122.26(e)(7) of this part shall require compliance with the conditions of the permit as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 38049, Sept. 26, 1984; 50 FR 4514, Jan. 31, 1985; 55 FR 48073, Nov. 16, 1990; 57 FR 60448, Dec. 18, 1992]

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

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

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

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

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

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

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

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

(b)(1) *Other effluent limitations and standards* under sections 301, 302, 303, 307, 318 and 405 of CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Director shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition. See also § 122.41(a).

(2) *Standards for sewage sludge use or disposal* under section 405(d) of the CWA unless those standards have been included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, Part C of Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under section 405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the Director may initiate proceedings under these regulations to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

(c) *Reopener clause:* for any discharger within a primary industry category (see appendix A), requirements under section 307(a)(2) of CWA as follows:

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

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

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

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

(4) For any permit issued to a treatment works treating domestic sewage (including ''sludge-only facilities''), the Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under section 405(d) of the CWA. The Director may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

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

(1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality.

(i) Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

(ii) When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

(iii) When the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

(iv) When the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.

(v) Except as provided in this subparagraph, when the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the permitting authority demonstrates in the fact sheet or statement of basis of the NPDES permit, using the procedures in paragraph (d)(1)(ii) of this section, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

(vi) Where a State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard, the permitting authority must establish effluent limits using one or more of the following options:

(A) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

(B) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 304(a) of the CWA, supplemented where necessary by other relevant information; or

(C) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(*1*) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(*2*) The fact sheet required by § 124.56 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(*3*) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(*4*) The permit contains a reopener clause allowing the permitting authority to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

(vii) When developing water quality-based effluent limits under this paragraph the permitting authority shall ensure that:

(A) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

(B) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.

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

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

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

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

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

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

(8) Incorporate alternative effluent limitations or standards where warranted by ''fundamentally different factors,'' under 40 CFR part 125, subpart D;

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

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

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

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

(i) Limitations on those pollutants; or

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

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

(g) *Twenty-four hour reporting.* Pollutants for which the permittee must report violations of maximum daily discharge limitations under § 122.41(1)(6)(ii)(C) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

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

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

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

(i) The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

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

(iii) Other measurements as appropriate including pollutants in internal waste streams under § 122.45(i); pollutants in intake water for net limitations under § 122.45(f); frequency, rate of discharge, etc., for noncontinuous discharges under § 122.45(e); pollutants subject to notification requirements under § 122.42(a); and pollutants in sewage sludge or other monitoring as specified in 40 CFR part 503; or as determined to be necessary on a case-by-case basis pursuant to section 405(d)(4) of the CWA.

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

(2) Except as provided in paragraphs (i)(4) and (i)(5) of this section, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in 40 CFR part 503 (where applicable), but in no case less than once a year.

(3) Requirements to report monitoring results for storm water discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(4) Requirements to report monitoring results for storm water discharges associated with industrial activity (other than those addressed in paragraph (i)(3) of this section) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

(i) The discharger to conduct an annual inspection of the facility site to identify areas contributing to a storm water discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a storm water pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

(ii) The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;

(iii) Such report and certification be signed in accordance with § 122.22; and

(iv) Permits for storm water discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.

(5) Permits which do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under § 122.41(l) (1), (4), (5), and (6) at least annually.

(j) *Pretreatment program for POTWs.* Requirements for POTWs to:

(1) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under section 307(b) of CWA and 40 CFR part 403.

(2) Submit a local program when required by and in accordance with 40 CFR part 403 to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the permit as described in 40 CFR part 403. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR part 403.

(3) For POTWs which are ''sludge-only facilities,'' a requirement to develop a pretreatment program under 40 CFR part 403 when the Director determines that a pretreatment program is necessary to assure compliance with Section 405(d) of the CWA.

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

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

(2) Numeric effluent limitations are infeasible, or

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

(l) *Reissued permits.* (1) Except as provided in paragraph (l)(2) of this section when a permit is renewed or reissued, interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was

based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.62.)

(2) In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(i) Exceptions—A permit with respect to which paragraph (l)(2) of this section applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if—

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

(B)(*1*) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(*2*) The Administrator determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under section 402(a)(1)(b);

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

(D) The permittee has received a permit modification under section 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a); or

(E) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(ii) *Limitations.* In no event may a permit with respect to which paragraph (l)(2) of this section applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 applicable to such waters.

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

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

(o) *Sewage sludge.* Requirements under section 405 of CWA governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use for which regulations have been established, in accordance with any applicable regulations.

(p) *Coast Guard.* When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

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

(r) *Great Lakes*. When a permit is issued to a facility that discharges into the Great Lakes System (as defined in 40 CFR 132.2), conditions promulgated by the State, Tribe, or EPA pursuant to 40 CFR part 132.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 31842, Aug. 8, 1984; 49 FR 38049, Sept. 26, 1984; 50 FR 6940, Feb. 19, 1985; 50 FR 7912, Feb. 27, 1985; 54 FR 256, Jan. 4, 1989; 54 FR 18783, May 2, 1989; 54 FR 23895, June 2, 1989; 57 FR 11413, Apr. 2, 1992; 57 FR 33049, July 24, 1992; 60 FR 15386, Mar. 23, 1995]

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

(a) *Outfalls and discharge points.* All permit effluent limitations, standards and prohibitions shall

be established for each outfall or discharge point of the permitted facility, except as otherwise provided under § 122.44(k) (BMPs where limitations are infeasible) and paragraph (i) of this section (limitations on internal waste streams).

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

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

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

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

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

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

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

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

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

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

(2) In establishing permit limitations on a case-by-case basis under § 125.3, it is necessary to express the limitation on the metal in the dissolved or valent or total form to carry out the provisions of the CWA; or

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

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

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

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

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

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

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

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

(4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/1 zinc or more than 250 grams (¼ kilogram) of zinc in any discharge).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 38049, Sept. 26, 1984; 50 FR 4514, Jan. 31, 1985; 54 FR 258, Jan. 4, 1989; 54 FR 18784, May 2, 1989]

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

(a) NPDES permits shall be effective for a fixed term not to exceed 5 years.

(b) Except as provided in § 122.6, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(c) The Director may issue any permit for a duration that is less than the full allowable term under this section.

(d) A permit may be issued to expire on or after the statutory deadline set forth in section 301(b)(2)(A), (C), and (E), if the permit includes effluent limitations to meet the requirements of section 301(b)(2)(A), (C), (D), (E) and (F), whether or not applicable effluent limitations guidelines have been promulgated or approved.

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

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 31842, Aug. 8, 1984; 50 FR 6940, Feb. 19, 1985; 60 FR 33931, June 29, 1995]

§ 122.47 Schedules of compliance.

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

(1) *Time for compliance.* Any schedules of compliance under this section shall require compliance

as soon as possible, but not later than the applicable statutory deadline under the CWA.

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

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

(i) The time between interim dates shall not exceed 1 year, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.

(ii) If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

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

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

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

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

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

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

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

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

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

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

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

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

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

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 38050, Sept. 26, 1984; 50 FR 6940, Feb. 19, 1985; 54 FR 18784, May 2, 1989]

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

All permits shall specify:

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

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

(c) Applicable reporting requirements based upon the impact of the regulated activity and as

specified in § 122.44. Reporting shall be no less frequent than specified in the above regulation.

[48 FR 14153, Apr. 1, 1983; 50 FR 6940, Feb. 19, 1985]

§ 122.49 Considerations under Federal law.

The following is a list of Federal laws that may apply to the issuance of permits under these rules. When any of these laws is applicable, its procedures must be followed. When the applicable law requires consideration or adoption of particular permit conditions or requires the denial of a permit, those requirements also must be followed.

(a) The *Wild and Scenic Rivers Act,* 16 U.S.C. 1273 *et seq.* section 7 of the Act prohibits the Regional Administrator from assisting by license or otherwise the construction of any water resources project that would have a direct, adverse effect on the values for which a national wild and scenic river was established.

(b) The *National Historic Preservation Act of 1966,* 16 U.S.C. 470 *et seq.* section 106 of the Act and implementing regulations (36 CFR part 800) require the Regional Administrator, before issuing a license, to adopt measures when feasible to mitigate potential adverse effects of the licensed activity and properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with State Historic Preservation Officers and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation.

(c) The *Endangered Species Act,* 16 U.S.C. 1531 *et seq.* section 7 of the Act and implementing regulations (50 CFR part 402) require the Regional Administrator to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

(d) The *Coastal Zone Management Act,* 16 U.S.C. 1451 *et seq.* section 307(c) of the Act and implementing regulations (15 CFR part 930) prohibit EPA from issuing a permit for an activity affecting land or water use in the coastal zone until the applicant certifies that the proposed activity complies with the State Coastal Zone Management program, and the State or its designated agency concurs with the certification (or the Secretary of Commerce overrides the State's nonconcurrence).

(e) The *Fish and Wildlife Coordination Act,* 16 U.S.C. 661 *et seq.*, requires that the Regional Administrator, before issuing a permit proposing or authorizing the impoundment (with certain exemptions), diversion, or other control or modification of any body of water, consult with the appropriate State agency exercising jurisdiction over wildlife resources to conserve those resources.

(f) *Executive orders.* [Reserved]

(g) The National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, may require preparation of an Environmental Impact Statement and consideration of EIS-related permit conditions (other than effluent limitations) as provided in § 122.29(c).

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

[48 FR 14153, Apr. 1, 1983, as amended at 48 FR 39620, Sept. 1, 1983; 49 FR 38050, Sept. 26, 1984]

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

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

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

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

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

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines

to the total wastestream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.

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

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

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

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

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 38050, Sept. 26, 1984]

Subpart D—Transfer, Modification, Revocation and Reissuance, and Termination of Permits

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

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

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

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

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

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

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

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice) which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

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

(2) *Information.* The Director has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For NPDES general permits (§ 122.28) this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger NPDES permits §§ 122.21, 122.29), this cause shall include any significant information derived from effluent testing required under § 122.21(k)(5)(vi) or § 122.21(h)(4)(iii) after issuance of the permit.

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

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

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

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

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

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

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

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

(5) When the permittee has filed a request for a variance under CWA section 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a) or for ''fundamentally different factors'' within the time specified in § 122.21 or § 125.27(a).

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

(7) *Reopener*. When required by the ''reopener'' conditions in a permit, which are established in the permit under § 122.44(b) (for CWA toxic effluent limitations and standards for sewage sludge use or disposal, see also § 122.44(c)) or 40 CFR § 403.10(e) (pretreatment program).

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

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

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

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

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

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

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

(14) [Reserved]

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

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

(17) [Reserved]

(18) *Land application plans.* When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.

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

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

(2) The Director has received notification (as required in the permit, see § 122.41(l)(3)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (§ 122.61(b)) but will not be revoked and reissued after the effective

date of the transfer except upon the request of the new permittee.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 25981, June 25, 1984; 49 FR 37009, Sept. 29, 1984; 49 FR 38050, Sept. 26, 1984; 50 FR 4514, Jan. 31, 1985; 51 FR 20431, June 4, 1986; 51 FR 26993, July 28, 1986; 54 FR 256, 258, Jan. 4, 1989; 54 FR 18784, May 2, 1989; 60 FR 33931, June 29, 1995]

§ 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) Correct typographical errors;

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

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

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

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

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

(f) [Reserved]

(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.

[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]

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

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

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

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

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

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

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

[48 FR 14153, Apr. 1, 1983; 50 FR 6940, Feb. 19, 1985, as amended at 54 FR 18784, May 2, 1989]

Appendix A to Part 122—NPDES Primary Industry Categories

Any permit issued after June 30, 1981 to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of section 301(b)(2)(A), (C), (D), (E) and (F) of CWA, whether or not applicable effluent limitations guidelines have been promulgated. See §§ 122.44 and 122.46.

Industry Category

Adhesives and sealants
Aluminum forming
Auto and other laundries
Battery manufacturing
Coal mining
Coil coating
Copper forming
Electrical and electronic components
Electroplating
Explosives manufacturing
Foundries
Gum and wood chemicals
Inorganic chemicals manufacturing
Iron and steel manufacturing
Leather tanning and finishing
Mechanical products manufacturing
Nonferrous metals manufacturing
Ore mining
Organic chemicals manufacturing
Paint and ink formulation
Pesticides
Petroleum refining
Pharmaceutical preparations
Photographic equipment and supplies

Plastics processing
Plastic and synthetic materials manufacturing
Porcelain enameling
Printing and publishing
Pulp and paper mills
Rubber processing
Soap and detergent manufacturing
Steam electric power plants
Textile mills
Timber products processing

APPENDIX B TO PART 122—CRITERIA FOR DETERMINING A CONCENTRATED ANIMAL FEEDING OPERATION (§ 122.23)

An animal feeding operation is a concentrated animal feeding operation for purposes of § 122.23 if either of the following criteria are met.

(a) More than the numbers of animals specified in any of the following categories are confined:

(1) 1,000 slaughter and feeder cattle,

(2) 700 mature dairy cattle (whether milked or dry cows),

(3) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),

(4) 500 horses,

(5) 10,000 sheep or lambs,

(6) 55,000 turkeys,

(7) 100,000 laying hens or broilers (if the facility has continuous overflow watering),

(8) 30,000 laying hens or broilers (if the facility has a liquid manure system),

(9) 5,000 ducks, or

(10) 1,000 animal units; or

(b) More than the following number and types of animals are confined:

(1) 300 slaughter or feeder cattle,

(2) 200 mature dairy cattle (whether milked or dry cows),

(3) 750 swine each weighing over 25 kilograms (approximately 55 pounds),

(4) 150 horses,

(5) 3,000 sheep or lambs,

(6) 16,500 turkeys,

(7) 30,000 laying hens or broilers (if the facility has continuous overflow watering),

(8) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),

(9) 1,500 ducks, or

(10) 300 animal units;

and either one of the following conditions are met: pollutants are discharged into navigable waters through a man-made ditch, flushing system or other similar man-made device; or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24-hour storm event.

The term *animal unit* means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

The term *manmade* means constructed by man and used for the purpose of transporting wastes.

APPENDIX C TO PART 122—CRITERIA FOR DETERMINING A CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITY (§ 122.24)

A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of § 122.24 if it contains, grows, or holds aquatic animals in either of the following categories:

(a) Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

(1) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(2) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(b) Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

(1) Closed ponds which discharge only during periods of excess runoff; or

(2) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

''Cold water aquatic animals'' include, but are not limited to, the *Salmonidae* family of fish; e.g., trout and salmon.

''Warm water aquatic animals'' include, but are not limited to, the *Ameiuride, Centrarchidae* and *Cyprinidae* families of fish; e.g., respectively, catfish, sunfish and minnows.

APPENDIX D TO PART 122—NPDES PERMIT APPLICATION TESTING REQUIREMENTS (§ 122.21)

TABLE I—TESTING REQUIREMENTS FOR ORGANIC TOXIC POLLUTANTS BY INDUSTRIAL CATEGORY FOR EXISTING DISCHARGERS

Industrial category	GC/MS Fraction [1]			
	Volatile	Acid	Base/ neutral	Pesticide
Adhesives and Sealants	[2]	[2]	[2]	
Aluminum Forming	[2]	[2]	[2]	
Auto and Other Laundries	[2]	[2]	[2]	[2]
Battery Manufacturing	[2]		[2]	
Coal Mining	[2]	[2]	[2]	[2]
Coil Coating	[2]	[2]	[2]	
Copper Forming	[2]	[2]	[2]	
Electric and Electronic Components	[2]	[2]	[2]	[2]
Electroplating	[2]	[2]	[2]	
Explosives Manufacturing		[2]	[2]	
Foundries	[2]	[2]	[2]	
Gum and Wood Chemicals	[2]	[2]	[2]	[2]

Industrial category	GC/MS Fraction[1]			
	Volatile	Acid	Base/ neutral	Pesticide
Inorganic Chemicals Manufacturing	[2]	[2]	[2]	
Iron and Steel Manufacturing	[2]	[2]	[2]	
Leather Tanning and Finishing	[2]	[2]	[2]	[2]
Mechanical Products Manufacturing	[2]	[2]	[2]	
Nonferrous Metals Manufacturing	[2]	[2]	[2]	[2]
Ore Mining	[2]	[2]	[2]	[2]
Organic Chemicals Manufacturing	[2]	[2]	[2]	[2]
Paint and Ink Formulation	[2]	[2]	[2]	[2]
Pesticides	[2]	[2]	[2]	[2]
Petroleum Refining	[2]	[2]	[2]	[2]
Pharmaceutical Preparations	[2]	[2]	[2]	
Photographic Equipment and Supplies	[2]	[2]	[2]	[2]
Plastic and Synthetic Materials Manufacturing	[2]	[2]	[2]	[2]
Plastic Processing	[2]			
Porcelain Enameling	[2]		[2]	[2]
Printing and Publishing	[2]	[2]	[2]	[2]
Pulp and Paper Mills	[2]	[2]	[2]	[2]
Rubber Processing	[2]	[2]	[2]	
Soap and Detergent Manufacturing	[2]	[2]	[2]	
Steam Electric Power Plants	[2]	[2]	[2]	
Textile Mills	[2]	[2]	[2]	[2]
Timber Products Processing	[2]	[2]	[2]	[2]

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

TABLE II—ORGANIC TOXIC POLLUTANTS IN EACH OF FOUR FRACTIONS IN ANALYSIS BY GAS CHROMATOGRAPHY/MASS SPECTROSCOPY (GS/MS)

Volatiles

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

Acid Compounds

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

Base/Neutral

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

45B pyrene
46B 1,2,4-trichlorobenzene

Pesticides

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

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

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

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

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

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

Toxic Pollutants

Asbestos

Hazardous Substances

Acetaldehyde
Allyl alcohol
Allyl chloride
Amyl acetate
Aniline
Benzonitrile
Benzyl chloride
Butyl acetate
Butylamine
Captan
Carbaryl
Carbofuran
Carbon disulfide
Chlorpyrifos
Coumaphos
Cresol
Crotonaldehyde
Cyclohexane
2,4-D (2,4-Dichlorophenoxy acetic acid)
Diazinon
Dicamba
Dichlobenil
Dichlone
2,2-Dichloropropionic acid
Dichlorvos
Diethyl amine
Dimethyl amine
Dintrobenzene
Diquat
Disulfoton
Diuron
Epichlorohydrin
Ethion
Ethylene diamine
Ethylene dibromide
Formaldehyde
Furfural
Guthion
Isoprene
Isopropanolamine Dodecylbenzenesulfonate
Kelthane
Kepone
Malathion
Mercaptodimethur
Methoxychlor

Methyl mercaptan
Methyl methacrylate
Methyl parathion
Mevinphos
Mexacarbate
Monoethyl amine
Monomethyl amine
Naled
Napthenic acid
Nitrotoluene
Parathion
Phenolsulfanate
Phosgene
Propargite
Propylene oxide
Pyrethrins
Quinoline
Resorcinol
Strontium
Strychnine
Styrene
2,4,5-T (2,4,5-Trichlorophenoxy acetic acid)
TDE (Tetrachlorodiphenylethane)
2,4,5-TP [2-(2,4,5-Trichlorophenoxy) propanoic acid]
Trichlorofan
Triethanolamine dodecylbenzenesulfonate
Triethylamine
Trimethylamine
Uranium
Vanadium
Vinyl acetate
Xylene
Xylenol
Zirconium

[Note 1: The Environmental Protection Agency has suspended the requirements of § 122.21(g)(7)(ii)(A) and Table I of Appendix D as they apply to certain industrial categories. The suspensions are as follows:

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

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

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

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

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

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

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

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

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

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

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

This revision continues these suspensions.]*

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

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

Industry category	GC/MS fraction[2]			
	Volatile	Acid	Neutral	Pesticide
Adhesives and sealants	(1)	(1)	(1)	
Aluminum forming	(1)	(1)	(1)	
Auto and other laundries	(1)	(1)	(1)	(1)
Battery manufacturing	(1)		(1)	
Coal mining				
Coil coating	(1)	(1)	(1)	
Copper forming	(1)	(1)	(1)	
Electric and electronic compounds	(1)	(1)	(1)	(1)
Electroplating	(1)	(1)	(1)	
Explosives manufacturing		(1)	(1)	
Foundries	(1)	(1)	(1)	
Gum and wood (all subparts except D and F)	(1)	(1)		
Subpart D—tall oil rosin	(1)	(1)	(1)	
Subpart F—rosin-based derivatives	(1)	(1)	(1)	
Inorganic chemicals manufacturing	(1)	(1)	(1)	
Iron and steel manufacturing	(1)	(1)	(1)	
Leather tanning and finishing	(1)	(1)	(1)	
Mechanical products manufacturing	(1)	(1)	(1)	

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

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

Industry category	GC/MS fraction [2]			
	Volatile	Acid	Neutral	Pesticide
Nonferrous metals manufacturing	(1)	(1)	(1)	(1)
Ore mining (applies to the base and precious metals/Subpart B)		(1)		
Organic chemicals manufacturing	(1)	(1)	(1)	(1)
Paint and ink formulation	(1)	(1)	(1)	
Pesticides	(1)	(1)	(1)	(1)
Petroleum refining	(1)			
Pharmaceutical preparations	(1)	(1)	(1)	
Photographic equipment and supplies	(1)	(1)	(1)	
Plastic and synthetic materials manufacturing	(1)	(1)	(1)	(1)
Plastic processing	(1)			
Porcelain enameling				
Printing and publishing	(1)	(1)	(1)	(1)
Pulp and paperboard mills—see footnote [3]				
Rubber processing	(1)	(1)	(1)	
Soap and detergent manufacturing	(1)	(1)	(1)	
Steam electric power plants	(1)	(1)		
Textile mills (Subpart C—Greige Mills are exempt from this table)	(1)	(1)	(1)	
Timber products processing	(1)	(1)	(1)	(1)

[1] Testing required.

[2] The pollutants in each fraction are listed in Item V–C.

[3] Pulp and Paperboard Mills:

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

[1] Must test.

[2] Do not test unless ''reason to believe'' it is discharged.

[3] Subparts are defined in 40 CFR Part 430.

[48 FR 14153, Apr. 1, 1983, as amended at 49 FR 38050, Sept. 26, 1984; 50 FR 6940, Feb. 19, 1985]

APPENDIX E TO PART 122—RAINFALL ZONES OF THE UNITED STATES

EC01MR92.016

Not Shown: Alaska (Zone 7); Hawaii (Zone 7); Northern Mariana Islands (Zone 7); Guam (Zone 7); American Samoa (Zone 7); Trust Territory of the Pacific Islands (Zone 7); Puerto Rico (Zone 3) Virgin Islands (Zone 3).

Source: Methodology for Analysis of Detention Basins for Control of Urban Runoff Quality, prepared for U.S. Environmental Protection Agency, Office of Water, Nonpoint Source Division, Washington, DC, 1986.

[55 FR 48073, Nov. 16, 1990]

APPENDIX F TO PART 122—INCORPORATED PLACES WITH POPULATIONS GREATER THAN 250,000 ACCORDING TO LATEST DECENNIAL CENSUS BY BUREAU OF CENSUS

State	Incorporated place
Alabama	Birmingham.
Arizona	Phoenix.
	Tucson.
California	Long Beach.
	Los Angeles.
	Oakland.
	Sacramento.
	San Diego.
	San Francisco.
	San Jose.
Colorado	Denver.
District of Columbia	
Florida	Jacksonville.
	Miami.
	Tampa.
Georgia	Atlanta.
Illinois	Chicago.
Indiana	Indianapolis.
Kansas	Wichita.
Kentucky	Louisville.
Louisiana	New Orleans.
Maryland	Baltimore.
Massachusetts	Boston.
Michigan	Detroit.
Minnesota	Minneapolis
	St. Paul.
Missouri	Kansas City.
	St. Louis.
Nebraska	Omaha.
New Jersey	Newark.
New Mexico	Albuquerque.
New York	Buffalo.
	Bronx Borough.
	Brooklyn Borough.
	Manhattan Borough.
	Queens Borough.
	Staten Island Borough.
North Carolina	Charlotte.
Ohio	Cincinnati.
	Cleveland.
	Columbus.
	Toledo.
Oklahoma	Oklahoma City.
	Tulsa.
Oregon	Portland.
Pennsylvania	Philadelphia.
	Pittsburgh.
Tennessee	Memphis.
	Nashville/Davidson.
Texas	Austin.
	Dallas.
	El Paso.
	Fort Worth.
	Houston.
	San Antonio.
Virginia	Norfolk.
	Virginia Beach.
Washington	Seattle.
Wisconsin	Milwaukee.

[55 FR 48073, Nov. 16, 1990]

APPENDIX G TO PART 122—PLACES WITH POPULATIONS GREATER THAN 100,000 AND LESS THAN 250,000 ACCORDING TO LATEST DECENNIAL CENSUS BY BUREAU OF CENSUS

State	Incorporated place
Alabama	Huntsville.
	Mobile.
	Montgomery.
Alaska	Anchorage.
Arizona	Mesa.
	Tempe.
Arkansas	Little Rock.
California	Anaheim.
	Bakersfield.
	Berkeley.
	Concord.
	Fremont.
	Fresno.
	Fullerton.
	Garden Grove.
	Glendale.
	Huntington Beach.
	Modesto.
	Oxnard.
	Pasadena.
	Riverside.
	San Bernadino.
	Santa Ana.
	Stockton.
	Sunnyvale.
	Torrance.
Colorado	Aurora.
	Colorado Springs.
	Lakewood.
	Pueblo.
Connecticut	Bridgeport.
	Hartford.
	New Haven.
	Stamford.
	Waterbury.
Florida	Fort Lauderdale.
	Hialeah.
	Hollywood.
	Orlando.
	St. Petersburg.
Georgia	Columbus.
	Macon.
	Savannah.
Idaho	Boise City.
Illinois	Peoria.
	Rockford.
Indiana	Evansville.

State	Incorporated place
	Fort Wayne.
	Gary.
	South Bend.
Iowa	Cedar Rapids.
	Davenport.
	Des Moines.
Kansas	Kansas City.
	Topeka.
Kentucky	Lexington-Fayette.
Louisiana	Baton Rouge.
	Shreveport.
Massachusetts	Springfield.
	Worcester.
Michigan	Ann Arbor.
	Flint.
	Grand Rapids.
	Lansing.
	Livonia.
	Sterling Heights.
	Warren.
Mississippi	Jackson.
Missouri	Independence.
	Springfield.
Nebraska	Lincoln.
Nevada	Las Vegas.
	Reno.
New Jersey	Elizabeth.
	Jersey City.
	Paterson.
New York	Albany.
	Rochester.
	Syracuse.
	Yonkers.
North Carolina	Durham.
	Greensboro.
	Raleigh.
	Winston-Salem.
Ohio	Akron.
	Dayton.
	Youngstown.
Oregon	Eugene.
Pennsylvania	Allentown.
	Erie.
Rhode Island	Providence.
South Carolina	Columbia.
Tennessee	Chattanooga.
	Knoxville.
Texas	Amarillo.
	Arlington.
	Beaumont.
	Corpus Christi.
	Garland.
	Irving.
	Lubbock.
	Pasadena.
	Waco.
Utah	Salt Lake City.
Virginia	Alexandria.
	Chesapeake.
	Hampton.
	Newport News.
	Portsmouth.
	Richmond.
	Roanoke.
Washington	Spokane.
	Tacoma.
Wisconsin	Madison.

[55 FR 48074, Nov. 16, 1990]

Appendix H to Part 122—Counties with Unincorporated Urbanized Areas With a Population of 250,000 or More According to the Latest Decennial Census by the Bureau of Census

State	County	Unincorporated urbanized population
California	Los Angeles	912,664
	Sacramento	449,056
	San Diego	304,758
Delaware	New Castle	257,184
Florida	Dade	781,949
Georgia	DeKalb	386,379
Hawaii	Honolulu	688,178
Maryland	Anne Arundel	271,458
	Baltimore	601,308
	Montgomery	447,993
	Prince George's	450,188
Texas	Harris	409,601
Utah	Salt Lake	304,632
Virginia	Fairfax	527,178
Washington	King	336,800

[55 FR 48074, Nov. 16, 1990]

Appendix I to Part 122—Counties With Unincorporated Urbanized Areas Greater Than 100,000, But Less Than 250,000 According to the Latest Decennial Census by the Bureau of Census

State	County	Unincorporated urbanized population
Alabama	Jefferson	102,917
Arizona	Pima	111,479
California	Alameda	187,474
	Contra Costa	158,452
	Kern	117,231
	Orange	210,693
	Riverside	115,719
	San Bernardino	148,644
Florida	Broward	159,370
	Escambia	147,892
	Hillsborough	238,292
	Orange	245,325
	Palm Beach	167,089
	Pinellas	194,389
	Polk	104,150
	Sarasota	110,009
Georgia	Clayton	100,742
	Cobb	204,121
	Richmond	118,529
Kentucky	Jefferson	224,958
Louisiana	Jefferson	140,836
North Carolina	Cumberland	142,727
Nevada	Clark	201,775
Oregon	Multnomah	141,100
	Washington	109,348
South Carolina	Greenville	135,398
	Richland	124,684
Virginia	Arlington	152,599
	Henrico	161,204
	Chesterfield	108,348
Washington	Snohomish	103,493
	Pierce	196,113

[55 FR 48074, Nov. 16, 1990]

PART 123—STATE PROGRAM REQUIREMENTS

Subpart A—General

Subpart B—State Program Submissions

Subpart C—Transfer of Information and Permit Review

Subpart D—Program Approval, Revision and Withdrawal

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

SOURCE: 48 FR 14178, Apr. 1, 1983, unless otherwise noted.

Subpart A—General

§ 123.1 Purpose and scope.

(a) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State programs and the requirements State programs must meet to be approved by the Administrator under sections 318, 402, and 405 (National Pollutant Discharge Elimination System—NPDES) of CWA.

(b) These regulations are promulgated under the authority of sections 304(i), 101(e), 405, and 518(e) of the CWA, and implement the requirements of those sections.

(c) The Administrator shall approve State programs which conform to the applicable requirements of this part. A State NPDES program will not be approved by the Administrator under section 402 of CWA unless it has authority to control the discharges specified in sections 318 and 405(a) of CWA. Permit programs under sections 318 and 405(a) will not be approved independent of a section 402 program. (Permit programs under section 405(f) of CWA (sludge management programs) may be approved under 40 CFR part 501 independently of a section 402 permit program.)

(d)(1) Upon approval of a State program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program. After program approval EPA shall retain jurisdiction over any permits (including general permits) which it has issued unless arrangements have been made with the State in the Memorandum of Agreement for the State to assume responsibility for these permits. Retention of jurisdiction shall include the processing of any permit appeals, modification requests, or variance requests; the conduct of inspections, and the receipt and review of self-monitoring reports. If any permit appeal, modification request or variance request is not finally resolved when the federally issued permit expires, EPA may, with the consent of the State, retain jurisdiction until the matter is resolved.

(2) The procedures outlined in the preceding paragraph (d)(1) of this section for suspension of permitting authority and transfer of existing permits will also apply when EPA approves an Indian Tribe's application to operate a State program and a State was the authorized permitting authority under § 123.23(b) for activities within the scope of the newly approved program. The authorized State will retain jurisdiction over its existing permits as described in paragraph (d)(1) of this section absent a different arrangement stated in the Memorandum of Agreement executed between EPA and the Tribe.

(e) Upon submission of a complete program, EPA will conduct a public hearing, if interest is shown, and determine whether to approve or disapprove the program taking into consideration the requirements of this part, the CWA and any comments received.

(f) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part.

(g)(1) Except as may be authorized pursuant to paragraph (g)(2) of this section or excluded by § 122.3, the State program must prohibit all point

source discharges of pollutants, all discharges into aquaculture projects, and all disposal of sewage sludge which results in any pollutant from such sludge entering into any waters of the United States within the State's jurisdiction except as authorized by a permit in effect under the State program or under section 402 of CWA. NPDES authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities or discharges. When more than one agency is responsible for issuing permits, each agency must make a submission meeting the requirements of § 123.21 before EPA will begin formal review.

(2) A State may seek approval of a partial or phased program in accordance with section 402(n) of the CWA.

(h) In many cases, States (other than Indian Tribes) will lack authority to regulate activities on Indian lands. This lack of authority does not impair that State's ability to obtain full program approval in accordance with this part, i.e., inability of a State to regulate activities on Indian lands does not constitute a partial program. EPA will administer the program on Indian lands if a State (or Indian Tribe) does not seek or have authority to regulate activities on Indian lands.

NOTE: States are advised to contact the United States Department of the Interior, Bureau of Indian Affairs, concerning authority over Indian lands.

(i) Nothing in this part precludes a State from:

(1) Adopting or enforcing requirements which are more stringent or more extensive than those required under this part;

(2) Operating a program with a greater scope of coverage than that required under this part. If an approved State program has greater scope of coverage than required by Federal law the additional coverage is not part of the Federally approved program.

NOTE: For example, if a State requires permits for discharges into publicly owned treatment works, these permits are not NPDES permits.

[48 FR 14178, Apr. 1, 1983, as amended at 54 FR 256, Jan. 4, 1989; 54 FR 18784, May 2, 1989; 58 FR 67981, Dec. 22, 1993; 59 FR 64343, Dec. 14, 1994]

§ 123.2 Definitions.

The definitions in part 122 and part 501 apply to all subparts of this part.

[54 FR 18784, May 2, 1989]

§ 123.3 Coordination with other programs.

Issuance of State permits under this part may be coordinated with issuance of RCRA, UIC, NPDES, and 404 permits whether they are controlled by the State, EPA, or the Corps of Engineers. See § 124.4.

Subpart B—State Program Submissions

§ 123.21 Elements of a program submission.

(a) Any State that seeks to administer a program under this part shall submit to the Administrator at least three copies of a program submission. The submission shall contain the following:

(1) A letter from the Governor of the State (or in the case of an Indian Tribe in accordance with § 123.33(b), the Tribal authority exercising powers substantially similar to those of a State Governor) requesting program approval;

(2) A complete program description, as required by § 123.22, describing how the State intends to carry out its responsibilities under this part;

(3) An Attorney General's statement as required by § 123.23;

(4) A Memorandum of Agreement with the Regional Administrator as required by § 123.24;

(5) Copies of all applicable State statutes and regulations, including those governing State administrative procedures;

(b)(1) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the statutory review period (i.e., the period of time allotted for formal EPA review of a proposed State program under CWA) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the statutory review period shall not begin until all the necessary information is received by EPA.

(2) In the case of an Indian Tribe eligible under § 123.33(b), EPA shall take into consideration the contents of the Tribe's request submitted under § 123.32, in determining if the program submission required by § 123.21(a) is complete.

(c) If the State's submission is materially changed during the statutory review period, the statutory review period shall begin again upon receipt of the revised submission.

(d) The State and EPA may extend the statutory review period by agreement.

[48 FR 14178, Apr. 1, 1983; 50 FR 6941, Feb. 19, 1985, as amended at 58 FR 67981, Dec. 22, 1993; 59 FR 64343, Dec. 14, 1994]

§ 123.22 Program description.

Any State that seeks to administer a program under this part shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under an inter-

state compact. The program description shall include:

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency may be designated as a ''lead agency'' to facilitate communications between EPA and the State agencies having program responsibility. If the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program.

(1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support.

(3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding.

(c) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures;

(d) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program. Forms used by States need not be identical to the forms used by EPA but should require the same basic information, except that State NPDES programs are required to use standard Discharge Monitoring Reports (DMR). The State need not provide copies of uniform national forms it intends to use but should note its intention to use such forms.

NOTE: States are encouraged to use uniform national forms established by the Administrator. If uniform national forms are used, they may be modified to include the State Agency's name, address, logo, and other similar information, as appropriate, in place of EPA's.

(e) A complete description of the State's compliance tracking and enforcement program.

(f) A State seeking approval of a sludge management program under section 405(f) of the CWA as part of its NPDES program, in addition to the above requirements of this section, shall include the inventory as required in 40 CFR 501.12(f).

(g) In the case of Indian Tribes eligible under § 123.33(b), if a State has been authorized by EPA to issue permits on the Federal Indian reservation in accordance with § 123.23(b), a description of how responsibility for pending permit applications, existing permits, and supporting files will be transferred from the State to the eligible Indian Tribe. To the maximum extent practicable, this should include a Memorandum of Agreement negotiated between the State and the Indian Tribe addressing the arrangements for such transfer.

[48 FR 14178, Apr. 1, 1983; 50 FR 6941, Feb. 19, 1985, as amended at 54 FR 18784, May 2, 1989; 58 FR 67981, Dec. 22, 1993; 59 FR 64343, Dec. 14, 1994]

§ 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.

[48 FR 14178, Apr. 1, 1983, as amended at 58 FR 67981, Dec. 22, 1993]

§ 123.24 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this part shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this part and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's statutory oversight responsibility.

(b) The Memorandum of Agreement shall include the following:

(1)(i) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). If existing permits are transferred from EPA to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

NOTE: For example, EPA and the State and the permittee could agree that the State would issue a permit(s) identical to the outstanding Federal permit which would simultaneously be terminated.

(ii) Where a State has been authorized by EPA to issue permits in accordance with § 123.23(b) on the Federal Indian reservation of the Indian Tribe seeking program approval, provisions describing how the transfer of pending permit applications, permits, and any other information relevant to the program operation not already in the possession of the Indian Tribe (support files for permit issuance, compliance reports, etc.) will be accomplished.

(2) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment and, where applicable, objection.

(3) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate. These procedures shall implement the requirements of § 123.43.

(4) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(5) When appropriate, provisions for joint processing of permits by the State and EPA for facilities or activities which require permits from both EPA and the State under different programs. (See § 124.4.)

NOTE: To promote efficiency and to avoid duplication and inconsistency, States are encouraged to enter into joint processing agreements with EPA for permit issuance. Likewise, States are encouraged (but not required) to consider steps to coordinate or consolidate their own permit programs and activities.

(6) Provisions for modification of the Memorandum of Agreement in accordance with this part.

(c) The Memorandum of Agreement, the annual program grant and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended through the procedures set forth in this part. The State/EPA Agreement may not override the Memorandum of Agreement.

NOTE: Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. However, it may still be appropriate to specify in the MOA the basis for such detailed agreements, e.g., a provision in the MOA specifying that EPA will select facilities in the State for inspection annually as part of the State/EPA agreement.

(d) The Memorandum of Agreement shall also specify the extent to which EPA will waive its right to review, object to, or comment upon State-issued permits under section 402(d)(3), (e) or (f) of CWA. While the Regional Administrator and the State may agree to waive EPA review of certain ''classes or categories'' of permits, no waiver of review may be granted for the following classes or categories:

(1) Discharges into the territorial sea;

(2) Discharges which may affect the waters of a State other than the one in which the discharge originates;

(3) Discharges proposed to be regulated by general permits (see § 122.28);

(4) Discharges from publicly owned treatment works with a daily average discharge exceeding 1 million gallons per day;

(5) Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons per day;

(6) Discharges from any major discharger or from any discharger within any of the 21 industrial categories listed in appendix A to part 122;

(7) Discharges from other sources with a daily average discharge exceeding 0.5 (one-half) million gallons per day, except that EPA review of permits for discharges of non-process wastewater may be waived regardless of flow.

(8) ''Class I sludge management facilities'' as defined in 40 CFR 501.2.

(e) Whenever a waiver is granted under paragraph (d) of this section, the Memorandum of Agreement shall contain:

(1) A statement that the Regional Administrator retains the right to terminate the waiver as to future permit actions, in whole or in part, at any time by sending the State Director written notice of termination; and

(2) A statement that the State shall supply EPA with copies of final permits.

[48 FR 14178, Apr. 1, 1983; 50 FR 6941, Feb. 19, 1985, as amended at 54 FR 18784, May 2, 1989; 58 FR 67981, Dec. 22, 1993]

§ 123.25 Requirements for permitting.

(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 a State which chooses not to administer a sludge management program pursuant to section 405(f) of the CWA as part of its NPDES program is not required to have legal authority to implement the portions of the following provisions which were promulgated after the enactment of the Water Quality Act of 1987 (Pub. L. 100–4) and which govern sewage sludge use and disposal. In all cases, States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

(1) § 122.4—(Prohibitions):

(2) § 122.5(a) and (b)—(Effect of permit);

(3) § 122.7(b) and (c)—(Confidential information);

(4) § 122.21 (a)–(b), (c)(2), (e)–(k), and (m)–(p)—(Application for a permit);

(5) § 122.22—(Signatories);

(6) § 122.23—(Concentrated animal feeding operations);

(7) § 122.24—(Concentrated aquatic animal production facilities);

(8) § 122.25—(Aquaculture projects);

(9) § 122.26—(Storm water discharges);

(10) § 122.27—(Silviculture);

(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) Section 122.41—(Applicable permit conditions)(Indian Tribes can satisfy enforcement authority requirements under § 123.34).

(13) § 122.42—(Conditions applicable to specified categories of permits);

(14) § 122.43—(Establishing permit conditions);

(15) § 122.44—(Establishing NPDES permit conditions);

(16) § 122.45—(Calculating permit conditions);

(17) § 122.46—(Duration);

(18) § 122.47(a)—(Schedules of compliance);

(19) § 122.48—(Monitoring requirements);

(20) § 122.50—(Disposal into wells);

(21) § 122.61—(Permit transfer);

(22) § 122.62—(Permit modification);

(23) § 122.64—(Permit termination);

(24) § 124.3(a)—(Application for a permit);

(25) § 124.5 (a), (c), (d), and (f)—(Modification of permits);

(26) § 124.6 (a), (c), (d), and (e)—(Draft permit);

(27) § 124.8—(Fact sheets);

(28) § 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e)—(Public notice);

(29) § 124.11—(Public comments and requests for hearings);

(30) § 124.12(a)—(Public hearings); and

(31) § 124.17 (a) and (c)—(Response to comments);

(32) § 124.56—(Fact sheets);

(33) § 124.57(a)—(Public notice);

(34) § 124.59—(Comments from government agencies);

(35) § 124.62—(Decision on variances);

(36) Subparts A, B, C, D, H, I, J, K and L of part 125;

(37) 40 CFR parts 129, 133, subchapter N and 40 CFR part 503; and

(38) For a Great Lakes State or Tribe (as defined in 40 CFR 132.2), 40 CFR part 132 (NPDES permitting implementation procedures only).

NOTE: 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).

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

(b) State NPDES programs shall have an approved continuing planning process under 40 CFR 35.1500 and shall assure that the approved planning process is at all times consistent with CWA.

(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) For the purposes of this paragraph:

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

(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.

[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 9414, Feb. 19, 1993; 58 FR 67981, Dec. 22, 1993; 60 FR 15386, Mar. 23, 1995]

§ 123.26 Requirements for compliance evaluation programs.

(a) State programs shall have procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees and other regulated persons (and for investigation for possible enforcement of failure to submit these notices and reports).

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements. The State shall maintain:

(1) A program which is capable of making comprehensive surveys of all facilities and activities subject to the State Director's authority to identify persons subject to regulation who have failed to comply with permit application or other program requirements. Any compilation, index or inventory of such facilities and activities shall be made available to the Regional Administrator upon request;

(2) A program for periodic inspections of the facilities and activities subject to regulation. These inspections shall be conducted in a manner designed to:

(i) Determine compliance or noncompliance with issued permit conditions and other program requirements;

(ii) Verify the accuracy of information submitted by permittees and other regulated persons in reporting forms and other forms supplying monitoring data; and

(iii) Verify the adequacy of sampling, monitoring, and other methods used by permittees and other regulated persons to develop that information;

(3) A program for investigating information obtained regarding violations of applicable program and permit requirements; and

(4) Procedures for receiving and ensuring proper consideration of information submitted by the Public about violations. Public effort in reporting violations shall be encouraged, and the State Director shall make available information on reporting procedures.

(c) The State Director and State officers engaged in compliance evaluation shall have authority to enter any site or premises subject to regulation or in which records relevant to program operation are kept in order to copy any records, inspect, monitor or otherwise investigate compliance with the State program including compliance with permit conditions and other program requirements. States whose law requires a search warrant before entry conform with this requirement.

(d) Investigatory inspections shall be conducted, samples shall be taken and other information shall be gathered in a manner (e.g., using proper ''chain of custody'' procedures) that will produce evidence admissible in an enforcement proceeding or in court.

(e) State NPDES compliance evaluation programs shall have procedures and ability for:

(1) Maintaining a comprehensive inventory of all sources covered by NPDES permits and a

schedule of reports required to be submitted by permittees to the State agency;

(2) Initial screening (i.e., pre-enforcement evaluation) of all permit or grant-related compliance information to identify violations and to establish priorities for further substantive technical evaluation;

(3) When warranted, conducting a substantive technical evaluation following the initial screening of all permit or grant-related compliance information to determine the appropriate agency response;

(4) Maintaining a management information system which supports the compliance evaluation activities of this part; and

(5) Inspecting the facilities of all major dischargers and all Class I sludge management facilities (as defined in 40 CFR 501.2) where applicable at least annually.

[48 FR 14178, Apr. 1, 1983, as amended at 54 FR 18785, May 2, 1989]

§ 123.27 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;

NOTE: This paragraph (a)(1) requires that States have a mechanism (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to stop any unauthorized activity endangering public health or the environment.

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit;

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) Civil penalties shall be recoverable for the violation of any NPDES permit condition; any NPDES filing requirement; any duty to allow or carry out inspection, entry or monitoring activities; or, any regulation or orders issued by the State Director. These penalties shall be assessable in at least the amount of $5,000 a day for each violation.

(ii) Criminal fines shall be recoverable against any person who willfully or negligently violates any applicable standards or limitations; any NPDES permit condition; or any NPDES filing requirement. These fines shall be assessable in at least the amount of $10,000 a day for each violation.

NOTE: States which provide the criminal remedies based on ''criminal negligence,'' ''gross negligence'' or strict liability satisfy the requirement of paragraph (a)(3)(ii) of this section.

(iii) Criminal fines shall be recoverable against any person who knowingly makes any false statement, representation or certification in any NPDES form, in any notice or report required by an NPDES permit, or who knowingly renders inaccurate any monitoring device or method required to be maintained by the Director. These fines shall be recoverable in at least the amount of $5,000 for each instance of violation.

NOTE: In many States the State Director will be represented in State courts by the State Attorney General or other appropriate legal officer. Although the State Director need not appear in court actions he or she should have power to request that any of the above actions be brought.

(b)(1) The maximum civil penalty or criminal fine (as provided in paragraph (a)(3) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the appropriate Act;

NOTE: For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.

(c) A civil penalty assessed, sought, or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation.

NOTE: To the extent that State judgments or settlements provide penalties in amounts which EPA believes to be substantially inadequate in comparison to the amounts which EPA would require under similar facts, EPA, when authorized by the applicable statute, may commence separate actions for penalties.

Procedures for assessment by the State of the cost of investigations, inspections, or monitoring surveys which lead to the establishment of violations;

In addition to the requirements of this paragraph, the State may have other enforcement remedies. The following enforcement options, while not mandatory, are highly recommended:

Procedures which enable the State to assess or to sue any persons responsible for unauthorized activities for any expenses incurred by the State in removing, correcting, or terminating any adverse effects upon human health and the environment resulting from the unauthorized activity, whether or not accidental;

Procedures which enable the State to sue for compensation for any loss or destruction of wildlife, fish or aquatic life, or their habitat, and for any other damages caused by unauthorized activity, either to the State or to any resi-

dents of the State who are directly aggrieved by the unauthorized activity, or both; and

Procedures for the administrative assessment of penalties by the Director.

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil or administrative action to obtain remedies specified in paragraphs (a)(1), (2) or (3) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in § 123.26(b)(4);

(ii) Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

(e) Indian Tribes that cannot satisfy the criminal enforcement authority requirements of this section may still receive program approval if they meet the requirement for enforcement authority established under § 123.34.

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

[48 FR 14178, Apr. 1, 1983, as amended at 48 FR 39620, Sept. 1, 1983; 50 FR 6941, Feb. 19, 1985; 54 FR 258, Jan. 4, 1989; 58 FR 67981, Dec. 22, 1993]

§ 123.28 Control of disposal of pollutants into wells.

State law must provide authority to issue permits to control the disposal of pollutants into wells. Such authority shall enable the State to protect the public health and welfare and to prevent the pollution of ground and surface waters by prohibiting well discharges or by issuing permits for such discharges with appropriate permit terms and conditions. A program approved under section 1422 of SDWA satisfies the requirements of this section.

NOTE: States which are authorized to administer the NPDES permit program under section 402 of CWA are encouraged to rely on existing statutory authority, to the extent possible, in developing a State UIC program under section 1422 of SDWA. Section 402(b)(1)(D) of CWA requires that NPDES States have the authority ''to issue permits which * * * control the disposal of pollutants into wells.'' In many instances, therefore, NPDES States will have existing statutory authority to regulate well disposal which satisfies the requirements of the UIC program. Note, however, that CWA excludes certain types of well injections from the definition of ''pollutant.'' If the State's statutory authority contains a similar exclusion it may need to be modified to qualify for UIC program approval.

§ 123.29 Prohibition.

State permit programs shall provide that no permit shall be issued when the Regional Administrator has objected in writing under § 123.44.

§ 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.

[61 FR 20980, May 8, 1996]

§ 123.31 Requirements for eligibility of Indian Tribes.

(a) Consistent with section 518(e) of the CWA, 33 U.S.C. 1377(e), the Regional Administrator will treat an Indian Tribe as eligible to apply for NPDES program authority if it meets the following criteria:

(1) The Indian Tribe is recognized by the Secretary of the Interior.

(2) The Indian Tribe has a governing body carrying out substantial governmental duties and powers.

(3) The functions to be exercised by the Indian Tribe pertain to the management and protection of water resources which are held by an Indian Tribe, held by the United States in trust for the Indians, held by a member of an Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of an Indian reservation.

(4) The Indian Tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions to be exercised, in a manner consistent with the terms and

purposes of the Act and applicable regulations, of an effective NPDES permit program.

(b) An Indian Tribe which the Regional Administrator determines meets the criteria described in paragraph (a) of this section must also satisfy the State program requirements described in this part for assumption of the State program.

[58 FR 67981, Dec. 22, 1993, as amended at 59 FR 64343, Dec. 14, 1994]

§ 123.32 Request by an Indian Tribe for a determination of eligibility.

An Indian Tribe may apply to the Regional Administrator for a determination that it qualifies pursuant to section 518 of the Act for purposes of seeking NPDES permit program approval. The application shall be concise and describe how the Indian Tribe will meet each of the requirements of § 123.31. The application shall include the following information:

(a) A statement that the Tribe is recognized by the Secretary of the Interior;

(b) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. This statement should:

(1) Describe the form of the Tribal government;

(2) Describe the types of governmental functions currently performed by the Tribal governing body, such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(3) Identify the source of the Tribal government's authority to carry out the governmental functions currently being performed.

(c) A map or legal description of the area over which the Indian Tribe asserts authority under section 518(e)(2) of the Act; a statement by the Tribal Attorney General (or equivalent official authorized to represent the Tribe in all legal matters in court pertaining to the program for which it seeks approval) which describes the basis for the Tribe's assertion (including the nature or subject matter of the asserted regulatory authority); copies of those documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the Tribe believes are relevant to its assertion under section 518(e)(2) of the Act; and a description of the location of the surface waters for which the Tribe proposes to establish an NPDES permit program.

(d) A narrative statement describing the capability of the Indian Tribe to administer an effective, environmentally sound NPDES permit program. The statement should include:

(1) A description of the Indian Tribe's previous management experience which may include the administration of programs and service authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a);

(2) A list of existing environmental or public health programs administered by the Tribal governing body, and a copy of related Tribal laws, regulations, and policies;

(3) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government;

(4) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary responsibility for establishing and administering an NPDES permit program (including a description of the relationship between the existing or proposed agency and its regulated entities);

(5) A description of the technical and administrative abilities of the staff to administer and manage an effective, environmentally sound NPDES permit program or a plan which proposes how the Tribe will acquire additional administrative and technical expertise. The plan must address how the Tribe will obtain the funds to acquire the administrative and technical expertise.

(e) The Regional Administrator may, at his or her discretion, request further documentation necessary to support a Tribe's eligibility.

(f) If the Administrator or his or her delegatee has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a state as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the NPDES program which is requested by the Regional Administrator.

[58 FR 67982, Dec. 22, 1993, as amended at 59 FR 64343, Dec. 14, 1994]

§ 123.33 Procedures for processing an Indian Tribe's application.

(a) The Regional Administrator shall process an application of an Indian Tribe submitted pursuant to § 123.32 in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(b) The Regional Administrator shall follow the procedures described in 40 CFR part 123, subpart D in processing a Tribe's request to assume the NPDES program.

[58 FR 67982, Dec. 22, 1993, as amended at 59 FR 64343, Dec. 14, 1994]

§ 123.34 Provisions for Tribal criminal enforcement authority.

To the extent that an Indian Tribe is precluded from asserting criminal enforcement authority as required under § 123.27, the Federal Government will exercise primary criminal enforcement responsibility. The Tribe, with the EPA Region, shall develop a procedure by which the Tribal agency will refer potential criminal violations to the Regional Administrator, as agreed to by the parties, in an appropriate and timely manner. This procedure shall encompass all circumstances in which the Tribe is incapable of exercising the enforcement requirements of § 123.27. This agreement shall be incorporated into a joint or separate Memorandum of Agreement with the EPA Region, as appropriate.

[58 FR 67983, Dec. 22, 1993]

Subpart C—Transfer of Information and Permit Review

§ 123.41 Sharing of information.

(a) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information under this section. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR part 2. If EPA obtains from a State information that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA shall furnish to States with approved programs the information in its files not submitted under a claim of confidentiality which the State needs to implement its approved program. EPA shall furnish to States with approved programs information submitted to EPA under a claim of confidentiality, which the State needs to implement its approved program, subject to the conditions in 40 CFR part 2.

§ 123.42 Receipt and use of Federal information.

Upon approving a State permit program, EPA shall send to the State agency administering the permit program any relevant information which was collected by EPA. The Memorandum of Agreement under § 123.24 shall provide for the following, in such manner as the State Director and the Regional Administrator shall agree:

(a) Prompt transmission to the State Director from the Regional Administrator of copies of any pending permit applications or any other relevant information collected before the approval of the State permit program and not already in the possession of the State Director. When existing permits are transferred to the State Director (e.g., for purposes of compliance monitoring, enforcement or reissuance), relevant information includes support files for permit issuance, compliance reports and records of enforcement actions.

(b) Procedures to ensure that the State Director will not issue a permit on the basis of any application received from the Regional Administrator which the Regional Administrator identifies as incomplete or otherwise deficient until the State Director receives information sufficient to correct the deficiency.

§ 123.43 Transmission of information to EPA.

(a) Each State agency administering a permit program shall transmit to the Regional Administrator copies of permit program forms and any other relevant information to the extent and in the manner agreed to by the State Director and Regional Administrator in the Memorandum of Agreement and not inconsistent with this part. Proposed permits shall be prepared by State agencies unless agreement to the contrary has been reached under § 123.44(j). The Memorandum of Agreement shall provide for the following:

(1) Prompt transmission to the Regional Administrator of a copy of all complete permit applications received by the State Director, except those for which permit review has been waived under § 123.24(d). The State shall supply EPA with copies of permit applications for which permit review has been waived whenever requested by EPA;

(2) Prompt transmission to the Regional Administrator of notice of every action taken by the State agency related to the consideration of any permit application or general permit, including a copy of each proposed or draft permit and any conditions, requirements, or documents which are related to the proposed or draft permit or which affect the authorization of the proposed permit, except those for which permit review has been waived under § 123.24(d). The State shall supply EPA with copies of notices for which permit review has been waived whenever requested by EPA; and

(3) Transmission to the Regional Administrator of a copy of every issued permit following issuance, along with any and all conditions, requirements, or documents which are related to or affect the authorization of the permit.

(b) [Reserved]

(c) The State program shall provide for transmission by the State Director to EPA of:

(1) Notices from publicly owned treatment works under § 122.42(b) and 40 CFR part 403, upon request of the Regional Administrator;

(2) A copy of any significant comments presented in writing pursuant to the public notice of a draft permit and a summary of any significant comments presented at any hearing on any draft permit, except those comments regarding permits for which permit review has been waived under § 123.24(d) and for which EPA has not otherwise requested receipt, if:

(i) The Regional Administrator requests this information; or

(ii) The proposed permit contains requirements significantly different from those contained in the tentative determination and draft permit; or

(iii) Significant comments objecting to the tentative determination and draft permit have been presented at the hearing or in writing pursuant to the public notice.

(d) Any State permit program shall keep such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of CWA or of this part.

[48 FR 14178, Apr. 1, 1983, as amended at 60 FR 33931, June 29, 1995]

§ 123.44 EPA review of and objections to State permits.

(a)(1) The Memorandum of Agreement shall provide a period of time (up to 90 days from receipt of proposed permits) to which the Regional Administrator may make general comments upon, objections to, or recommendations with respect to proposed permits. EPA reserves the right to take 90 days to supply specific grounds for objection, notwithstanding any shorter period specified in the Memorandum of Agreement, when a general objection is filed within the review period specified in the Memorandum of Agreement. The Regional Administrator shall send a copy of any comment, objection or recommendation to the permit applicant.

(2) In the case of general permits, EPA shall have 90 days from the date of receipt of the proposed general permit to comment upon, object to or make recommendations with respect to the proposed general permit, and is not bound by any shorter time limits set by the Memorandum of Agreement for general comments, objections or recommendations. The EPA Director, Office of Water Enforcement and Permits may comment upon, object to, or make recommendations with respect to proposed general permits, except those for separate storm sewers, on EPA's behalf.

(b)(1) Within the period of time provided under the Memorandum of Agreement for making general comments upon, objections to or recommendations with respect to proposed permits, the Regional Administrator shall notify the State Director of any objection to issuance of a proposed permit (except as provided in paragraph (a)(2) of this section for proposed general permits). This notification shall set forth in writing the general nature of the objection.

(2) Within 90 days following receipt of a proposed permit to which he or she has objected under paragraph (b)(1) of this section, or in the case of general permits within 90 days after receipt of the proposed general permit, the Regional Administrator, or in the case of general permits other than for separate storm sewers, the Regional Administrator or the EPA Director, Office of Water Enforcement and Permits, shall set forth in writing and transmit to the State Director:

(i) A statement of the reasons for the objection (including the section of CWA or regulations that support the objection), and

(ii) The actions that must be taken by the State Director to eliminate the objection (including the effluent limitations and conditions which the permit would include if it were issued by the Regional Administrator.)

NOTE: Paragraphs (a) and (b) of this section, in effect, modify any existing agreement between EPA and the State which provides less than 90 days for EPA to supply the specific grounds for an objection. However, when an agreement provides for an EPA review period of less than 90 days, EPA must file a general objection, in accordance with paragraph (b)(1) of this section within the time specified in the agreement. This general objection must be followed by a specific objection within the 90-day period. This modification to MOA's allows EPA to provide detailed information concerning acceptable permit conditions, as required by section 402(d) of CWA. To avoid possible confusion, MOA's should be changed to reflect this arrangement.

(c) The Regional Administrator's objection to the issuance of a proposed permit must be based upon one or more of the following grounds:

(1) The permit fails to apply, or to ensure compliance with, any applicable requirement of this part;

NOTE: For example, the Regional Administrator may object to a permit not requiring the achievement of required effluent limitations by applicable statutory deadlines.

(2) In the case of a proposed permit for which notification to the Administrator is required under section 402(b)(5) of CWA, the written recommendations of an affected State have not been accepted by the permitting State and the Regional Administrator finds the reasons for rejecting the recommendations are inadequate;

(3) The procedures followed in connection with formulation of the proposed permit failed in a material respect to comply with procedures required by CWA or by regulations thereunder or by the Memorandum of Agreement;

(4) Any finding made by the State Director in connection with the proposed permit misinterprets CWA or any guidelines or regulations under CWA, or misapplies them to the facts;

(5) Any provisions of the proposed permit relating to the maintenance of records, reporting, monitoring, sampling, or the provision of any other information by the permittee are inadequate, in the judgment of the Regional Administrator, to assure compliance with permit conditions, including effluent standards and limitations or standards for sewage sludge use and disposal required by CWA, by the guidelines and regulations issued under CWA, or by the proposed permit;

(6) In the case of any proposed permit with respect to which applicable effluent standards and limitations or standards for sewage sludge use and disposal under sections 301, 302, 306, 307, 318, 403, and 405 of CWA have not yet been promulgated by the Agency, the proposed permit, in the judgment of the Regional Administrator, fails to carry out the provisions of CWA or of any regulations issued under CWA; the provisions of this paragraph apply to determinations made pursuant to § 125.3(c)(2) in the absence of applicable guidelines, to best management practices under section 304(e) of CWA, which must be incorporated into permits as requirements under section 301, 306, 307, 318, 403 or 405, and to sewage sludge use and disposal requirements developed on a case-by-case basis pursuant to section 405(d) of CWA, as the case may be;

(7) Issuance of the proposed permit would in any other respect be outside the requirements of CWA, or regulations issued under CWA.

(8) The effluent limits of a permit fail to satisfy the requirements of 40 CFR 122.44(d).

(9) For a permit issued by a Great Lakes State or Tribe (as defined in 40 CFR 132.2), the permit does not satisfy the conditions promulgated by the State, Tribe, or EPA pursuant to 40 CFR part 132.

(d) Prior to notifying the State Director of an objection based upon any of the grounds set forth in paragraph (b) of this section, the Regional Administrator:

(1) Shall consider all data transmitted pursuant to § 123.43;

(2) May, if the information provided is inadequate to determine whether the proposed permit meets the guidelines and requirements of CWA, request the State Director to transmit to the Regional Administrator the complete record of the permit proceedings before the State, or any portions of the record that the Regional Administrator determines are necessary for review. If this request is made within 30 days of receipt of the State submittal under § 123.43, it shall constitute an interim objection to the issuance of the permit, and the full period of time specified in the Memorandum of Agreement for the Regional Administrator's review shall recommence when the Regional Administrator has received such record or portions of the record; and

(3) May, in his or her discretion, and to the extent feasible within the period of time available under the Memorandum of Agreement, afford to interested persons an opportunity to comment on the basis for the objection;

(e) Within 90 days of receipt by the State Director of an objection by the Regional Administrator, the State or interstate agency or any interested person may request that a public hearing be held by the Regional Administrator on the objection. A public hearing in accordance with the procedures of § 124.12 (c) and (d) shall be held, and public notice provided in accordance with § 124.10, whenever requested by the State or the interstate agency which proposed the permit or if warranted by significant public interest based on requests received.

(f) A public hearing held under paragraph (e) of this section shall be conducted by the Regional Administrator, and, at the Regional Administrator's discretion, with the assistance of an EPA panel designated by the Regional Administrator, in an orderly and expeditious manner.

(g) Following the public hearing, the Regional Administrator shall reaffirm the original objection, modify the terms of the objection, or withdraw the objection, and shall notify the State of this decision.

(h)(1) If no public hearing is held under paragraph (e) of this section and the State does not resubmit a permit revised to meet the Regional Administrator's objection within 90 days of receipt of the objection, the Regional Administrator may issue the permit in accordance with parts 121, 122 and 124 of this chapter and any other guidelines and requirements of CWA.

(2) If a public hearing is held under paragraph (e) of this section, the Regional Administrator does not withdraw the objection, and the State does not resubmit a permit revised to meet the Regional Administrator's objection or modified objection within 30 days of the date of the Regional Administrator's notification under paragraph (g) of this section, the Regional Administrator may issue the permit in accordance with parts 121, 122 and 124 of this chapter and any other guidelines and requirements of CWA.

(3) Exclusive authority to issue the permit passes to EPA when the times set out in this paragraph expire.

(i) In the case of proposed general permits for discharges other than from separate storm sewers insert ''or the EPA Director, Office of Water Enforcement and Permits'' after ''Regional Adminis-

trator'' whenever it appears in paragraphs (c) through (h) of this section.

(j) The Regional Administrator may agree, in the Memorandum of Agreement under § 123.24, to review draft permits rather than proposed permits. In such a case, a proposed permit need not be prepared by the State and transmitted to the Regional Administrator for review in accordance with this section unless the State proposes to issue a permit which differs from the draft permit reviewed by the Regional Administrator, the Regional Administrator has objected to the draft permit, or there is significant public comment.

[48 FR 14178, Apr. 1, 1983, as amended at 54 FR 18785, May 2, 1989; 54 FR 23896, June 2, 1989; 60 FR 15386, Mar. 23, 1995]

§ 123.45 Noncompliance and program reporting by the Director.

The Director shall prepare quarterly, semi-annual, and annual reports as detailed below. When the State is the permit-issuing authority, the State Director shall submit all reports required under this section to the Regional Administrator, and the EPA Region in turn shall submit the State reports to EPA Headquarters. When EPA is the permit-issuing authority, the Regional Administrator shall submit all reports required under this section to EPA Headquarters.

(a) *Quarterly reports.* The Director shall submit quarterly narrative reports for major permittees as follows:

(1) *Format.* The report shall use the following format:

(i) Provide a separate list of major NPDES permittees which shall be subcategorized as non-POTWs, POTWs, and Federal permittees.

(ii) Alphabetize each list by permittee name. When two or more permittees have the same name, the permittee with the lowest permit number shall be entered first.

(iii) For each permittee on the list, include the following information in the following order:

(A) The name, location, and permit number.

(B) A brief description and date of each instance of noncompliance for which paragraph (a)(2) of this section requires reporting. Each listing shall indicate each specific provision of paragraph (a)(2) (e.g., (ii)(A) thru (iii)(G)) which describes the reason for reporting the violation on the quarterly report.

(C) The date(s), and a brief description of the action(s) taken by the Director to ensure compliance.

(D) The status of the instance(s) of noncompliance and the date noncompliance was resolved.

(E) Any details which tend to explain or mitigate the instance(s) of noncompliance.

(2) *Instances of noncompliance by major dischargers to be reported*—(i) *General.* Instances of noncompliance, as defined in paragraphs (a)(2)(ii) and (iii) of this section, by major dischargers shall be reported in successive reports until the noncompliance is reported as resolved (i.e., the permittee is no longer violating the permit conditions reported as noncompliance in the QNCR). Once an instance of noncompliance is reported as resolved in the QNCR, it need not appear in subsequent reports.

(A) All reported violations must be listed on the QNCR for the reporting period when the violation occurred, even if the violation is resolved during that reporting period.

(B) All permittees under current enforcement orders (i.e., administrative and judicial orders and consent decrees) for previous instances of noncompliance must be listed in the QNCR until the orders have been satisfied in full and the permittee is in compliance with permit conditions. If the permittee is in compliance with the enforcement order, but has not achieved full compliance with permit conditions, the compliance status shall be reported as ''resolved pending,'' but the permittee will continue to be listed on the QNCR.

(ii) *Category I noncompliance.* The following instances of noncompliance by major dischargers are Category I noncompliance:

(A) Violations of conditions in enforcement orders except compliance schedules and reports.

(B) Violations of compliance schedule milestones for starting construction, completing construction, and attaining final compliance by 90 days or more from the date of the milestone specified in an enforcement order or a permit.

(C) Violations of permit effluent limits that exceed the Appendix A ''Criteria for Noncompliance Reporting in the NPDES Program''.

(D) Failure to provide a compliance schedule report for final compliance or a monitoring report. This applies when the permittee has failed to submit a final compliance schedule progress report, pretreatment report, or a Discharge Monitoring Report within 30 days from the due date specified in an enforcement order or a permit.

(iii) *Category II noncompliance.* Category II noncompliance includes violations of permit conditions which the Agency believes to be of substantial concern and may not meet the Category I criteria. The following are instances of noncompliance which must be reported as Category II noncompliance unless the same violation meets the criteria for Category I noncompliance:

(A) (*1*) Violation of a permit limit;

(*2*) An unauthorized bypass;

(*3*) An unpermitted discharge; or

(*4*) A pass-through of pollutants which causes or has the potential to cause a water quality prob-

lem (e.g., fish kills, oil sheens) or health problems (e.g., beach closings, fishing bans, or other restrictions of beneficial uses).

(B) Failure of an approved POTW to implement its approved pretreatment program adequately including failure to enforce industrial pretreatment requirements on industrial users as required in the approved program.

(C) Violations of any compliance schedule milestones (except those milestones listed in paragraph (a)(2)(ii)(B) of this section) by 90 days or more from the date specified in an enforcement order or a permit.

(D) Failure of the permittee to provide reports (other than those reports listed in paragraph (a)(2)(ii)(D) of this section) within 30 days from the due date specified in an enforcement order or a permit.

(E) Instances when the required reports provided by the permittee are so deficient or incomplete as to cause misunderstanding by the Director and thus impede the review of the status of compliance.

(F) Violations of narrative requirements (e.g., requirements to develop Spill Prevention Control and Countermeasure Plans and requirements to implement Best Management Practices), which are of substantial concern to the regulatory agency.

(G) Any other violation or group of permit violations which the Director or Regional Administrator considers to be of substantial concern.

(b) *Semi-annual statistical summary report.* Summary information shall be provided twice a year on the number of major permittees with two or more violations of the same monthly average permit limitation in a six month period, including those otherwise reported under paragraph (a) of this section. This report shall be submitted at the same time, according to the Federal fiscal year calendar, as the first and third quarter QNCRs.

(c) *Annual reports for NPDES*—(1) *Annual noncompliance report.* Statistical reports shall be submitted by the Director on nonmajor NPDES permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of noncompliance listed in paragraph (a) of this section.

(2) A separate list of nonmajor discharges which are one or more years behind in construction phases of the compliance schedule shall also be submitted in alphabetical order by name and permit number.

(d) *Schedule*—(1) *For all quarterly reports.* On the last working day of May, August, November, and February, the State Director shall submit to the Regional Administrator information concerning noncompliance with NPDES permit requirements by major dischargers in the State in acordance with the following schedule. The Regional Administrator shall prepare and submit information for EPA-issued permits to EPA Headquarters in accordance with the same schedule:

QUARTERS COVERED BY REPORTS ON NONCOMPLIANCE BY MAJOR DISCHARGERS:

[Date for completion of reports]	
January, February, and March	[1] May 31
April, May, and June	[1] August 31
July, August, and September	[1] November 30
October, November, and December.	[1] February 28

[1] Reports must be made available to the public for inspection and copying on this date.

(2) *For all annual reports.* The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later.

(e) *Sludge noncompliance program reports.* The Director shall prepare and submit semi-annual noncompliance and annual program reports as required under 40 CFR 501.21. The Director may include this information in reports submitted in accordance with paragraphs (a) through (d) of this section.

(Approved by the Office of Management and Budget under control number 2040–0082)

[48 FR 14178, Apr. 1, 1983, as amended at 50 FR 34653, Aug. 26, 1985; 54 FR 18785, May 2, 1989]

APPENDIX A TO § 123.45—CRITERIA FOR NONCOMPLIANCE REPORTING IN THE NPDES PROGRAM

This appendix describes the criteria for reporting violations of NPDES permit effluent limits in the quarterly noncompliance report (QNCR) as specified under § 123.45(a)(2)(ii)(c). Any violation of an NPDES permit is a violation of the Clean Water Act (CWA) for which the permittee is liable. An agency's decision as to what enforcement action, if any, should be taken in such cases, will be based on an analysis of facts and legal requirements.

Violations of Permit Effluent Limits

Cases in which violations of permit effluent limits must be reported depend upon the magnitude and/or frequency of the violation. Effluent violations should be evaluated on a parameter-by-parameter and outfall-by-outfall basis. The criteria for reporting effluent violations are as follows:

a. Reporting Criteria for Violations of Monthly Average Permit Limits—Magnitude and Frequency

Violations of monthly average effluent limits which exceed or equal the product of the Technical Review Criteria (TRC) times the effluent limit, and occur two months in a six month period must be reported. TRCs are for two groups of pollutants.

Group I Pollutants—TRC=1.4
Group II Pollutants—TRC=1.2

b. Reporting Criteria for Chronic Violations of Monthly Average Limits

Chronic violations must be reported in the QNCR if the monthly average permit limits are exceeded any four months in a six-month period. These criteria apply to all Group I and Group II pollutants.

GROUP I POLLUTANTS—TRC=1.4

Oxygen Demand

Biochemical Oxygen Demand
Chemical Oxygen Demand
Total Oxygen Demands
Total Organic Carbon
Other

Solids

Total Suspended Solids (Residues)
Total Dissolved Solids (Residues)
Other

Nutrients

Inorganic Phosphorus Compounds
Inorganic Nitrogen Compounds
Other

Detergents and Oils

MBAS
NTA
Oil and Grease
Other detergents or algicides

Minerals

Calcium
Chloride
Fluoride
Magnesium
Sodium
Potassium
Sulfur
Sulfate
Total Alkalinity
Total Hardness
Other Minerals

Metals

Aluminum
Cobalt
Iron
Vanadium

GROUP II POLLUTANTS—TRC=1.2

METALS (ALL FORMS)

Other metals not specifically listed under Group I

Inorganic

Cyanide
Total Residual Chlorine

Organics

All organics are Group II except those specifically listed under Group I.

[50 FR 34654, Aug. 26, 1985]

§ 123.46 Individual control strategies.

(a) Not later than February 4, 1989, each State shall submit to the Regional Administrator for review, approval, and implementation an individual control strategy for each point source identified by the State pursuant to section 304(l)(1)(C) of the Act which discharges to a water identified by the State pursuant to section 304(l)(1)(B) which will produce a reduction in the discharge of toxic pollutants from the point sources identified under section 304(l)(1)(C) through the establishment of effluent limitations under section 402 of the CWA and water quality standards under section 303(c)(2)(B) of the CWA, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of establishment of such strategy.

(b) The Administrator shall approve or disapprove the control strategies submitted by any State pursuant to paragraph (a) of this section, not later than June 4, 1989. If a State fails to submit control strategies in accordance with paragraph (a) of this section or the Administrator does not approve the control strategies submitted by such State in accordance with paragraph (a), then, not later than June 4, 1990, the Administrator in cooperation with such State and after notice and opportunity for public comment, shall implement the requirements of CWA section 304(l)(1) in such State. In the implementation of such requirements, the Administrator shall, at a minimum, consider for listing under CWA section 304(l)(1) any navigable waters for which any person submits a petition to the Administrator for listing not later than October 1, 1989.

(c) For the purposes of this section the term individual control strategy, as set forth in section 304(l) of the CWA, means a final NPDES permit with supporting documentation showing that effluent limits are consistent with an approved wasteload allocation, or other documentation which shows that applicable water quality standards will be met not later than three years after the individual control strategy is established. Where a State is unable to issue a final permit on or before February 4, 1989, an individual control strategy may be a draft permit with an attached schedule (provided the State meets the schedule for issuing the final permit) indicating that the permit will be issued on or before February 4, 1990. If a point source is subject to section 304(l)(1)(C) of the CWA and is also subject to an on-site response action under sections 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), (42 U.S.C. 9601 *et seq.*), an individual control strategy may be the decision document (which incorporates

the applicable or relevant and appropriate requirements under the CWA) prepared under sections 104 or 106 of CERCLA to address the release or threatened release of hazardous substances to the environment.

(d) A petition submitted pursuant to section 304(l)(3) of the CWA must be submitted to the appropriate Regional Administrator. Petitions must identify a waterbody in sufficient detail so that EPA is able to determine the location and boundaries of the waterbody. The petition must also identify the list or lists for which the waterbody qualifies, and the petition must explain why the waterbody satisfies the criteria for listing under CWA section 304(l) and 40 CFR 130.10(d)(6).

(e) If the Regional Administrator disapproves one or more individual control strategies, or if a State fails to provide adequate public notice and an opportunity to comment on the ICSs, then, not later than June 4, 1989, the Regional Administrator shall give a notice of approval or disapproval of the individual control strategies submitted by each State pursuant to this section as follows:

(1) The notice of approval or disapproval given under this paragraph shall include the following:

(i) The name and address of the EPA office that reviews the State's submittals.

(ii) A brief description of the section 304(l) process.

(iii) A list of ICSs disapproved under this section and a finding that the ICSs will not meet all applicable review criteria under this section and section 304(l) of the CWA.

(iv) If the Regional Administrator determines that a State did not provide adequate public notice and an opportunity to comment on the waters, point sources, or ICSs prepared pursuant to section 304(l), or if the Regional Administrator chooses to exercise his or her discretion, a list of the ICSs approved under this section, and a finding that the ICSs satisfy all applicable review criteria.

(v) The location where interested persons may examine EPA's records of approval and disapproval.

(vi) The name, address, and telephone number of the person at the Regional Office from whom interested persons may obtain more information.

(vii) Notice that written petitions or comments are due within 120 days.

(2) The Regional Administrator shall provide the notice of approval or disapproval given under this paragraph to the appropriate State Director. The Regional Administrator shall publish a notice of availability, in a daily or weekly newspaper with State-wide circulation or in the FEDERAL REGISTER, for the notice of approval or disapproval. The Regional Administrator shall also provide written notice to each discharger identified under section 304(l)(1)(C), that EPA has listed the discharger under section 304(l)(1)(C).

(3) As soon as practicable but not later than June 4, 1990, the Regional Offices shall issue a response to petitions or comments received under section 304(l). The response to comments shall be given in the same manner as the notice described in paragraph (e) of this section except for the following changes:

(i) The lists of ICSs reflecting any changes made pursuant to comments or petitions received.

(ii) A brief description of the subsequent steps in the section 304(l) process.

(f) EPA shall review, and approve or disapprove, the individual control strategies prepared under section 304(l) of the CWA, using the applicable criteria set forth in section 304(l) of the CWA, and in 40 CFR part 122, including § 122.44(d). At any time after the Regional Administrator disapproves an ICS (or conditionally aproves a draft permit as an ICS), the Regional Office may submit a written notification to the State that the Regional Office intends to issue the ICS. Upon mailing the notification, and notwithstanding any other regulation, exclusive authority to issue the permit passes to EPA.

[54 FR 256, Jan. 4, 1989, as amended at 54 FR 23896, June 2, 1989; 57 FR 33049, July 24, 1992]

Subpart D—Program Approval, Revision, and Withdrawal

§ 123.61 Approval process.

(a) After determining that a State program submission is complete, EPA shall publish notice of the State's application in the FEDERAL REGISTER, and in enough of the largest newspapers in the State to attract statewide attention, and shall mail notice to persons known to be interested in such matters, including all persons on appropriate State and EPA mailing lists and all permit holders and applicants within the State. The notice shall:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide for a public hearing within the State to be held no less than 30 days after notice is published in the FEDERAL REGISTER;

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate whom an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(b) Within 90 days of the receipt of a complete program submission under § 123.21 the Administrator shall approve or disapprove the program based on the requirements of this part and of CWA and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains the Agency's response to these comments.

(c) If the Administrator approves the State's program he or she shall notify the State and publish notice in the FEDERAL REGISTER. The Regional Administrator shall suspend the issuance of permits by EPA as of the date of program approval.

(d) If the Administrator disapproves the State program he or she shall notify the State of the reasons for disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

[48 FR 14178, Apr. 1, 1983; 50 FR 6941, Feb. 19, 1985]

§ 123.62 Procedures for revision of State programs.

(a) Either EPA or the approved State may initiate program revision. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities. Grounds for program revision include cases where a State's existing approved program includes authority to issue NPDES permits for activities on a Federal Indian reservation and an Indian Tribe has subsequently been approved for assumption of the NPDES program under 40 CFR part 123 extending to those lands.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances.

(2) Whenever EPA determines that the proposed program revision is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days. The public notice shall be mailed to interested persons and shall be published in the FEDERAL REGISTER and in enough of the largest newspapers in the State to provide Statewide coverage. The public notice shall summarize the proposed revisions and provide for the opportunity to request a public hearing. Such a hearing will be held if there is significant public interest based on requests received.

(3) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the CWA.

(4) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the FEDERAL REGISTER. Notice of approval of non-substantial program revisions may be given by a letter from the Administrator to the State Governor or his designee.

(c) States with approved programs shall notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approved by the Administrator under paragraph (b) of this section. Organizational charts required under § 123.22(b) shall be revised and resubmitted.

(d) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as are necessary.

(e) *State NPDES programs only.* All new programs must comply with these regulations immediately upon approval. Any approved State section 402 permit program which requires revision to conform to this part shall be so revised within one year of the date of promulgation of these regulations, unless a State must amend or enact a statute in order to make the required revision in which case such revision shall take place within 2 years, except that revision of State programs to implement the requirements of 40 CFR part 403 (pretreatment) shall be accomplished as provided in 40 CFR 403.10. In addition, approved States shall submit, within 6 months, copies of their permit forms for EPA review and approval. Approved States shall also assure that permit applicants, other than POTWs, submit, as part of their application, the information required under §§ 124.4(d) and 122.21 (g) or (h), as appropriate.

(f) Revision of a State program by a Great Lakes State or Tribe (as defined in 40 CFR 132.2) to conform to section 118 of the CWA and 40 CFR part 132 shall be accomplished pursuant to 40 CFR part 132.

[48 FR 14178, Apr. 1, 1983, as amended at 49 FR 31842, Aug. 8, 1984; 50 FR 6941, Feb. 19, 1985; 53 FR 33007, Sept. 6, 1988; 58 FR 67983, Dec. 22, 1993; 60 FR 15386, Mar. 23, 1995]

§ 123.63 Criteria for withdrawal of State programs.

(a) The Administrator may withdraw program approval when a State program no longer complies with the requirements of this part, and the State fails to take corrective action. Such circumstances include the following:

(1) Where the State's legal authority no longer meets the requirements of this part, including:

(i) Failure of the State to promulgate or enact new authorities when necessary; or

(ii) Action by a State legislature or court striking down or limiting State authorities.

(2) Where the operation of the State program fails to comply with the requirements of this part, including:

(i) Failure to exercise control over activities required to be regulated under this part, including failure to issue permits;

(ii) Repeated issuance of permits which do not conform to the requirements of this part; or

(iii) Failure to comply with the public participation requirements of this part.

(3) Where the State's enforcement program fails to comply with the requirements of this part, including:

(i) Failure to act on violations of permits or other program requirements;

(ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed; or

(iii) Failure to inspect and monitor activities subject to regulation.

(4) Where the State program fails to comply with the terms of the Memorandum of Agreement required under § 123.24.

(5) Where the State fails to develop an adequate regulatory program for developing water quality-based effluent limits in NPDES permits.

(6) Where a Great Lakes State or Tribe (as defined in 40 CFR 132.2) fails to adequately incorporate the NPDES permitting implementation procedures promulgated by the State, Tribe, or EPA pursuant to 40 CFR part 132 into individual permits.

(b) [Reserved]

[48 FR 14178, Apr. 1, 1983; 50 FR 6941, Feb. 19, 1985, as amended at 54 FR 23897, June 2, 1989; 60 FR 15386, Mar. 23, 1995]

§ 123.64 Procedures for withdrawal of State programs.

(a) A State with a program approved under this part may voluntarily transfer program responsibilities required by Federal law to EPA by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

(1) The State shall give the Administrator 180 days notice of the proposed transfer and shall submit a plan for the orderly transfer of all relevant program information not in the possession of EPA (such as permits, permit files, compliance files, reports, permit applications) which are necessary for EPA to administer the program.

(2) Within 60 days of receiving the notice and transfer plan, the Administrator shall evaluate the State's transfer plan and shall identify any additional information needed by the Federal government for program administration and/or identify any other deficiencies in the plan.

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of the transfer in the FEDERAL REGISTER and in enough of the largest newspapers in the State to provide Statewide coverage, and shall mail notice to all permit holders, permit applicants, other regulated persons and other interested persons on appropriate EPA and State mailing lists.

(b) The following procedures apply when the Administrator orders the commencement of proceedings to determine whether to withdraw approval of a State program.

(1) *Order.* The Administrator may order the commencement of withdrawal proceedings on his or her own initiative or in response to a petition from an interested person alleging failure of the State to comply with the requirements of this part as set forth in § 123.63. The Administrator shall respond in writing to any petition to commence withdrawal proceedings. He may conduct an informal investigation of the allegations in the petition to determine whether cause exists to commence proceedings under this paragraph. The Administrator's order commencing proceedings under this paragraph shall fix a time and place for the commencement of the hearing and shall specify the allegations against the State which are to be considered at the hearing. Within 30 days the State shall admit or deny these allegations in a written answer. The party seeking withdrawal of the State's program shall have the burden of coming forward with the evidence in a hearing under this paragraph.

(2) *Definitions.* For purposes of this paragraph the definitions of ''Act,'' ''Administrative Law Judge,'' ''Hearing Clerk,'' and ''Presiding Officer'' in 40 CFR 22.03 apply in addition to the following:

(i) *Party* means the petitioner, the State, the Agency, and any other person whose request to participate as a party is granted.

(ii) *Person* means the Agency, the State and any individual or organization having an interest in the subject matter of the proceeding.

(iii) *Petitioner* means any person whose petition for commencement of withdrawal proceedings has been granted by the Administrator.

(3) *Procedures.* (i) The following provisions of 40 CFR part 22 (Consolidated Rules of Practice) are applicable to proceedings under this paragraph:

(A) § 22.02—(use of number/gender);

(B) § 22.04(c)—(authorities of Presiding Officer);

(C) § 22.06—(filing/service of rulings and orders);

(D) § 22.09—(examination of filed documents);

(E) § 22.19(a), (b) and (c)—(prehearing conference);

(F) § 22.22—(evidence);

(G) § 22.23—(objections/offers of proof);

(H) § 22.25—(filing the transcript); and

(I) § 22.26—(findings/conclusions).

(ii) The following provisions are also applicable:

(A) *Computation and extension of time*—(*1*) *Computation.* In computing any period of time prescribed or allowed in these rules of practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday, or legal holiday, the stated time period shall be extended to include the next business day.

(*2*) *Extensions of time.* The Administrator, Regional Administrator, or Presiding Officer, as appropriate, may grant an extension of time for the filing of any pleading, document, or motion (*i*) upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties, or (*ii*) upon his own motion. Such a motion by a party may only be made after notice to all other parties, unless the movant can show good cause why serving notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.

(*3*) The time for commencement of the hearing shall not be extended beyond the date set in the Administrator's order without approval of the Administrator.

(B) *Ex parte discussion of proceedings.* At no time after the issuance of the order commencing proceedings shall the Administrator, the Regional Administrator, the Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these officials in the decision on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication addressed to the Administrator, the Regional Administrator, the Regional Judicial Officer, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party, shall be regarded as argument made in the proceeding and shall be served upon all other parties. The other parties shall be given an opportunity to reply to such memorandum or communication.

(C) *Intervention*—(*1*) *Motion.* A motion for leave to intervene in any proceeding conducted under these rules of practice must set forth the grounds for the proposed intervention, the position and interest of the movant and the likely impact that intervention will have on the expeditious progress of the proceeding. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the foregoing sentence and paragraph (b)(3)(ii)(C)(*3*) of this section, within ten (10) days after service of the motion for leave to intervene.

(*2*) However, motions to intervene must be filed within 15 days from the date the notice of the Administrator's order is first published.

(*3*) *Disposition.* Leave to intervene may be granted only if the movant demonstrates that (*i*) his presence in the proceeding would not unduly prolong or otherwise prejudice that adjudication of the rights of the original parties; (*ii*) the movant will be adversely affected by a final order; and (*iii*) the interests of the movant are not being adequately represented by the original parties. The intervenor shall become a full party to the proceeding upon the granting of leave to intervene.

(*4*) *Amicus curiae.* Persons not parties to the proceeding who wish to file briefs may so move. The motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Administrator shall issue an order setting the time for filing such brief. An amicus curiae is eligible to participate in any briefing after his motion is granted, and shall be served with all briefs, reply briefs, motions, and orders relating to issues to be briefed.

(D) *Motions*—(*1*) *General.* All motions, except those made orally on the record during a hearing, shall (*i*) be in writing; (*ii*) state the grounds therefor with particularity; (*iii*) set forth the relief or order sought; and (*iv*) be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Such motions shall be served as provided by paragraph (b)(4) of this section.

(*2*) *Response to motions.* A party's response to any written motion must be filed within ten (10) days after service of such motion, unless additional time is allowed for such response. The response shall be accompanied by any affidavit, cer-

tificate, other evidence, or legal memorandum relied upon. If no response is filed within the designated period, the parties may be deemed to have waived any objection to the granting of the motion. The Presiding Officer, Regional Administrator, or Administrator, as appropriate, may set a shorter time for response, or make such other orders concerning the disposition of motions as they deem appropriate.

(*3*) *Decision.* The Administrator shall rule on all motions filed or made after service of the recommended decision upon the parties. The Presiding Officer shall rule on all other motions. Oral argument on motions will be permitted where the Presiding Officer, Regional Administrator, or the Administrator considers it necessary or desirable.

(4) *Record of proceedings.* (i) The hearing shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed by an official reporter designated by the Presiding Officer;

(ii) All orders issued by the Presiding Officer, transcripts of testimony, written statements of position, stipulations, exhibits, motions, briefs, and other written material of any kind submitted in the hearing shall be a part of the record and shall be available for inspection or copying in the Office of the Hearing Clerk, upon payment of costs. Inquiries may be made at the Office of the Administrative Law Judges, Hearing Clerk, 401 M Street, SW, Washington, DC 20460;

(iii) Upon notice to all parties the Presiding Officer may authorize corrections to the transcript which involves matters of substance;

(iv) An original and two (2) copies of all written submissions to the hearing shall be filed with the Hearing Clerk;

(v) A copy of each submission shall be served by the person making the submission upon the Presiding Officer and each party of record. Service under this paragraph shall take place by mail or personal delivery;

(vi) Every submission shall be accompanied by an acknowledgement of service by the person served or proof of service in the form of a statement of the date, time, and manner of service and the names of the persons served, certified by the person who made service, and;

(vii) The Hearing Clerk shall maintain and furnish to any person upon request, a list containing the name, service address, and telephone number of all parties and their attorneys or duly authorized representatives.

(5) *Participation by a person not a party.* A person who is not a party may, in the discretion of the Presiding Officer, be permitted to make a limited appearance by making oral or written statement of his/her position on the issues within such limits and on such conditions as may be fixed by the Presiding Officer, but he/she may not otherwise participate in the proceeding.

(6) *Rights of parties.* (i) All parties to the proceeding may:

(A) Appear by counsel or other representative in all hearing and pre-hearing proceedings;

(B) Agree to stipulations of facts which shall be made a part of the record.

(7) *Recommended decision.* (i) Within 30 days after the filing of proposed findings and conclusions, and reply briefs, the Presiding Officer shall evaluate the record before him/her, the proposed findings and conclusions and any briefs filed by the parties and shall prepare a recommended decision, and shall certify the entire record, including the recommended decision, to the Administrator.

(ii) Copies of the recommended decision shall be served upon all parties.

(iii) Within 20 days after the certification and filing of the record and recommended decision, all parties may file with the Administrator exceptions to the recommended decision and a supporting brief.

(8) *Decision by Administrator.* (i) Within 60 days after the certification of the record and filing of the Presiding Officer's recommeded decision, the Administrator shall review the record before him and issue his own decision.

(ii) If the Administrator concludes that the State has administered the program in conformity with the appropriate Act and regulations his decision shall constitute ''final agency action'' within the meaning of 5 U.S.C. 704.

(iii) If the Administrator concludes that the State has not administered the program in conformity with the appropriate Act and regulations he shall list the deficiencies in the program and provide the State a reasonable time, not to exceed 90 days, to take such appropriate corrective action as the Administrator determines necessary.

(iv) Within the time prescribed by the Administrator the State shall take such appropriate corrective action as required by the Administrator and shall file with the Administrator and all parties a statement certified by the State Director that such appropriate corrective action has been taken.

(v) The Administrator may require a further showing in addition to the certified statement that corrective action has been taken.

(vi) If the State fails to take such appropriate corrective action and file a certified statement thereof within the time prescribed by the Administrator, the Administrator shall issue a supplementary order withdrawing approval of the State program. If the State takes such appropriate corrective action, the Administrator shall issue a supplementary order stating that approval of authority is not withdrawn.

(vii) The Administrator's supplementary order shall constitute final Agency action within the meaning of 5 U.S.C. 704.

(viii) Withdrawal of authorization under this section and the appropriate Act does not relieve any person from complying with the requirements of State law, nor does it affect the validity of actions by the State prior to withdrawal.

[48 FR 14178, Apr. 1, 1983; 50 FR 6941, Feb. 19, 1985, as amended at 57 FR 5335, Feb. 13, 1992]

PART 124—PROCEDURES FOR DECISIONMAKING

Subpart A—General Program Requirements

Subpart B—Specific Procedures Applicable to RCRA Permits

Subpart C—Specific Procedures Applicable to PSD Permits

Subpart D—Specific Procedures Applicable to NPDES Permits

Subpart E—Evidentiary Hearing for EPA-Issued NPDES Permits and EPA-Terminated RCRA Permits

Subpart F—Non-Adversary Panel Procedures

AUTHORITY: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42

U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

SOURCE: 48 FR 14264, Apr. 1, 1983, unless otherwise noted.

Subpart A—General Program Requirements

§ 124.1 Purpose and scope.

(a) This part contains EPA procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA, UIC, PSD and NPDES ''permits'' (including ''sludge-only'' permits issued pursuant to § 122.1(b)(3)), other than RCRA and UIC ''emergency permits'' (see §§ 270.61 and 144.34) and RCRA ''permits by rule'' (§ 270.60). The latter kinds of permits are governed by part 270. RCRA interim status and UIC authorization by rule are not ''permits'' and are covered by specific provisions in parts 144, subpart C, and 270. This part also does not apply to permits issued, modified, revoked and reissued or terminated by the Corps of Engineers. Those procedures are specified in 33 CFR parts 320–327. The procedures of this part also apply to denial of a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29.

(b) Part 124 is organized into six subparts. Subpart A contains general procedural requirements applicable to all permit programs covered by these regulations. Subparts B through F supplement these general provisions with requirements that apply to only one or more of the programs. Subpart A describes the steps EPA will follow in receiving permit applications, preparing draft permits, issuing public notice, inviting public comment and holding public hearings on draft permits. Subpart A also covers assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of the final permit decision. Subpart B is reserved for specific procedural requirements for RCRA permits. There are none of these at present but they may be added in the future. Subpart C contains definitions and specific procedural requirements for PSD permits. Subpart D applies to NPDES permits until an evidentiary hearing begins, when subpart E procedures take over for EPA-issued NPDES permits and EPA-terminated RCRA permits. Subpart F, which is based on the ''initial licensing'' provisions of the Administrative Procedure Act (APA), can be used instead of subparts A through E in appropriate cases.

(c) Part 124 offers an opportunity for three kinds of hearings: A public hearing under subpart A, an evidentiary hearing under subpart E, and a panel hearing under subpart F. This chart describes when these hearings are available for each of the five permit programs.

HEARINGS AVAILABLE UNDER THIS PART

Programs	Subpart		
	(A)	(E)	(F)
	Public hearing	Evidentiary hearing	Panel hearing
RCRA	On draft permit, at Director's discretion or on request (§ 124.12).	(1) Permit termination (RCRA section 3008). (2) With NPDES evidentiary hearing (§ 124.74(b)(2)).	(1) At RA's discretion in lieu of public hearing (§§ 124.12 and 124.111(a)(3)). (2) When consolidated with NPDES draft permit processed under Subpart F (§ 124.111(a)(1)(i)).
UIC	On draft permit, at Director's discretion or on request (§ 124.12).	With NPDES evidentiary hearing (§ 124.74(b)(2)).	(1) At RA's discretion in lieu of public hearing (§§ 124.12 and 124.111(a)(3)). (2) When consolidated with NPDES draft permit processed under Subpart F (§ 124.111(a)(1)(i)).
PSD	On draft permit, at Director's discretion or on request (§ 124.12).	Not available (§ 124.71(c))	When consolidated with NPDES draft permit processed under Subpart F if RA determines that CAA one year deadline will not be violated.
NPDES (other than general permit).	On draft permit, at Director's discretion or on request (§ 124.12).	(1) On request to challenge any permit condition or variance (§ 124.74). (2) At RA's discretion for any 301(h) request (§ 124.64(b)).	(1) At RA's discretion when first decision on permit or variance request (§ 124.111). (2) At RA's discretion when request for evidentiary hearing is granted under § 124.75(a)(2) (§§ 124.74(c)(8) and 124.111(a)(2)). (3) At RA's discretion for any 301(h) request (§ 124.64(b)).

HEARINGS AVAILABLE UNDER THIS PART—Continued

Programs	Subpart		
	(A)	(E)	(F)
	Public hearing	Evidentiary hearing	Panel hearing
NPDES (general permit).	On draft permit, at Director's discretion or on request (§ 124.12).	Not available (§ 124.71(a))	At RA's discretion in lieu of public hearing (§ 124.111(a)(3)).
404	On draft permit or on application when no draft permit, at Director's discretion or on request (§ 124.12).	Not available (§ 124.71)	Not available (§ 124.111).

(d) This part is designed to allow permits for a given facility under two or more of the listed programs to be processed separately or together at the choice of the Regional Administrator. This allows EPA to combine the processing of permits only when appropriate, and not necessarily in all cases. The Regional Administrator may consolidate permit processing when the permit applications are submitted, when draft permits are prepared, or when final permit decisions are issued. This part also allows consolidated permits to be subject to a single public hearing under § 124.12, a single evidentiary hearing under § 124.75, or a single non-adversary panel hearing under § 124.120. Permit applicants may recommend whether or not their applications should be consolidated in any given case.

(e) Certain procedural requirements set forth in part 124 must be adopted by States in order to gain EPA approval to operate RCRA, UIC, NPDES, and 404 permit programs. These requirements are listed in §§ 123.25 (NPDES), 145.11 (UIC), 233,26 (404), and 271.14 (RCRA) and signaled by the following words at the end of the appropriate part 124 section or paragraph heading: *(applicable to State programs see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* Part 124 does not apply to PSD permits issued by an approved State.

(f) To coordinate decisionmaking when different permits will be issued by EPA and approved State programs, this part allows applications to be jointly processed, joint comment periods and hearings to be held, and final permits to be issued on a cooperative basis whenever EPA and a State agree to take such steps in general or in individual cases. These joint processing agreements may be provided in the Memorandum of Agreement developed under §§ 123.24 (NPDES), 145.24 (UIC), 233.24 (404), and 271.8 (RCRA).

[48 FR 14264, Apr. 1, 1983, as amended at 54 FR 9607, Mar. 7, 1989; 54 FR 18785, May 2, 1989]

§ 124.2 Definitions.

(a) In addition to the definitions given in §§ 122.2 and 123.2 (NPDES), 501.2 (sludge management), 144.3 and 145.2 (UIC), 233.3 (404), and 270.2 and 271.2 (RCRA), the definitions below apply to this part, except for PSD permits which are governed by the definitions in § 124.41. Terms not defined in this section have the meaning given by the appropriate Act.

Administrator means the Administrator of the U.S. Environmental Protection Agency, or an authorized representative.

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

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in ''approved States,'' including any approved modifications or revisions. For RCRA, application also includes the information required by the Director under §§ 270.14 through 270.29 [contents of Part B of the RCRA application].

Appropriate Act and regulations means the Clean Water Act (CWA); the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act (RCRA); or Safe Drinking Water Act (SDWA), whichever is applicable; and applicable regulations promulgated under those statutes. In the case of an ''approved State program'' appropriate Act and regulations includes program requirements.

Consultation with the Regional Administrator (§ 124.62(a)(2)) means review by the Regional Administrator following evaluation by a panel of the technical merits of all 301(k) applications ap-

proved by the Director. The panel (to be appointed by the Director of the Office of Water Enforcement and Permits) will consist of Headquarters, Regional, and State personnel familiar with the industrial category in question.

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

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

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

Environmental Appeals Board shall mean the Board within the Agency described in § 1.25(e) of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in RCRA, PSD, UIC, or NPDES permit appeals filed under this subpart, including informal appeals of denials of requests for modification, revocation and reissuance, or termination of permits under Section 124.5(b). An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation does not preclude the Environmental Appeals Board from referring an appeal or a motion under this subpart to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and the rules in this subpart referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

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

Facility or activity means any ''HWM facility,'' UIC ''injection well,'' NPDES ''point source'' or ''treatment works treating domestic sewage'' or State 404 dredge or fill activity, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, NPDES, or 404 programs.

Federal Indian reservation (in the case of NPDES) means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

General permit (NPDES and 404) means an NPDES or 404 ''permit'' authorizing a category of discharges or activities under the CWA within a geographical area. For NPDES, a general permit means a permit issued under § 122.28. For 404, a general permit means a permit issued under § 233.37.

Indian Tribe means (in the case of UIC) any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over a defined area. For the NPDES program, the term ''Indian Tribe'' means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

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

Major facility means any RCRA, UIC, NPDES, or 404 ''facility or activity'' classified as such by the Regional Administrator, or, in the case of ''approved State programs,'' the Regional Administrator in conjunction with the State Director.

NPDES means National Pollutant Discharge Elimination System.

Owner or operator means owner or operator of any ''facility or activity'' subject to regulation under the RCRA, UIC, NPDES, or 404 programs.

Permit means an authorization, license, or equivalent control document issued by EPA or an ''approved State'' to implement the requirements of this part and parts 122, 123, 144, 145, 233, 270, and 271. ''Permit'' includes RCRA ''permit by rule'' (§ 270.60), UIC area permit (§ 144.33), NPDES or 404 ''general permit'' (§§ 270.61, 144.34, and 233.38). Permit does not include

RCRA interim status (§ 270.70), UIC authorization by rule (§ 144.21), or any permit which has not yet been the subject of final agency action, such as a ''draft permit'' or a ''proposed permit.''

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

RCRA means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580, as amended by Pub. L. 95–609, 42 U.S.C. 6901 *et seq*).

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

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

SDWA means the Safe Drinking Water Act (Pub. L. 95–523, as amended by Pub. L. 95–1900; 42 U.S.C. 300f *et seq*).

Section 404 program or State 404 program or 404 means an ''approved State program'' to regulate the ''discharge of dredged material'' and the ''discharge of fill material'' under section 404 of the Clean Water Act in ''State regulated waters.''

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

State means one of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (except in the case of RCRA), the Commonwealth of the Northern Mariana Islands, or an Indian Tribe that meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State (except in the case of RCRA).

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

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

UIC means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an ''approved program.''

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

(b) For the purposes of part 124, the term *Director* means the State Director or Regional Administrator and is used when the accompanying provision is required of EPA-administered programs and of State programs under §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA). The term *Regional Administrator* is used when the accompanying provision applies exclusively to EPA-issued permits and is not applicable to State programs under these sections. While States are not required to implement these latter provisions, they are not precluded from doing so, notwithstanding use of the term ''Regional Administrator.''

(c) The term *formal hearing* means any evidentiary hearing under subpart E or any panel hearing under subpart F but does not mean a public hearing conducted under § 124.12.

[48 FR 14264, Apr. 1, 1983; 48 FR 30115, June 30, 1983, as amended at 49 FR 25981, June 25, 1984; 53 FR 37410, Sept. 26, 1988; 54 FR 18785, May 2, 1989; 57 FR 5335, Feb. 13, 1992; 57 FR 60129, Dec. 18, 1992; 58 FR 67983, Dec. 22, 1993; 59 FR 64343, Dec. 14, 1994]

§ 124.3 Application for a permit.

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

(2) The Director shall not begin the processing of a permit until the applicant has fully complied

with the application requirements for that permit. See §§ 270.10, 270.13 (RCRA), 144.31 (UIC), 40 CFR 52.21 (PSD), and 122.21 (NPDES).

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

(b) [Reserved]

(c) The Regional Administrator shall review for completeness every application for an EPA-issued permit. Each application for an EPA-issued permit submitted by a new HWM facility, a new UIC injection well, a major PSD stationary source or major PSD modification, or an NPDES new source or NPDES new discharger should be reviewed for completeness by the Regional Administrator within 30 days of its receipt. Each application for an EPA-issued permit submitted by an existing HWM facility (both Parts A and B of the application), existing injection well or existing NPDES source or sludge-only facility should be reviewed for completeness within 60 days of receipt. Upon completing the review, the Regional Administrator shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Regional Administrator shall list the information necessary to make the application complete. When the application is for an existing HWM facility, an existing UIC injection well or an existing NPDES source or ''sludge-only facility'' the Regional Administrator shall specify in the notice of deficiency a date for submitting the necessary information. The Regional Administrator shall notify the applicant that the application is complete upon receiving this information. After the application is completed, the Regional Administrator may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete.

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

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

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

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

(1) Prepare a draft permit;

(2) Give public notice;

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

(4) Issue a final permit; and

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

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

[48 FR 14264, Apr. 1, 1983, as amended at 48 FR 39620, Sept. 1, 1983; 54 FR 18785, May 2, 1989]

§ 124.4 Consolidation of permit processing.

(a)(1) Whenever a facility or activity requires a permit under more than one statute covered by these regulations, processing of two or more applications for those permits may be consolidated. The first step in consolidation is to prepare each draft permit at the same time.

(2) Whenever draft permits are prepared at the same time, the statements of basis (required under § 124.7 for EPA-issued permits only) or fact sheets (§ 124.8), administrative records (required under § 124.9 for EPA-issued permits only), public comment periods (§ 124.10), and any public hearings (§ 124.12) on those permits should also be consolidated. The final permits may be issued together. They need not be issued together if in the judgment of the Regional Administrator or State Director(s), joint processing would result in unreasonable delay in the issuance of one or more permits.

(b) Whenever an existing facility or activity requires additional permits under one or more of the statutes covered by these regulations, the permitting authority may coordinate the expiration date(s) of the new permit(s) with the expiration date(s) of the existing permit(s) so that all permits expire simultaneously. Processing of the subsequent applications for renewal permits may then be consolidated.

(c) Processing of permit applications under paragraph (a) or (b) of this section may be consolidated as follows:

(1) The Director may consolidate permit processing at his or her discretion whenever a facility or activity requires all permits either from EPA or from an approved State.

(2) The Regional Administrator and the State Director(s) may agree to consolidate draft permits whenever a facility or activity requires permits from both EPA and an approved State.

(3) Permit applicants may recommend whether or not the processing of their applications should be consolidated.

(d) Whenever permit processing is consolidated and the Regional Administrator invokes the ''initial licensing'' provisions of subpart F for an NPDES, RCRA, or UIC permit, any permit(s) with which that NPDES, RCRA or UIC permit was consolidated shall likewise be processed under subpart F.

(e) Except with the written consent of the permit applicant, the Regional Administrator shall not consolidate processing a PSD permit with any other permit under paragraph (a) or (b) of this section or process a PSD permit under subpart F as provided in paragraph (d) of this section when to do so would delay issuance of the PSD permit more than one year from the effective date of the application under § 124.3(f).

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

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

(b) If the Director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, or hearings. Denials by the Regional Administrator may be informally appealed to the Environmental Appeals Board by a letter briefly setting forth the relevant facts. The Environmental Appeals Board may direct the Regional Administrator to begin modification, revocation and reissuance, or termination proceedings under paragraph (c) of this section. The appeal shall be considered denied if the Environmental Appeals Board takes no action on the letter within 60 days after receiving it. This informal appeal is, under 5 U.S.C. 704, a prerequisite to seeking judicial review of EPA action in denying a request for modification, revocation and reissuance, or termination.

(c) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* (1) If the Director tentatively decides to modify or revoke and reissue a permit under §§ 122.62 (NPDES), 144.39 (UIC), 233.14 (404), or 270.41 or 270.42(c) (RCRA), he or she shall prepare a draft permit under § 124.6 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, the Director shall require the submission of a new application.

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

(3) ''Minor modifications'' as defined in §§ 122.63 (NPDES), 144.41 (UIC), and 233.16 (404), and ''Classes 1 and 2 modifications'' as defined in § 270.42 (a) and (b) (RCRA) are not subject to the requirements of this section.

(d) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)).* If the Director tentatively decides to terminate a permit under §§ 122.64 (NDPES), 144.40 (UIC), 233.15 (404), or 270.43 (RCRA), he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 124.6. In the case of EPA-issued permits, a notice of intent to terminate shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibility to an approved State under §§ 123.24(b)(1) (NPDES), 145.24(b)(1) (UIC), 271.8(b)(6) (RCRA), or 501.14(b)(1) (Sludge).

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

(f) *(Applicable to State programs, see § 233.26 (404)).* Any request by the permittee for modification to an existing 404 permit (other than a request for a minor modification as defined in § 233.16 (404)) shall be treated as a permit application and

shall be processed in accordance with all requirements of § 124.3.

(g)(1) (Reserved for PSD Modification Provisions).

(2) PSD permits may be terminated only by rescission under § 52.21(w) or by automatic expiration under § 52.21(r). Applications for rescission shall be precessed under § 52.21(w) and are not subject to this part.

[48 FR 14264, Apr. 1, 1983, as amended at 53 FR 37934, Sept. 28, 1988; 54 FR 18785, May 2, 1989; 57 FR 60129, Dec. 18, 1992]

§ 124.6 Draft permits.

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

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

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

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

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

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

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

(4) For:

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

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

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

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

(v) NPDES permits, effluent limitations, standards, prohibitions, standards for sewage sludge use or disposal, and conditions under §§ 122.41, 122.42, and 122.44, including when applicable any conditions certified by a State agency under § 124.55, and all variances that are to be included under § 124.63.

(e) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* All draft permits prepared by EPA under this section shall be accompanied by a statement of basis (§ 124.7) or fact sheet (§ 124.8), and shall be based on the administrative record (§ 124.9), publicly noticed (§ 124.10) and made available for public comment (§ 124.11). The Regional Administrator shall give notice of opportunity for a public hearing (§ 124.12), issue a final decision (§ 124.15) and respond to comments (§ 124.17). For RCRA, UIC or PSD permits, an appeal may be taken under § 124.19 and, for NPDES permits, an appeal may be taken under § 124.74. Draft permits prepared by a State shall be accompanied by a fact sheet if required under § 124.8.

[48 FR 14264, Apr. 1, 1983, as amended at 54 FR 18785, May 2, 1989]

§ 124.7 Statement of basis.

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

§ 124.8 Fact sheet.

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

(a) A fact sheet shall be prepared for every draft permit for a major HWM, UIC, 404, or NPDES facility or activity, for every Class I sludge management facility, for every 404 and NPDES general permit (§§ 237.37 and 122.28), for every NPDES draft permit that incorporates a variance or requires an explanation under § 124.56(b), for every draft permit that includes a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix), and for every draft permit which the Director finds is the subject of wide-spread

public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Director shall send this fact sheet to the applicant and, on request, to any other person.

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

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

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

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

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

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

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

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

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

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

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

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

[48 FR 14264, Apr. 1, 1983, as amended at 54 FR 18786, May 2, 1989]

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) A permit application has been tentatively denied under § 124.6(b);

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

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

(iv) An appeal has been granted under § 124.19(c);

(v) *(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

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

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

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

(b) *Timing (applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404, and 271.14 (RCRA)).* (1) Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under

paragraph (a) of this section shall allow at least 30 days for public comment. For RCRA permits only, public notice shall allow at least 45 days for public comment. For EPA-issued permits, if the Regional Administrator determines under 40 CFR part 6, subpart F that an Environmental Impact Statement (EIS) shall be prepared for an NPDES new source, public notice of the draft permit shall not be given until after a draft EIS is issued.

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

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

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

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

(ii) Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD (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) 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) 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) For NPDES permits only, any user identified in the permit application of a privately owned treatment works;

(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) 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) 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) Persons on a mailing list developed by:

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

(B) Soliciting persons for ''area lists'' from participants in past permit proceedings in that area; and

(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)(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.

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

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

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

(d) *Contents (applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA))*—(1) *All public notices.* All

public notices issued under this part shall contain the following minimum information:

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

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

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

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

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

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

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

(viii) For 404 permits only,

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

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

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

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

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

(ix) Any additional information considered necessary or proper.

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

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

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

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

(iv) For 404 permits only, a summary of major issues raised to date during the public comment period.

(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).

[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]

§ 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.

§ 124.12 Public hearings.

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

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

(3) For RCRA permits only, (i) the Director shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within 45 days of public notice under § 124.10(b)(1); (ii) whenever possible the Director shall schedule a hearing under this section at a location convenient to the nearest population center to the proposed facility;

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

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

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

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

(e)(1) At his or her discretion, the Regional Administrator may specify that RCRA or UIC permits be processed under the procedures in subpart F.

(2) For initial RCRA permits for existing HWM facilities, the Regional Administrator shall have the discretion to provide a hearing under the procedures in subpart F. The permit applicant may request such a hearing pursuant to § 124.114 no one or more issues, if the applicant explains in his request why he or she believes those issues:

(i) Are genuine issues to material fact; and (ii) determine the outcome of one or more contested permit conditions identified as such in the applicant's request, that would require extensive changes to the facility (''contested major permit conditions''). If the Regional Administrator decides to deny the request, he or she shall send to the applicant a brief written statement of his or her reasons for concluding that no such determinative issues have been presented for resolution in such a hearing.

[48 FR 14264, Apr. 1, 1983, as amended at 49 FR 17718, Apr. 24, 1984; 50 FR 6941, Feb. 19, 1985; 54 FR 258, Jan. 4, 1989]

§ 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.)

[49 FR 38051, Sept. 26, 1984]

§ 124.14 Reopening of the public comment period.

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

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

(3) On his own motion or on the request of any person, the Regional Administrator may direct that the requirements of paragraph (a)(1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (a)(1) of this section will substantially expedite the decisionmaking process. The notice of the draft permit shall state whenever this has been done.

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

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

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

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

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

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

(d) For RCRA, UIC, or NPDES permits, the Regional Administrator may also, in the circumstances described above, elect to hold further proceedings under subpart F. This decision may be combined with any of the actions enumerated in paragraph (b) of this section.

(e) Public notice of any of the above actions shall be issued under § 124.10.

[48 FR 14264, Apr. 1, 1983, as amended at 49 FR 38051, Sept. 26, 1984]

§ 124.15 Issuance and effective date of permit.

(a) After the close of the public comment period under § 124.10 on a draft permit, the Regional Administrator shall issue a final permit decision (or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29). The Regional Administrator shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for appealing a decision on a RCRA, UIC, or PSD permit or for contesting a decision on an NPDES permit or a decision to terminate a RCRA permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.

(b) A final permit decision (or a decision to deny a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29) shall become effective 30 days after the service of notice of the decision unless:

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

(2) Review is requested under § 124.19 (RCRA, UIC, and PSD permits) or an evidentiary hearing is requested under § 124.74 (NPDES permit and RCRA permit terminations); or

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

[48 FR 14264, Apr. 1, 1983, as amended at 54 FR 9607, Mar. 7, 1989]

§ 124.16 Stays of contested permit conditions.

(a) *Stays.* (1) If a request for review of a RCRA or UIC permit under § 124.19 or an NPDES permit under § 124.74 or § 124.114 is granted or if conditions of a RCRA or UIC permit are consolidated for reconsideration in an evidentiary hearing on an NPDES permit under §§ 124.74, 124.82 or 124.114, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final agency action. (No stay of a PSD permit is available under this section.) If the permit involves a new facility or new injection well, new source, new discharger or a recommencing discharger, the applicant shall be without a permit for the proposed new facility, injection well, source or discharger pending final agency action. See also § 124.60.

(2) Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions. Stayed provisions of permits for existing facilities, injection wells, and sources shall be identified by the Regional Administrator. All other provisions of the permit for the existing facility, injection well, or source shall remain fully effective and enforceable.

(b) *Stays based on cross effects.* (1) A stay may be granted based on the grounds that an appeal to the Administrator under § 124.19 of one permit may result in changes to another EPA-issued permit only when each of the permits involved has

been appealed to the Administrator and he or she has accepted each appeal.

(2) No stay of an EPA-issued RCRA, UIC, or NPDES permit shall be granted based on the staying of any State-issued permit except at the discretion of the Regional Administrator and only upon written request from the State Director.

(c) Any facility or activity holding an existing permit must:

(1) Comply with the conditions of that permit during any modification or revocation and reissuance proceeding under § 124.5; and

(2) To the extent conditions of any new permit are stayed under this section, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed.

§ 124.17 Response to comments.

(a) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* At the time that any final permit decision is issued under § 124.15, the Director shall issue a response to comments. States are only required to issue a response to comments when a final permit is issued. This response shall:

(1) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and

(2) Briefly describe and respond to all significant comments on the draft permit or the permit application (for section 404 permits only) raised during the public comment period, or during any hearing.

(b) For EPA-issued permits, any documents cited in the response to comments shall be included in the administrative record for the final permit decision as defined in § 124.18. If new points are raised or new material supplied during the public comment period, EPA may document its response to those matters by adding new materials to the administrative record.

(c) *(Applicable to State programs, see §§ 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA).)* The response to comments shall be available to the public.

§ 124.18 Administrative record for final permit when EPA is the permitting authority.

(a) The Regional Administrator shall base final permit decisions under § 124.15 on the administrative record defined in this section.

(b) The administrative record for any final permit shall consist of the administrative record for the draft permit and:

(1) All comments received during the public comment period provided under § 124.10 (including any extension or reopening under § 124.14);

(2) The tape or transcript of any hearing(s) held under § 124.12;

(3) Any written materials submitted at such a hearing;

(4) The response to comments required by § 124.17 and any new material placed in the record under that section;

(5) For NPDES new source permits only, final environmental impact statement and any supplement to the final EIS;

(6) Other documents contained in the supporting file for the permit; and

(7) The final permit.

(c) The additional documents required under paragraph (b) of this section should be added to the record as soon as possible after their receipt or publication by the Agency. The record shall be complete on the date the final permit is issued.

(d) This section applies to all final RCRA, UIC, PSD, and NPDES permits when the draft permit was subject to the administrative record requirements of § 124.9 and to all NPDES permits when the draft permit was included in a public notice after October 12, 1979.

(e) Material readily available at the issuing Regional Office, or published materials which are generally available and which are included in the administrative record under the standards of this section or of § 124.17 (''Response to comments''), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments.

§ 124.19 Appeal of RCRA, UIC, and PSD permits.

(a) Within 30 days after a RCRA, UIC, or PSD final permit decision (or a decision under § 270.29 to deny a permit for the active life of a RCRA hazardous waste management facility or unit) has been issued under § 124.15, any person who filed comments on that draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. The 30-day period within which a person may request review under this section begins with the service of notice of the Regional Administrator's action unless a later date is specified in that notice. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public

comment period (including any public hearing) to the extent required by these regulations and when appropriate, a showing that the condition in question is based on:

(1) A finding of fact or conclusion of law which is clearly erroneous, or

(2) An exercise of discretion or an important policy consideration which the Environmental Appeals Board should, in its discretion, review.

(b) The Environmental Appeals Board may also decide on its initiative to review any condition of any RCRA, UIC, or PSD permit issued under this part. The Environmental Appeals Board must act under this paragraph within 30 days of the service date of notice of the Regional Administrator's action.

(c) Within a reasonable time following the filing of the petition for review, the Environmental Appeals Board shall issue an order granting or denying the petition for review. To the extent review is denied, the conditions of the final permit decision become final agency action. Public notice of any grant of review by the Environmental Appeals Board under paragraph (a) or (b) of this section shall be given as provided in § 124.10. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent only to the person(s) requesting review.

(d) The Environmental Appeals Board may defer consideration of an appeal of a RCRA or UIC permit under this section until the completion of formal proceedings under subpart E or F relating to an NPDES permit issued to the same facility or activity upon concluding that:

(1) The NPDES permit is likely to raise issues relevant to a decision of the RCRA or UIC appeals;

(2) The NPDES permit is likely to be appealed; and

(3) *Either:* (i) The interests of both the facility or activity and the public are not likely to be materially adversely affected by the deferral; or

(ii) Any adverse effect is outweighed by the benefits likely to result from a consolidated decision on appeal.

(e) A petition to the Environmental Appeals Board under paragraph (a) of this section is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action.

(f)(1) For purposes of judicial review under the appropriate Act, final agency action occurs when a final RCRA, UIC, or PSD permit is issued or denied by EPA and agency review procedures are exhausted. A final permit decision shall be issued by the Regional Administrator:

(i) When the Environmental Appeals Board issues notice to the parties that review has been denied;

(ii) When the Environmental Appeals Board issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of remand proceedings if the proceedings are remanded, unless the Environmental Appeals Board's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

(2) Notice of any final agency action regarding a PSD permit shall promptly be published in the FEDERAL REGISTER.

(g) Motions to reconsider a final order shall be filed within ten (10) days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to § 124.2 and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless specifically so ordered by the Environmental Appeals Board.

[48 FR 14264, Apr. 1, 1983, as amended at 54 FR 9607, Mar. 7, 1989; 57 FR 5335, Feb. 13, 1992]

§ 124.20 Computation of time.

(a) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(b) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.

(c) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

(d) Whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days shall be added to the prescribed time.

§ 124.21 Effective date of part 124.

(a) Except for paragraphs (b) and (c) of this section, part 124 will become effective July 18, 1980. Because this effective date will precede the processing of any RCRA or UIC permits, part 124 will apply in its entirety to all RCRA and UIC permits.

(b) All provisions of part 124 pertaining to the RCRA program will become effective on November 19, 1980.

(c) All provisions of part 124 pertaining to the UIC program will become effective July 18, 1980, but shall not be implemented until the effective date of 40 CFR part 146.

(d) This part does not significantly change the way in which NPDES permits are processed. Since October 12, 1979, NPDES permits have been the subject to almost identical requirements in the revised NPDES regulations which were promulgated on June 7, 1979. See *44 FR 32948.* To the extent this part changes the revised NPDES permit regulations, those changes will take effect as to all permit proceedings in progress on July 3, 1980.

(e) This part also does not significantly change the way in which PSD permits are processed. For the most part, these regulations will also apply to PSD proceedings in progress on July 18, 1980. However, because it would be disruptive to require retroactively a formal administrative record for PSD permits issued without one, §§ 124.9 and 124.18 will apply to PSD permits for which draft permits were prepared after the effective date of these regulations.

Subpart B—Specific Procedures Applicable to RCRA Permits

§ 124.31 Pre-application public meeting and notice.

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a ''significant change'' is any change that would qualify as a class 3 permit modification under 40 CFR 270.42. For the purposes of this section only, ''hazardous waste management units over which EPA has permit issuance authority'' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Prior to the submission of a part B RCRA permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b) of this section, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the part B application, in accordance with 40 CFR 270.14(b).

(d) The applicant must provide public notice of the pre-application meeting at least 30 days prior to the meeting. The applicant must maintain, and provide to the permitting agency upon request, documentation of the notice.

(1) The applicant shall provide public notice in all of the following forms:

(i) *A newspaper advertisement.* The applicant shall publish a notice, fulfilling the requirements in paragraph (d)(2) of this section, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Director shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Director determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

(ii) *A visible and accessible sign.* The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph (d)(2) of this section. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

(iii) *A broadcast media announcement.* The applicant shall broadcast a notice, fulfilling the requirements in paragraph (d)(2) of this section, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Director.

(iv) *A notice to the permitting agency.* The applicant shall send a copy of the newspaper notice to the permitting agency and to the appropriate units of State and local government, in accordance with § 124.10(c)(1)(x).

(2) The notices required under paragraph (d)(1) of this section must include:

(i) The date, time, and location of the meeting;

(ii) A brief description of the purpose of the meeting;

(iii) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

(iv) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and

(v) The name, address, and telephone number of a contact person for the applicant.

[60 FR 63431, Dec. 11, 1995]

§ 124.32 Public notice requirements at the application stage.

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units under 40 CFR 270.51. For the purposes of this section only, ''hazardous waste management units over which EPA has permit issuance authority'' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Notification at application submittal.

(1) The Director shall provide public notice as set forth in § 124.10(c)(1)(ix), and notice to appropriate units of State and local government as set forth in § 124.10(c)(1)(x), that a part B permit application has been submitted to the Agency and is available for review.

(2) The notice shall be published within a reasonable period of time after the application is received by the Director. The notice must include:

(i) The name and telephone number of the applicant's contact person;

(ii) The name and telephone number of the permitting agency's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

(iii) An address to which people can write in order to be put on the facility mailing list;

(iv) The location where copies of the permit application and any supporting documents can be viewed and copied;

(v) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

(vi) The date that the application was submitted.

(c) Concurrent with the notice required under § 124.32(b) of this subpart, the Director must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the permitting agency's office.

[60 FR 63432, Dec. 11, 1995]

§ 124.33 Information repository.

(a) *Applicability.* The requirements of this section apply to all applications seeking RCRA permits for hazardous waste management units over which EPA has permit issuance authority. For the purposes of this section only, ''hazardous waste management units over which EPA has permit issuance authority'' refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.

(b) The Director may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Director shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Director determines, at any time after submittal of a permit application, that there is a need for a repository, then the Director shall notify the facility that it must establish and maintain an information repository. (See 40 CFR 270.30(m) for similar provisions relating to the information repository during the life of a permit).

(c) The information repository shall contain all documents, reports, data, and information deemed necessary by the Director to fulfill the purposes for which the repository is established. The Director shall have the discretion to limit the contents of the repository.

(d) The information repository shall be located and maintained at a site chosen by the facility. If the Director finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Director shall specify a more appropriate site.

(e) The Director shall specify requirements for informing the public about the information repository. At a minimum, the Director shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

(f) The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the Director. The Director may close the repository at his or her discretion, based on the factors in paragraph (b) of this section.

[60 FR 63432, Dec. 11, 1995]

Subpart C—Specific Procedures Applicable to PSD Permits

§ 124.41 Definitions applicable to PSD permits.

Whenever PSD permits are processed under this part, the following terms shall have the following meanings:

Administrator, EPA, and *Regional Administrator* shall have the meanings set forth in § 124.2, except when EPA has delegated authority to administer those regulations to another agency under the applicable subsection of 40 CFR 52.21, the term *EPA* shall mean the delegate agency and the term *Regional Administrator* shall mean the chief administrative officer of the delegate agency.

Application means an application for a PSD permit.

Appropriate Act and Regulations means the Clean Air Act and applicable regulations promulgated under it.

Approved program means a State implementation plan providing for issuance of PSD permits which has been approved by EPA under the Clean Air Act and 40 CFR part 51. An *approved State* is one administering an *approved program. State Director* as used in § 124.4 means the person(s) responsible for issuing PSD permits under an approved program, or that person's delegated representative.

Construction has the meaning given in 40 CFR 52.21.

Director means the Regional Administrator.

Draft permit shall have the meaning set forth in § 124.2.

Facility or activity means a *major PSD stationary source* or *major PSD modification.*

Federal Land Manager has the meaning given in 40 CFR 52.21.

Indian Governing Body has the meaning given in 40 CFR 52.21.

Major PSD modification means a *major modification* as defined in 40 CFR 52.21.

Major PSD stationary source means a *major stationary source* as defined in 40 CFR 52.21(b)(1).

Owner or operator means the owner or operator of any facility or activity subject to regulation under 40 CFR 52.21 or by an approved State.

Permit or *PSD permit* means a permit issued under 40 CFR 52.21 or by an approved State.

Person includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent or employee thereof.

Regulated activity or *activity subject to regulation* means a *major PSD stationary source* or *major PSD modification.*

Site means the land or water area upon which a *major PSD stationary source* or *major PSD modification* is physically located or conducted, including but not limited to adjacent land used for utility systems; as repair, storage, shipping or processing areas; or otherwise in connection with the *major PSD stationary source* or *major PSD modification.*

State means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

§ 124.42 Additional procedures for PSD permits affecting Class I areas.

(a) The Regional Administrator shall provide notice of any permit application for a proposed major PSD stationary source or major PSD modification the emissions from which would affect a Class I area to the Federal Land Manager, and the Federal official charged with direct responsibility for management of any lands within such area. The Regional Administrator shall provide such notice promptly after receiving the application.

(b) Any demonstration which the Federal Land Manager wishes to present under 40 CFR 52.21(q)(3), and any variances sought by an owner or operator under § 52.21(q)(4) shall be submitted in writing, together with any necessary supporting analysis, by the end of the public comment period under § 124.10 or § 124.118. (40 CFR 52.21(q)(3) provides for denial of a PSD permit to a facility or activity when the Federal Land Manager demonstrates that its emissions would adversely affect a Class I area even though the applicable increments would not be exceeded. 40 CFR 52.21(q)(4) conversely authorizes EPA, with the concurrence of the Federal Land Manager and State responsible, to grant certain variances from the otherwise applicable emission limitations to a facility or activity whose emissions would affect a Class I area.)

(c) Variances authorized by 40 CFR 52.21 (q)(5) through (q)(7) shall be handled as specified in those paragraphs and shall not be subject to this part. Upon receiving appropriate documentation of a variance properly granted under any of these provisions, the Regional Administrator shall enter the variance in the administrative record. Any decisions later made in proceedings under this part concerning that permit shall be consistent with the conditions of that variance.

Subpart D—Specific Procedures Applicable to NPDES Permits

§ 124.51 Purpose and scope.

(a) This subpart sets forth additional requirements and procedures for decisionmaking for the NPDES program.

(b) Decisions on NPDES variance requests ordinarily will be made during the permit issuance process. Variances and other changes in permit conditions ordinarily will be decided through the same notice-and-comment and hearing procedures as the basic permit.

(c) As stated in 40 CFR 131.4, an Indian Tribe that meets the statutory criteria which authorize EPA to treat the Tribe in a manner similar to that in which it treats a State for purposes of the Water Quality Standards program is likewise qualified for such treatment for purposes of State certification of water quality standards pursuant to section 401(a)(1) of the Act and subpart D of this part.

[48 FR 14264, Apr. 1, 1983, as amended at 58 FR 67983, Dec. 22, 1993; 59 FR 64343, Dec. 14, 1994]

§ 124.52 Permits required on a case-by-case basis.

(a) Various sections of part 122, subpart B allow the Director to determine, on a case-by-case basis, that certain concentrated animal feeding operations (§ 122.23), concentrated aquatic animal production facilities (§ l22.24), storm water discharges (§ 122.26), and certain other facilities covered by general permits (§ 122.28) that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(b) Whenever the Regional Administrator decides that an individual permit is required under this section, except as provided in paragraph (c) of this section, the Regional Administrator shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit under § 122.21 within 60 days of notice, unless permission for a later date is granted by the Regional Administrator. The question whether the designation was proper will remain open for consideration during the public comment period under § 124.11 or § 124.118 and in any subsequent hearing.

(c) Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section (*see* 40 CFR 122.26 (a)(1)(v), (c)(1)(v), and (g)(1)(i)), the Regional Administrator may require the discharger to submit a permit application or other information regarding the discharge under section 308 of the CWA. In requiring such information, the Regional Administrator shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under 40 CFR 122.26 (a)(1)(v) and (c)(1)(v) within 60 days of notice or under 40 CFR 122.26(g)(1)(i) within 180 days of notice, unless permission for a later date is granted by the Regional Administrator. The question whether the initial designation was proper will remain open for consideration during the public comment period under § 124.11 or § 124.118 and in any subsequent hearing.

[55 FR 48075, Nov. 16, 1990, as amended at 60 FR 17957, Apr. 7, 1995; 60 FR 19464, Apr. 18, 1995; 60 FR 40235, Aug. 7, 1995]

§ 124.53 State certification.

(a) Under CWA section 401(a)(1), EPA may not issue a permit until a certification is granted or waived in accordance with that section by the State in which the discharge originates or will originate.

(b) Applications received without a State certification shall be forwarded by the Regional Administrator to the certifying State agency with a request that certification be granted or denied.

(c) If State certification has not been received by the time the draft permit is prepared, the Regional Administrator shall send the certifying State agency:

(1) A copy of a draft permit;

(2) A statement that EPA cannot issue or deny the permit until the certifying State agency has granted or denied certification under § 124.55, or waived its right to certify; and

(3) A statement that the State will be deemed to have waived its right to certify unless that right is exercised within a specified reasonable time not to exceed 60 days from the date the draft permit is mailed to the certifying State agency unless the Regional Administrator finds that unusual circumstances require a longer time.

(d) State certification shall be granted or denied within the reasonable time specified under paragraph (c)(3) of this section. The State shall send a notice of its action, including a copy of any certification, to the applicant and the Regional Administrator.

(e) State certification shall be in writing and shall include:

(1) Conditions which are necessary to assure compliance with the applicable provisions of CWA sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law;

(2) When the State certifies a draft permit instead of a permit application, any conditions more stringent than those in the draft permit which the State finds necessary to meet the requirements listed in paragraph (e)(1) of this section. For each

more stringent condition, the certifying State agency shall cite the CWA or State law references upon which that condition is based. Failure to provide such a citation waives the right to certify with respect to that condition; and

(3) A statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of State law, including water quality standards. Failure to provide this statement for any condition waives the right to certify or object to any less stringent condition which may be established during the EPA permit issuance process.

§ 124.54 Special provisions for State certification and concurrence on applications for section 301(h) variances.

(a) When an application for a permit incorporating a variance request under CWA section 301(h) is submitted to a State, the appropriate State official shall either:

(1) Deny the request for the CWA section 301(h) variance (and so notify the applicant and EPA) and, if the State is an approved NPDES State and the permit is due for reissuance, process the permit application under normal procedures; or

(2) Forward a certification meeting the requirements of § 124.53 to the Regional Administrator.

(b) When EPA issues a tentative decision on the request for a variance under CWA section 301(h), and no certification has been received under paragraph (a) of this section, the Regional Administrator shall forward the tentative decision to the State in accordance with § 124.53(b) specifying a reasonable time for State certification and concurrence. If the State fails to deny or grant certification and concurrence under paragraph (a) of this section within such reasonable time, certification shall be waived and the State shall be deemed to have concurred in the issuance of a CWA section 301(h) variance.

(c) Any certification provided by a State under paragraph (a)(2) of this section shall constitute the State's concurrence (as required by section 301(h)) in the issuance of the permit incorporating a section 301(h) variance subject to any conditions specified therein by the State. CWA section 301(h) certification and concurrence under this section will not be forwarded to the State by EPA for recertification after the permit issuance process; States must specify any conditions required by State law, including water quality standards, in the initial certification.

§ 124.55 Effect of State certification.

(a) When certification is required under CWA section 401(a)(1) no final permit shall be issued:

(1) If certification is denied, or

(2) Unless the final permit incorporates the requirements specified in the certification under § 124.53(d)(1) and (2).

(b) If there is a change in the State law or regulation upon which a certification is based, or if a court of competent jurisdiction or appropriate State board or agency stays, vacates, or remands a certification, a State which has issued a certification under § 124.53 may issue a modified certification or notice of waiver and forward it to EPA. If the modified certification is received before final agency action on the permit, the permit shall be consistent with the more stringent conditions which are based upon State law identified in such certification. If the certification or notice of waiver is received after final agency action on the permit, the Regional Administrator may modify the permit on request of the permittee only to the extent necessary to delete any conditions based on a condition in a certification invalidated by a court of competent jurisdiction or by an appropriate State board or agency.

(c) A State may not condition or deny a certification on the grounds that State law allows a less stringent permit condition. The Regional Administrator shall disregard any such certification conditions, and shall consider those conditions or denials as waivers of certification.

(d) A condition in a draft permit may be changed during agency review in any manner consistent with a certification meeting the requirements of § 124.53(d). No such changes shall require EPA to submit the permit to the State for recertification.

(e) Review and appeals of limitations and conditions attributable to State certification shall be made through the applicable procedures of the State and may not be made through the procedures in this part.

(f) Nothing in this section shall affect EPA's obligation to comply with § 122.47. See CWA section 301(b)(1)(C).

§ 124.56 Fact sheets.

(Applicable to State programs, see § 123.25 (NPDES).) In addition to meeting the requirements of § 124.8, NPDES fact sheets shall contain the following:

(a) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal as required by § 122.44 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

(b)(1) When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

(i) Limitations to control toxic pollutants under § 122.44(e);

(ii) Limitations on internal waste streams under § 122.45(i); or

(iii) Limitations on indicator pollutants under §125.3(g).

(iv) Limitations set on a case-by-case basis under § 125.3 (c)(2) or (c)(3), or pursuant to Section 405(d)(4) of the CWA.

(2) For every permit to be issued to a treatment works owned by a person other than a State or municipality, an explanation of the Director's decision on regulation of users under § 122.44(m).

(c) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application; and

(d) For EPA-issued NPDES permits, the requirements of any State certification under § 124.53.

(e) For permits that include a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix), a brief description of how each of the required elements of the land application plan are addressed in the permit.

[48 FR 14264, Apr. 1, 1983, as amended at 49 FR 38051, Sept. 26, 1984; 54 FR 18786, May 2, 1989]

§ 124.57 Public notice.

(a) *Section 316(a) requests (applicable to State programs, see § 123.25).* In addition to the information required under § 124.10(d)(1), public notice of an NPDES draft permit for a discharge where a CWA section 316(a) request has been filed under § 122.21(l) shall include:

(1) A statement that the thermal component of the discharge is subject to effluent limitations under CWA section 301 or 306 and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 or 306;

(2) A statement that a section 316(a) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under section 316(a) and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and

(3) If the applicant has filed an early screening request under § 125.72 for a section 316(a) variance, a statement that the applicant has submitted such a plan.

(b) *Evidentiary hearings under subpart E.* In addition to the information required under § 124.10(d)(2), public notice of a hearing under subpart E shall include:

(1) Reference to any public hearing under § 124.12 on the disputed permit;

(2) Name and address of the person(s) requesting the evidentiary hearing;

(3) A statement of the following procedures:

(i) Any person seeking to be a party must file a request to be admitted as a party to the hearing within 15 days of the date of publication of the notice;

(ii) Any person seeking to be a party may, subject to the requirements of § 124.76, propose material issues of fact or law not already raised by the original requester or another party;

(iii) The conditions of the permit(s) at issue may be amended after the evidentiary hearing and any person interested in those permit(s) must request to be a party in order to preserve any right to appeal or otherwise contest the final administative decision.

(c) *Non-adversary panel procedures under subpart F.* (1) In addition to the information required under § 124.10(d)(2), mailed public notice of a draft permit to be processed under subpart F shall include a statement that any hearing shall be held under subpart F (panel hearing).

(2) Mailed public notice of a panel hearing under subpart F shall include:

(i) Name and address of the person requesting the hearing, or a statement that the hearing is being held by order of the Regional Administrator, and the name and address of each known party to the hearing;

(ii) A statement whether the recommended decision will be issued by the Presiding Officer or by the Regional Administrator;

(iii) The due date for filing a written request to participate in the hearing under § 124.117; and

(iv) The due date for filing comments under § 124.118.

[48 FR 14264, Apr. 1, 1983; 50 FR 6941, Feb. 19, 1985]

§ 124.58 [Reserved]

§ 124.59 Conditions requested by the Corps of Engineers and other government agencies.

(Applicable to State programs, see § 123.25 (NPDES).) (a) If during the comment period for an NPDES draft permit, the District Engineer advises the Director in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advised the Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall include the specified conditions in the permit. Review or appeal of denial of a per-

mit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this part. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the NPDES permit for the duration of that stay.

(b) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other State or Federal agency with jurisdiction over fish, wildlife, or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of § 122.49 and of the CWA.

(c) In appropriate cases the Director may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

[48 FR 14264, Apr. 1, 1983, as amended at 54 FR 258, Jan. 4, 1989]

§ 124.60 Issuance and effective date and stays of NPDES permits.

In addition to the requirements of §124.15, the following provisions apply to NPDES permits and to RCRA or UIC permits to the extent those permits may have been consolidated with an NPDES permit in a formal hearing:

(a)(1) If a request for a formal hearing is granted under § 124.75 or § 124.114 regarding the initial permit issued for a new source, a new discharger, or a recommencing discharger, or if a petition for review of the denial of a request for a formal hearing with respect to such a permit is timely filed with the Administrator under § 124.91, the applicant shall be without a permit pending final Agency action under § 124.91.

(2) Whenever a source or facility subject to this paragraph or to paragraph (c)(7) of this section has received a final permit under § 124.15 which is the subject of a hearing request under § 124.74 or a formal hearing under § 124.75, the Presiding Officer, on motion by the source or facility, may issue an order authorizing it to begin discharges (or in the case of RCRA permits, construction or operations) if it complies with all uncontested conditions of the final permit and all other appropriate conditions imposed by the Presiding Officer during the period until final agency action. The motion shall be granted if no party opposes it, or if the source or facility demonstrates that:

(i) It is likely to receive a permit to discharge (or in the case of RCRA permits, to operate or construct) at that site;

(ii) The environment will not be irreparably harmed if the source or facility is allowed to begin discharging (or in the case of RCRA, to begin operating or construction) in compliance with the conditions of the Presiding Officer's order pending final agency action; and

(iii) Its discharge (or in the case of RCRA, its operation or construction) pending final agency action is in the public interest.

(3) *For RCRA only*, no order under paragraph (a)(2) may authorize a facility to commence construction if any party has challenged a construction-related permit term or condition.

(b) The Regional Administrator, at any time prior to the rendering of an initial decision in a formal hearing on a permit, may withdraw the permit and prepare a new draft permit under § 124.6 addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part. Any portions of the permit which are not withdrawn and which are not stayed under this section shall remain in effect.

(c)(1) If a request for a formal hearing is granted in whole or in part under § 124.75 regarding a permit for an existing source, or if a petition for review of the denial of a request for a formal hearing with respect to that permit is timely filed with the Administrator under § 124.91, the force and effect of the contested conditions of the final permit shall be stayed. The Regional Administrator shall notify, in accordance with § 124.75, the discharger and all parties of the uncontested conditions of the final permit that are enforceable obligations of the discharger.

(2) When effluent limitations are contested, but the underlying control technology is not, the notice shall identify the installation of the technology in accordance with the permit compliance schedules (if uncontested) as an uncontested, enforceable obligation of the permit.

(3) When a combination of technologies is contested, but a portion of the combination is not contested, that portion shall be identified as uncontested if compatible with the combination of technologies proposed by the requester.

(4) Uncontested conditions, if inseverable from a contested condition, shall be considered contested.

(5) Uncontested conditions shall become enforceable 30 days after the date of notice under paragraph (c)(1) of this section granting the request. If, however, a request for a formal hearing on a condition was denied and the denial is appealed under § 124.91, then that condition shall become enforceable upon the date of the notice of

the Administrator's decision on the appeal if the denial is affirmed, or shall be stayed, in accordance with this section, if the Administrator reverses the denial and grants the evidentiary hearing.

(6) Uncontested conditions shall include:

(i) Preliminary design and engineering studies or other requirements necessary to achieve the final permit conditions which do not entail substantial expenditures;

(ii) Permit conditions which will have to be met regardless of which party prevails at the evidentiary hearing;

(iii) When the discharger proposed a less stringent level of treatment than that contained in the final permit, any permit conditions appropriate to meet the levels proposed by the discharger, if the measures required to attain that less stringent level of treatment are consistent with the measures required to attain the limits proposed by any other party; and

(iv) Construction activities, such as segregation of waste streams or installation of equipment, which would partially meet the final permit conditions and could also be used to achieve the discharger's proposed alternative conditions.

(7) If for any offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig which has never received a finally effective permit to discharge at a ''site,'' but which is not a ''new discharger'' or a ''new source,'' the Regional Administrator finds that compliance with certain permit conditions may be necessary to avoid irreparable environmental harm during the administrative review, he may specify in the statement of basis or fact sheet that those conditions, even if contested, shall remain enforceable obligations of the discharger during administrative review unless otherwise modified by the Presiding Officer under paragraph (a)(2) of this section.

(d) If at any time after a hearing is granted and after the Regional Administrator's notice under paragraph (c)(1) of this section it becomes clear that a permit requirement is no longer contested, any party may request the Presiding Officer to issue an order identifying the requirements as uncontested. The requirement identified in such order shall become enforceable 30 days after the issuance of the order.

(e) When a formal hearing is granted under § 124.75 on an application for a renewal of an existing permit, all provisions of the existing permit as well as uncontested provisions of the new permit, shall continue fully enforceable and effective until final agency action under § 124.91. (See § 122.6) Upon written request from the applicant, the Regional Administrator may delete requirements from the existing permit which unnecessarily duplicate uncontested provisions of the new permit.

(f) When issuing a finally effective NPDES permit the conditions of which were the subject of a formal hearing under subpart E or F, the Regional Administrator shall extend the permit compliance schedule to the extent required by a stay under this section provided that no such extension shall be granted which would:

(1) Result in the violation of an applicable statutory deadline; or

(2) Cause the permit to expire more than 5 years after issuance under § 124.15(a).

NOTE: Extensions of compliance schedules under § 124.60(f)(2) will not automatically be granted for a period equal to the period the stay is in effect for an effluent limitation. For example, if both the Agency and the discharger agree that a certain treatment technology is required by the CWA where guidelines do not apply, but a hearing is granted to consider the effluent limitations which the technology will achieve, requirements regarding installation of the underlying technology will not be stayed during the hearing. Thus, unless the hearing extends beyond the final compliance date in the permit, it will not ordinarily be necessary to extend the compliance schedule. However, when application of an underlying technology is challenged, the stay for installation requirements relating to that technology would extend for the duration of the hearing.

(g) For purposes of judicial review under CWA section 509(b), final agency action on a permit does not occur unless and until a party has exhausted its administrative remedies under subparts E and F and § 124.91. Any party which neglects or fails to seek review under § 124.91 thereby waives its opportunity to exhaust available agency remedies.

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

[48 FR 14264, Apr. 1, 1983, as amended at 48 FR 39620, Sept. 1, 1983]

§ 124.61 Final environmental impact statement.

No final NPDES permit for a new source shall be issued until at least 30 days after the date of issuance of a final environmental impact statement if one is required under 40 CFR 6.805.

§ 124.62 Decision on variances.

(*Applicable to State programs, see § 123.25 (NPDES).)*

(a) The Director may grant or deny requests for the following variances (subject to EPA objection under § 123.44 for State permits):

(1) Extensions under CWA section 301(i) based on delay in completion of a publicly owned treatment works;

(2) After consultation with the Regional Administrator, extensions under CWA section 301(k) based on the use of innovative technology; or

(3) Variances under CWA section 316(a) for thermal pollution.

(b) The State Director may deny, or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

(1) A variance based on the economic capability of the applicant under CWA section 301(c); or

(2) A variance based on water quality related effluent limitations under CWA section 302(b)(2).

(c) The Regional Administrator may deny, forward, or submit to the EPA Office Director for Water Enforcement and Permits with a recommendation for approval, a request for a variance listed in paragraph (b) of this section that is forwarded by the State Director, or that is submitted to the Regional Administrator by the requester where EPA is the permitting authority.

(d) The EPA Office Director for Water Enforcement and Permits may approve or deny any variance request submitted under paragraph (c) of this section. If the Office Director approves the variance, the Director may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under § 124.64.

(e) The State Director may deny or forward to the Administrator (or his delegate) with a written concurrence a completed request for:

(1) A variance based on the presence of ''fundamentally different factors'' from those on which an effluent limitations guideline was based;

(2) A variance based upon certain water quality factors under CWA section 301(g).

(f) The Administrator (or his delegate) may grant or deny a request for a variance listed in paragraph (e) of this section that is forwarded by the State Director, or that is submitted to EPA by the requester where EPA is the permitting authority. If the Administrator (or his delegate) approves the variance, the State Director or Regional Administrator may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that decision under § 124.64.

[48 FR 14264, Apr. 1, 1983; 50 FR 6941, Feb. 19, 1985, as amended at 51 FR 16030, Apr. 30, 1986; 54 FR 256, 258, Jan. 4, 1989]

§ 124.63 Procedures for variances when EPA is the permitting authority.

(a) In States where EPA is the permit issuing authority and a request for a variance is filed as required by § 122.21, the request shall be processed as follows:

(1)(i) If, at the time, that a request for a variance based on the presence of fundamentally different factors or on section 301(g) of the CWA is submitted, the Regional Administrator has received an application under § 124.3 for issuance or renewal of that permit, but has not yet prepared a draft permit under § 124.6 covering the discharge in question, the Administrator (or his delegate) shall give notice of a tentative decision on the request at the time the notice of the draft permit is prepared as specified in § 124.10, unless this would significantly delay the processing of the permit. In that case the processing of the variance request may be separated from the permit in accordance with paragraph (a)(3) of this section, and the processing of the permit shall proceed without delay.

(ii) If, at the time, that a request for a variance under sections 301(c) or 302(b)(2) of the CWA is submitted, the Regional Administrator has received an application under § 124.3 for issuance or renewal of that permit, but has not yet prepared a draft permit under § 124.6 covering the discharge in question, the Regional Administrator, after obtaining any necessary concurrence of the EPA Deputy Assistant Administrator for Water Enforcement under § 124.62, shall give notice of a tentative decision on the request at the time the notice of the draft permit is prepared as specified in § 124.10, unless this would significantly delay the processing of the permit. In that case the processing of the variance request may be separated from the permit in accordance with paragraph (a)(3) of this section, and the processing of the permit shall proceed without delay.

(2) If, at the time that a request for a variance is filed the Regional Administrator has given notice under § 124.10 of a draft permit covering the discharge in question, but that permit has not yet become final, administrative proceedings concerning that permit may be stayed and the Regional Administrator shall prepare a new draft permit including a tentative decision on the request, and the fact sheet required by § 124.8. However, if this will significantly delay the processing of the existing draft permit or the Regional Administrator, for other reasons, considers combining the variance request and the existing draft permit inadvisable, the request may be separated from the permit in accordance with paragraph (a)(3) of this section, and the administrative dispositon of the existing draft permit shall proceed without delay.

(3) If the permit has become final and no application under § 124.3 concerning it is pending or if the variance request has been separated from a draft permit as described in paragraphs (a) (1) and (2) of this section, the Regional Administrator may prepare a new draft permit and give notice of it under § 124.10. This draft permit shall be accompanied by the fact sheet required by § 124.8 except that the only matters considered shall relate to the requested variance.

[48 FR 14264, Apr. 1, 1983, as amended at 51 FR 16030, Apr. 30, 1986]

§ 124.64 Appeals of variances.

(a) When a State issues a permit on which EPA has made a variance decision, separate appeals of the State permit and of the EPA variance decision are possible. If the owner or operator is challenging the same issues in both proceedings, the Regional Administrator will decide, in consultation with State officials, which case will be heard first.

(b) Variance decisions made by EPA may be appealed under either subpart E or F, provided the requirements of the applicable subpart are met. However, whenever the basic permit decision is eligible only for an evidentiary hearing under subpart E while the variance decision is eligible only for a panel hearing under subpart F, the issues relating to both the basic permit decision and the variance decision shall be considered in the subpart E proceeding. No subpart F hearing may be held if a subpart E hearing would be held in addition. See § 124.111(b).

(c) *Stays for section 301(g) variances.* If a request for an evidentiary hearing is granted on a variance requested under CWA section 301(g), or if a petition for review of the denial of a request for the hearing is filed under § 124.91, any otherwise applicable standards and limitations under CWA section 301 shall not be stayed unless:

(1) In the judgment of the Regional Administrator, the stay or the variance 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, or synergistic propensities; and

(2) In the judgment of the Regional Administrator, there is a substantial likelihood that the discharger will succeed on the merits of its appeal; and

(3) The discharger files a bond or other appropriate security which is required by the Regional Administrator to assure timely compliance with the requirements from which a variance is sought in the event that the appeal is unsuccessful.

(d) Stays for variances other than section 301(g) are governed by § 124.60.

§ 124.65 [Reserved]

§ 124.66 Special procedures for decisions on thermal variances under section 316(a).

(a) Except as provided in § 124.65, the only issues connected with issuance of a particular permit on which EPA will make a final Agency decision before the final permit is issued under §§ 124.15 and 124.60 are whether alternative effluent limitations would be justified under CWA section 316(a) and whether cooling water intake structures will use the best available technology under section 316(b). Permit applicants who wish an early decision on these issues should request it and furnish supporting reasons at the time their permit applications are filed under § 122.21. The Regional Administrator will then decide whether or not to make an early decision. If it is granted, both the early decision on CWA section 316 (a) or (b) issues and the grant of the balance of the permit shall be considered permit issuance under these regulations, and shall be subject to the same requirements of public notice and comment and the same opportunity for an evidentiary or panel hearing under subpart E or F.

(b) If the Regional Administrator, on review of the administrative record, determines that the information necessary to decide whether or not the CWA section 316(a) issue is not likely to be available in time for a decision on permit issuance, the Regional Administrator may issue a permit under § 124.15 for a term up to 5 years. This permit shall require achievement of the effluent limitations initially proposed for the thermal component of the discharge no later than the date otherwise required by law. However, the permit shall also afford the permittee an opportunity to file a demonstration under CWA section 316(a) after conducting such studies as are required under 40 CFR part 125, subpart H. A new discharger may not exceed the thermal effluent limitation which is initially proposed unless and until its CWA section 316(a) variance request is finally approved.

(c) Any proceeding held under paragraph (a) of this section shall be publicly noticed as required by § 124.10 and shall be conducted at a time allowing the permittee to take necessary measures to meet the final compliance date in the event its request for modification of thermal limits is denied.

(d) Whenever the Regional Administrator defers the decision under CWA section 316(a), any decision under section 316(b) may be deferred.

Subpart E—Evidentiary Hearings for EPA-Issued NPDES Permits and EPA-Terminated RCRA Permits

§ 124.71 Applicability.

(a) The regulations in this subpart govern all formal hearings conducted by EPA under CWA sections 402 and 405(f), except those conducted under subpart F. They also govern all evidentiary hearings conducted under RCRA section 3008 in connection with the termination of a RCRA permit. This includes termination of interim status for failure to furnish information needed to make a final decision. A formal hearing is available to challenge any NPDES permit issued under § 124.15 except for a general permit. Persons affected by a general permit may not challenge the conditions of a general permit as of right in further agency proceedings. They may instead either challenge the general permit in court, or apply for an individual NPDES permit under § 122.21 as authorized in § 122.28 and then request a formal hearing on the issuance or denial of an individual permit. (The Regional Administrator also has the discretion to use the procedures of subpart F for general permits. See § 124.111).

(b) In certain cases, evidentiary hearings under this subpart may also be held on the conditions of UIC permits, or of RCRA permits which are being issued, modified, or revoked and reissued, rather than terminated or suspended. This will occur when the conditions of the UIC or RCRA permit in question are closely linked with the conditions of an NPDES permit as to which an evidentiary hearing has been granted. See § 124.74(b)(2). Any interested person may challenge the Regional Administrator's initial new source determination by requesting an evidentiary hearing under this part. See § 122.29.

(c) PSD permits may never be subject to an evidentiary hearing under this subpart. Section 124.74(b)(2)(iv) provides only for consolidation of PSD permits with other permits subject to a panel hearing under subpart F.

[48 FR 14264, Apr. 1, 1983, as amended at 54 FR 18786, May 2, 1989]

§ 124.72 Definitions.

For the purpose of this subpart, the following definitions are applicable:

Environmental Appeals Board shall mean the Board within the Agency described in § 1.25 of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in NPDES appeals filed under this subpart. An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation does not preclude the Environmental Appeals Board from referring an appeal or a motion to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and the rules in this subpart referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

Hearing Clerk means The Hearing Clerk, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Party means the EPA trial staff under § 124.78 and any person whose request for a hearing under § 124.74 or whose request to be admitted as a party or to intervene under § 124.79 or § 124.117 has been granted.

Presiding Officer for the purposes of this subpart means an Administrative Law Judge appointed under 5 U.S.C. 3105 and designated to preside at the hearing. Under subpart F other persons may also serve as hearing officers. See § 124.119.

Regional Hearing Clerk means an employee of the Agency designated by a Regional Administrator to establish a repository for all books, records, documents, and other materials relating to hearings under this subpart.

[48 FR 14264, Apr. 1, 1983, as amended at 57 FR 5335, Feb. 13, 1992]

§ 124.73 Filing and submission of documents.

(a) All submissions authorized or required to be filed with the Agency under this subpart shall be filed with the Regional Hearing Clerk, unless otherwise provided by regulation. Submissions shall be considered filed on the date on which they are mailed or delivered in person to the Regional Hearing Clerk.

(b) All submissions shall be signed by the person making the submission, or by an attorney or other authorized agent or representative.

(c)(1) All data and information referred to or in any way relied upon in any submission shall be included in full and may not be incorporated by reference, unless previously submitted as part of the administrative record in the same proceeding. This requirement does not apply to State or Federal statutes and regulations, judicial decisions published in a national reporter system, officially issued EPA documents of general applicability, and any other generally available reference material which may be incorporated by reference. Any party incorporating materials by reference shall provide copies upon request by the Regional Administrator or the Presiding Officer.

(2) If any part of the material submitted is in a foreign language, it shall be accompanied by an English translation verified under oath to be complete and accurate, together with the name, address, and a brief statement of the qualifications of the person making the translation. Translations of literature or other material in a foreign language shall be accompanied by copies of the original publication.

(3) Where relevant data or information is contained in a document also containing irrelevant matter, either the irrelevant matter shall be deleted or the relevant portions shall be indicated.

(4) Failure to comply with the requirements of this section or any other requirement in this subpart may result in the noncomplying portions of the submission being excluded from consideration. If the Regional Administrator or the Presiding Officer, on motion by any party or *sua sponte*, determines that a submission fails to meet any requirement of this subpart, the Regional Administrator or Presiding Officer shall direct the Regional Hearing Clerk to return the submission, together with a reference to the applicable regulations. A party whose materials have been rejected has 14 days to correct the errors and resubmit, unless the Regional Administrator or the Presiding Officer finds good cause to allow a longer time.

(d) The filing of a submission shall not mean or imply that it in fact meets all applicable requirements or that it contains reasonable grounds for the action requested or that the action requested is in accordance with law.

(e) The original of all statements and documents containing factual material, data, or other information shall be signed in ink and shall state the name, address, and the representative capacity of the person making the submission.

§ 124.74 Requests for evidentiary hearing.

(a) Within 30 days following the service of notice of the Regional Administrator's final permit decision under § 124.15, any interested person may submit a request to the Regional Administrator under paragraph (b) of this section for an evidentiary hearing to reconsider or contest that decision. If such a request is submitted by a person other than the permittee, the person shall simultaneously serve a copy of the request on the permittee.

(b)(1) In accordance with § 124.76, such requests shall state each legal or factual question alleged to be at issue, and their relevance to the permit decision, together with a designation of the specific factual areas to be adjudicated and the hearing time estimated to be necessary for adjudication. Information supporting the request or other written documents relied upon to support the request shall be submitted as required by § 124.73 unless they are already part of the administrative record required by § 124.18.

NOTE: This paragraph allows the submission of requests for evidentiary hearings even though both legal and factual issues may be raised, or only legal issues may be raised. In the latter case, because no factual issues were raised, the Regional Administrator would be required to deny the request. However, on review of the denial the Environmental Appeals Board is authorized by § 124.91(a)(1) to review policy or legal conclusions of the Regional Administrator. EPA is requiring an appeal to the Environmental Appeals Board even of purely legal issues involved in a permit decision to ensure that the Environmental Appeals Board will have an opportunity to review any permit before it will be final and subject to judicial review.

(2) Persons requesting an evidentiary hearing on an NPDES permit under this section may also request an evidentiary hearing on a RCRA or UIC permit, PSD permits may never be made part of an evidentiary hearing under subpart E. This request is subject to all the requirements of paragraph (b)(1) of this section and in addition will be granted only if:

(i) Processing of the RCRA or UIC permit at issue was consolidated with the processing of the NPDES permit as provided in § 124.4;

(ii) The standards for granting a hearing on the NPDES permit are met;

(iii) The resolution of the NPDES permit issues is likely to make necessary or appropriate modification of the RCRA or UIC permit; and

(iv) If a PSD permit is involved, a permittee who is eligible for an evidentiary hearing under subpart E on his or her NPDES permit requests that the formal hearing be conducted under the procedures of subpart F and the Regional Administrator finds that consolidation is unlikly to delay final permit issuance beyond the PSD one-year statutory deadline.

(c) These requests shall also contain:

(1) The name, mailing address, and telephone number of the person making such request;

(2) A clear and concise factual statement of the nature and scope of the interest of the requester;

(3) The names and addresses of all persons whom the requester represents; and

(4) A statement by the requester that, upon motion of any party granted by the Presiding Officer, or upon order of the Presiding Officer *sua sponte* without cost or expense to any other party, the requester shall make available to appear and testify, the following:

(i) The requester;

(ii) All persons represented by the requester; and

(iii) All officers, directors, employees, consultants, and agents of the requester and the persons represented by the requester.

(5) Specific references to the contested permit conditions, as well as suggested revised or alternative permit conditions (including permit denials) which, in the judgment of the requester, would be required to implement the purposes and policies of the CWA.

(6) In the case of challenges to the application of control or treatment technologies identified in the statement of basis or fact sheet, identification of the basis for the objection, and the alternative technologies or combination of technologies which the requester believes are necessary to meet the requirements of the CWA.

(7) Identification of the permit obligations that are contested or are inseverable from contested conditions and should be stayed if the request is granted by reference to the particular contested conditions warranting the stay.

(8) Hearing requests also may ask that a formal hearing be held under the procedures set forth in subpart F. An applicant may make such a request even if the proceeding does not constitute ''initial licensing'' as defined in § 124.111.

(d) If the Regional Administrator grants an evidentiary hearing request, in whole or in part, the Regional Administrator shall identify the permit conditions which have been contested by the requester and for which the evidentiary hearing has been granted. Permit conditions which are not contested or for which the Regional Administrator has denied the hearing request shall not be affected by, or considered at, the evidentiary hearing. The Regional Administrator shall specify these conditions in writing in accordance with § 124.60(c).

(e) The Regional Administrator must grant or deny all requests for an evidentiary hearing on a particular permit. All requests that are granted for a particular permit shall be combined in a single evidentiary hearing.

(f) The Regional Administrator (upon notice to all persons who have already submitted hearing requests) may extend the time allowed for submitting hearing requests under this section for good cause.

[48 FR 14264, Apr. 1, 1983, as amended at 57 FR 5336, Feb. 13, 1992]

§ 124.75 Decision on request for a hearing.

(a)(1) Within 30 days following the expiration of the time allowed by § 124.74 for submitting an evidentiary hearing request, the Regional Administrator shall decide the extent to which, if at all, the request shall be granted, provided that the request conforms to the requirements of § 124.74, and sets forth material issues of fact relevant to the issuance of the permit.

(2) When an NPDES permit for which a hearing request has been granted constitutes ''initial licensing'' under § 124.111, the Regional Administrator may elect to hold a formal hearing under the procedures of subpart F rather than under the procedures of this subpart even if no person has requested that subpart F be applied. If the Regional Administrator makes such a decision, he or she shall issue a notice of hearing under § 124.116. All subsequent proceedings shall then be governed by §§ 124.117 through 124.121, except that any reference to a draft permit shall mean the final permit.

(3) Whenever the Regional Administrator grants a request made under § 124.74(c)(8) for a formal hearing under subpart F on an NPDES permit that does not constitute an initial license under § 124.111, the Regional Administrator shall issue a notice of hearing under § 124.116 including a statement that the permit will be processed under the procedures of subpart F unless a written objection is received within 30 days. If no valid objection is received, the application shall be processed in accordance with §§ 124.117 through 124.121, except that any reference to a draft permit shall mean the final permit. If a valid objection is received, this subpart shall be applied instead.

(b) If a request for a hearing is denied in whole or in part, the Regional Administrator shall briefly state the reasons. That denial is subject to review by the Environmental Appeals Board under § 124.91.

[48 FR 14264, Apr. 1, 1983, as amended at 57 FR 5336, Feb. 13, 1992]

§ 124.76 Obligation to submit evidence and raise issues before a final permit is issued.

In any case where the Regional Administrator elected to apply the requirements of § 124.14(a), no evidence shall be submitted by any party to a hearing under this Subpart that was not submitted to the administrative record required by § 124.18 as part of the preparation of and comment on a draft permit, unless good cause is shown for the failure to submit it. No issues shall be raised by any party that were not submitted to the administrative record required by § 124.18 as part of the preparation of and comment on a draft permit unless good cause is shown for the failure to submit them. Good cause includes the case where the party seeking to raise the new issues or introduce new information shows that it could not reasonably have ascertained the issues or made the information available within the time required by § 124.15; or that it could not have reasonably anticipated the relevance or materiality of the information sought to be introduced. Good cause exists

for the introduction of data available on operation authorized under § 124.60(a)(2).

[49 FR 38051, Sept. 26, 1984]

§ 124.77 Notice of hearing.

Public notice of the grant of an evidentiary hearing regarding a permit shall be given as provided in § 124.57(b) and by mailing a copy to all persons who commented on the draft permit, testified at the public hearing, or submitted a request for a hearing. Before the issuance of the notice, the Regional Administrator shall designate the Agency trial staff and the members of the decisional body (as defined in § 124.78).

§ 124.78 Ex parte communications.

(a) For purposes of this section, the following definitions shall apply:

(1) *Agency trial staff* means those Agency employees, whether temporary or permanent, who have been designated by the Agency under § 124.77 or § 124.116 as available to investigate, litigate, and present the evidence, arguments, and position of the Agency in the evidentiary hearing or nonadversary panel hearing. Any EPA employee, consultant, or contractor who is called as a witness by EPA trial staff, or who assisted in the formulation of the draft permit which is the subject of the hearing, shall be designated as a member of the Agency trial staff;

(2) *Decisional body* means any Agency employee who is or may reasonably be expected to be involved in the decisional process of the proceeding including the Administrator, the members of the Environmental Appeals Board, the Presiding Officer, the Regional Administrator (if he or she does not designate himself or herself as a member of the Agency trial staff), and any of their staff participating in the decisional process. In the case of a nonadversary panel hearing, the decisional body shall also include the panel members, whether or not permanently employed by the Agency;

(3) *Ex parte communication* means any communication, written or oral, relating to the merits of the proceeding between the decisional body and an interested person outside the Agency or the Agency trial staff which was not originally filed or stated in the administrative record or in the hearing. *Ex parte* communications do not include:

(i) Communications between Agency employees other than between the Agency trial staff and the members of the decisional body;

(ii) Discussions between the decisional body and either:

(A) Interested persons outside the Agency, or

(B) The Agency trial staff, *if* all parties have received prior written notice of the proposed communications and have been given the opportunity to be present and participate therein.

(4) *Interested person outside the Agency* includes the permit applicant, any person who filed written comments in the proceeding, any person who requested the hearing, any person who requested to participate or intervene in the hearing, any participant in the hearing and any other interested person not employed by the Agency at the time of the communications, and any attorney of record for those persons.

(b)(1) No interested person outside the Agency or member of the Agency trial staff shall make or knowingly cause to be made to any members of the decisional body, an *ex parte* communication on the merits of the proceedings.

(2) No member of the decisional body shall make or knowingly cause to be made to any interested person outside the Agency or member of the Agency trial staff, an *ex parte* communication on the merits of the proceedings.

(3) A member of the decisional body who receives or who makes or who knowingly causes to be made a communication prohibited by this subsection shall file with the Regional Hearing Clerk all written communications or memoranda stating the substance of all oral communications together with all written responses and memoranda stating the substance of all oral responses.

(c) Whenever any member of the decisionmaking body receives an *ex parte* communication knowingly made or knowingly caused to be made by a party or representative of a party in violation of this section, the person presiding at the stage of the hearing then in progress may, to the extent consistent with justice and the policy of the CWA, require the party to show cause why its claim or interest in the proceedings should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(d) The prohibitions of this section begin to apply upon issuance of the notice of the grant of a hearing under § 124.77 or § 124.116. This prohibition terminates at the date of final agency action.

[48 FR 14264, Apr. 1, 1983, as amended at 49 FR 38052, Sept. 26, 1984; 57 FR 5336, Feb. 13, 1992]

§ 124.79 Additional parties and issues.

(a) Any person may submit a request to be admitted as a party within 15 days after the date of mailing, publication, or posting of notice of the grant of an evidentiary hearing, whichever occurs last. The Presiding Officer shall grant requests that meet the requirements of §§ 124.74 and 124.76.

(b) After the expiration of the time prescribed in paragraph (a) of this section any person may file a motion for leave to intervene as a party. This motion must meet the requirements of §§ 124.74 and 124.76 and set forth the grounds for

the proposed intervention. No factual or legal issues, besides those raised by timely hearing requests, may be proposed except for good cause. A motion for leave to intervene must also contain a verified statement showing good cause for the failure to file a timely request to be admitted as a party. The Presiding Officer shall grant the motion only upon an express finding on the record that:

(1) Extraordinary circumstances justify granting the motion;

(2) The intervener has consented to be bound by:

(i) Prior written agreements and stipulations by and between the existing parties; and

(ii) All orders previously entered in the proceedings; and

(3) Intervention will not cause undue delay or prejudice the rights of the existing parties.

§ 124.80 Filing and service.

(a) An original and one (1) copy of all written submissions relating to an evidentiary hearing filed after the notice is published shall be filed with the Regional Hearing Clerk.

(b) The party filing any submission shall also serve a copy of each submission upon the Presiding Officer and each party of record. Service shall be by mail or personal delivery.

(c) Every submission shall be accompanied by an acknowledgment of service by the person served or a certificate of service citing the date, place, time, and manner of service and the names of the persons served.

(d) The Regional Hearing Clerk shall maintain and furnish a list containing the name, service address, and telephone number of all parties and their attorneys or duly authorized representatives to any person upon request.

§ 124.81 Assignment of Administrative Law Judge.

No later than the date of mailing, publication, or posting of the notice of a grant of an evidentiary hearing, whichever occurs last, the Regional Administrator shall refer the proceeding to the Chief Administrative Law Judge who shall assign an Administrative Law Judge to serve as Presiding Officer for the hearing.

§ 124.82 Consolidation and severance.

(a) The Administrator, Regional Administrator, or Presiding Officer has the discretion to consolidate, in whole or in part, two or more proceedings to be held under this subpart, whenever it appears that a joint hearing on any or all of the matters in issue would expedite or simplify consideration of the issues and that no party would be prejudiced thereby. Consolidation shall not affect the right of any party to raise issues that might have been raised had there been no consolidation.

(b) If the Presiding Officer determines consolidation is not conducive to an expeditious, full, and fair hearing, any party or issues may be severed and heard in a separate proceeding.

§ 124.83 Prehearing conferences.

(a) The Presiding Officer, *sua sponte*, or at the request of any party, may direct the parties or their attorneys or duly authorized representatives to appear at a specified time and place for one or more conferences before or during a hearing, or to submit written proposals or correspond for the purpose of considering any of the matters set forth in paragraph (c) of this section.

(b) The Presiding Officer shall allow a reasonable period before the hearing begins for the orderly completion of all prehearing procedures and for the submission and disposition of all prehearing motions. Where the circumstances warrant, the Presiding Officer may call a prehearing conference to inquire into the use of available procedures contemplated by the parties and the time required for their completion, to establish a schedule for their completion, and to set a tentative date for beginning the hearing.

(c) In conferences held, or in suggestions submitted, under paragraph (a) of this section, the following matter may be considered:

(1) Simplification, clarification, amplification, or limitation of the issues.

(2) Admission of facts and of the genuineness of documents, and stipulations of facts.

(3) Objections to the introduction into evidence at the hearing of any written testimony, documents, papers, exhibits, or other submissions proposed by a party, except that the administrative record required by § 124.19 shall be received in evidence subject to the provisions of § 124.85(d)(2). At any time before the end of the hearing any party may make, and the Presiding Officer shall consider and rule upon, motions to strike testimony or other evidence other than the administrative record on the grounds of relevance, competency, or materiality.

(4) Matters subject to official notice may be taken.

(5) Scheduling as many of the following as are deemed necessary and proper by the Presiding Officer:

(i) Submission of narrative statements of position on each factual issue in controversy;

(ii) Submission of written testimony and documentary evidence (e.g., affidavits, data, studies, reports, and any other type of written material) in support of those statements; or

(iii) Requests by any party for the production of additional documentation, data, or other information relevant and material to the facts in issue.

(6) Grouping participants with substantially similar interests to eliminate redundant evidence, motions, and objections.

(7) Such other matters that may expedite the hearing or aid in the disposition of the matter.

(d) At a prehearing conference or at some other reasonable time set by the Presiding Officer, each party shall make available to all other parties the names of the expert and other witnesses it expects to call. At its discretion or at the request of the Presiding Officer, a party may include a brief narrative summary of any witness's anticipated testimony. Copies of any written testimony, documents, papers, exhibits, or materials which a party expects to introduce into evidence, and the administrative record required by § 124.18 shall be marked for identification as ordered by the Presiding Officer. Witnesses, proposed written testimony, and other evidence may be added or amended upon order of the Presiding Officer for good cause shown. Agency employees and consultants shall be made available as witnesses by the Agency to the same extent that production of such witnesses is required of other parties under § 124.74(c)(4). (See also § 124.85(b)(16).)

(e) The Presiding Officer shall prepare a written prehearing order reciting the actions taken at each prehearing conference and setting forth the schedule for the hearing, unless a transcript has been taken and accurately reflects these matters. The order shall include a written statement of the areas of factual agreement and disagreement and of the methods and procedures to be used in developing the evidence and the respective duties of the parties in connection therewith. This order shall control the subsequent course of the hearing unless modified by the Presiding Officer for good cause shown.

§ 124.84 Summary determination.

(a) Any party to an evidentiary hearing may move with or without supporting affidavits and briefs for a summary determination in its favor upon any of the issues being adjudicated on the basis that there is no genuine issue of material fact for determination. This motion shall be filed at least 45 days before the date set for the hearing, except that upon good cause shown the motion may be filed at any time before the close of the hearing.

(b) Any other party may, within 30 days after service of the motion, file and serve a response to it or a countermotion for summary determination. When a motion for summary determination is made and supported, a party opposing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the Presiding Officer, that there is a genuine issue of material fact for determination at the hearing.

(c) Affidavits shall be made on personal knowledge, shall set forth facts that would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

(d) The Presiding Officer may set the matter for oral argument and call for the submission of proposed findings, conclusions, briefs, or memoranda of law. The Presiding Officer shall rule on the motion not more than 30 days after the date responses to the motion are filed under paragraph (b) of this section.

(e) If all factual issues are decided by summary determination, no hearing will be held and the Presiding Officer shall prepare an initial decision under § 124.89. If summary determination is denied or if partial summary determination is granted, the Presiding Officer shall issue a memorandum opinion and order, interlocutory in character, and the hearing will proceed on the remaining issues. Appeals from interlocutory rulings are governed by § 124.90.

(f) Should it appear from the affidavits of a party opposing a motion for summary determination that he or she cannot for reasons stated present, by affidavit or otherwise, facts essential to justify his or her opposition, the Presiding Officer may deny the motion or order a continuance to allow additional affidavits or other information to be obtained or may make such other order as is just and proper.

§ 124.85 Hearing procedure.

(a)(1) The permit applicant always bears the burden of persuading the Agency that a permit authorizing pollutants to be discharged should be issued and not denied. This burden does not shift.

NOTE: In many cases the documents contained in the administrative record, in particular the fact sheet or statement of basis and the response to comments, should adequately discharge this burden.

(2) The Agency has the burden of going forward to present an affirmative case in support of any challenged condition of a final permit.

(3) Any hearing participant who, by raising material issues of fact, contends:

(i) That particular conditions or requirements in the permit are improper or invalid, and who desires either:

(A) The inclusion of new or different conditions or requirements; or

(B) The deletion of those conditions or requirements; or

(ii) That the denial or issuance of a permit is otherwise improper or invalid, shall have the bur-

den of going forward to present an affirmative case at the conclusion of the Agency case on the challenged requirement.

(b) The Presiding Officer shall conduct a fair and impartial hearing, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order. For these purposes, the Presiding Officer may:

(1) Arrange and issue notice of the date, time, and place of hearings and conferences;

(2) Establish the methods and procedures to be used in the development of the evidence;

(3) Prepare, after considering the views of the participants, written statements of areas of factual disagreement among the participants;

(4) Hold conferences to settle, simplify, determine, or strike any of the issues in a hearing, or to consider other matters that may facilitate the expeditious disposition of the hearing;

(5) Administer oaths and affirmations;

(6) Regulate the course of the hearing and govern the conduct of participants;

(7) Examine witnesses;

(8) Identify and refer issues for interlocutory decision under § 124.90;

(9) Rule on, admit, exclude, or limit evidence;

(10) Establish the time for filing motions, testimony, and other written evidence, briefs, findings, and other submissions;

(11) Rule on motions and other procedural matters pending before him, including but not limited to motions for summary determination in accordance with § 124.84;

(12) Order that the hearing be conducted in stages whenever the number of parties is large or the issues are numerous and complex;

(13) Take any action not inconsistent with the provisions of this subpart for the maintenance of order at the hearing and for the expeditious, fair, and impartial conduct of the proceeding;

(14) Provide for the testimony of opposing witnesses to be heard simultaneously or for such witnesses to meet outside the hearing to resolve or isolate issues or conflicts;

(15) Order that trade secrets be treated as confidential business information in accordance with §§ 122.7 (NPDES) and 270.12 (RCRA) and 40 CFR part 2; and

(16) Allow such cross-examination as may be required for a full and true disclosure of the facts. No cross-examination shall be allowed on questions of policy except to the extent required to disclose the factual basis for permit requirements, or on questions of law, or regarding matters (such as the validity of effluent limitations guidelines) that are not subject to challenge in an evidentiary hearing. No Agency witnesses shall be required to testify or be made available for cross-examination on such matters. In deciding whether or not to allow cross-examination, the Presiding Officer shall consider the likelihood of clarifying or resolving a disputed issue of material fact compared to other available methods. The party seeking cross-examination has the burden of demonstrating that this standard has been met.

(c) All direct and rebuttal evidence at an evidentiary hearing shall be submitted in written form, unless, upon motion and good cause shown, the Presiding Officer determines that oral presentation of the evidence on any particular fact will materially assist in the efficient identification and clarification of the issues. Written testimony shall be prepared in narrative form.

(d)(1) The Presiding Officer shall admit all relevant, competent, and material evidence, except evidence that is unduly repetitious. Evidence may be received at any hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value.

(2) The administrative record required by § 124.18 shall be admitted and received in evidence. Upon motion by any party the Presiding Officer may direct that a witness be provided to sponsor a portion or portions of the administrative record. The Presiding Officer, upon finding that the standards in § 124.85(b)(3) have been met, shall direct the appropriate party to produce the witness for cross-examination. If a sponsoring witness cannot be provided, the Presiding Officer may reduce the weight accorded the appropriate portion of the record.

NOTE: Receiving the administrative record into evidence automatically serves several purposes: (1) It documents the prior course of the proceedings; (2) it provides a record of the views of affected persons for consideration by the agency decisionmaker; and (3) it provides factual material for use by the decisionmaker.

(3) Whenever any evidence or testimony is excluded by the Presiding Officer as inadmissible, all such evidence or testimony existing in written form shall remain a part of the record as an offer of proof. The party seeking the admission of oral testimony may make an offer of proof, by means of a brief statement on the record describing the testimony excluded.

(4) When two or more parties have substantially similar interests and positions, the Presiding Officer may limit the number of attorneys or other party representatives who will be permitted to cross-examine and to make and argue motions and objections on behalf of those parties. Attorneys may, however, engage in cross-examination relevant to matters not adequately covered by previous cross-examination.

(5) Rulings of the Presiding Officer on the admissibility of evidence or testimony, the propriety

of cross-examination, and other procedural matters shall appear in the record and shall control further proceedings, unless reversed as a result of an interlocutory appeal taken under § 124.90.

(6) All objections shall be made promptly or be deemed waived. Parties shall be presumed to have taken exception to an adverse ruling. No objection shall be deemed waived by further participation in the hearing.

(e) *Admission of evidence on environmental impacts.* If a hearing is granted under this subpart for a new source subject to NEPA, the Presiding Officer may admit evidence relevant to any environmental impacts of the permitted facility if the evidence would be relevant to the Agency's obligation under § 122.29(c)(3). If the source holds a final EPA-issued RCRA, PSD, or UIC permit, or an ocean dumping permit under the Marine Protection, Research, and Sanctuaries Act (MPRSA), no such evidence shall be admitted nor shall cross-examination be allowed relating to:

(1) Effects on air quality, (2) effects attributable to underground injection or hazardous waste management practices, or (3) effects of ocean dumping subject to the MPRSA, which were considered or could have been considered in the PSD, RCRA, UIC, or MPRSA permit issuance proceedings. However, the presiding officer may admit without cross-examination or any supporting witness relevant portions of the record of PSD, RCRA, UIC, or MPRSA permit issuance proceedings.

[48 FR 14264, Apr. 1, 1983, as amended at 49 FR 38052, Sept. 26, 1984]

§ 124.86 Motions.

(a) Any party may file a motion (including a motion to dismiss a particular claim on a contested issue) with the Presiding Officer on any matter relating to the proceeding. All motions shall be in writing and served as provided in § 124.80 except those made on the record during an oral hearing before the Presiding Officer.

(b) Within 10 days after service of any written motion, any part to the proceeding may file a response to the motion. The time for response may be shortened to 3 days or extended for an additional 10 days by the Presiding Officer for good cause shown.

(c) Notwithstanding § 122.4, any party may file with the Presiding Officer a motion seeking to apply to the permit any regulatory or statutory provision issued or made available after the issuance of the permit under § 124.15. The Presiding Officer shall grant any motion to apply a new statutory provision unless he or she finds it contrary to legislative intent. The Presiding Officer may grant a motion to apply a new regulatory requirement when appropriate to carry out the purpose of CWA, and when no party would be unduly prejudiced thereby.

§ 124.87 Record of hearings.

(a) All orders issued by the Presiding Officer, transcripts of oral hearings or arguments, written statements of position, written direct and rebuttal testimony, and any other data, studies, reports, documentation, information and other written material of any kind submitted in the proceeding shall be a part of the hearing record and shall be available to the public except as provided in §§ 122.7 (NPDES) and 270.12 (RCRA), in the Office of the Regional Hearing Clerk, as soon as it is received in that office.

(b) Evidentiary hearings shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed. After the hearing, the reporter shall certify and file with the Regional Hearing Clerk:

(1) The original of the transcript, and

(2) The exhibits received or offered into evidence at the hearing.

(c) The Regional Hearing Clerk shall promptly notify each of the parties of the filing of the certified transcript of proceedings. Any party who desires a copy of the transcript of the hearing may obtain a copy of the hearing transcript from the Regional Hearing Clerk upon payment of costs.

(d) The Presiding Officer shall allow witnesses, parties, and their counsel an opportunity to submit such written proposed corrections of the transcript of any oral testimony taken at the hearing, pointing out errors that may have been made in transcribing the testimony, as are required to make the transcript conform to the testimony. Except in unusual cases, no more than 30 days shall be allowed for submitting such corrections from the day a complete transcript of the hearing becomes available.

§ 124.88 Proposed findings of fact and conclusions; brief.

Within 45 days after the certified transcript is filed, any party may file with the Regional Hearing Clerk proposed findings of fact and conclusions of law and a brief in support thereof. Briefs shall contain appropriate references to the record. A copy of these findings, conclusions, and brief shall be served upon all the other parties and the Presiding Officer. The Presiding Officer, for good cause shown, may extend the time for filing the proposed findings and conclusions and/or the brief. The Presiding Officer may allow reply briefs.

§ 124.89 Decisions.

(a) The Presiding Officer shall review and evaluate the record, including the proposed findings and conclusions, any briefs filed by the par-

ties, and any interlocutory decisions under § 124.90 and shall issue and file his initial decision with the Regional Hearing Clerk. The Regional Hearing Clerk shall immediately serve copies of the initial decision upon all parties (or their counsel of record) and the Administrator.

(b) The initial decision of the Presiding Officer shall automatically become the final decision 30 days after its service unless within that time:

(1) A party files a petition for review by the Environmental Appeals Board pursuant to § 124.91; or

(2) The Environmental Appeals Board *sua sponte* files a notice that it will review the decision pursuant to § 124.91.

[48 FR 14264, Apr. 1, 1983, as amended at 57 FR 5336, Feb. 13, 1992]

§ 124.90 Interlocutory appeal.

(a) Except as provided in this section, appeals to the Environmental Appeals Board may be taken only under § 124.91. Appeals from orders or rulings may be taken under this section only if the Presiding Officer, upon motion of a party, certifies those orders or rulings to the Environmental Appeals Board for appeal on the record. Requests to the Presiding Officer for certification must be filed in writing within 10 days of service of notice of the order, ruling, or decision and shall state briefly the grounds relied on.

(b) The Presiding Officer may certify an order or ruling for appeal to the Environmental Appeals Board if:

(1) The order or ruling involves an important question on which there is substantial ground for difference of opinion, and

(2) *Either:* (i) An immediate appeal of the order or ruling will materially advance the ultimate completion of the proceeding; or

(ii) A review after the final order is issued will be inadequate or ineffective.

(c) If the Environmental Appeals Board decides that certification was improperly granted, it shall decline to hear the appeal. The Environmental Appeals Board shall accept or decline all interlocutory appeals within 30 days of their submission; if the Environmental Appeals Board takes no action within that time, the appeal shall be automatically dismissed. When the Presiding Officer declines to certify an order or ruling to the Environmental Appeals Board for an interlocutory appeal, it may be reviewed by the Environmental Appeals Board only upon appeal from the initial decision of the Presiding Officer, except when the Environmental Appeals Board determines, upon motion of a party and in exceptional circumstances, that to delay review would not be in the public interest. Such motion shall be made within 5 days after receipt of notification that the Presiding Officer has refused to certify an order or ruling for interlocutory appeal to the Environmental Appeals Board. Ordinarily, the interlocutory appeal will be decided on the basis of the submissions made to the Presiding Officer. The Environmental Appeals Board may, however, allow briefs and oral argument.

(d) In exceptional circumstances, the Presiding Officer may stay the proceeding pending a decision by the Environmental Appeals Board upon an order or ruling certified by the Presiding Officer for an interlocutory appeal, or upon the denial of such certification by the Presiding Officer.

(e) The failure to request an interlocutory appeal shall not prevent taking exception to an order or ruling in an appeal under § 124.91.

[48 FR 14264, Apr. 1, 1983, as amended at 57 FR 5336, Feb. 13, 1992]

§ 124.91 Appeal to the Administrator.

(a)(1) Within 30 days after service of an initial decision, or a denial in whole or in part of a request for an evidentiary hearing, any party or requester, as the case may be, may appeal any matter set forth in the initial decision or denial, or any adverse order or ruling to which the party objected during the hearing, by filing with the Environmental Appeals Board notice of appeal and petition for review. The petition shall include a statement of the supporting reasons and, when appropriate, a showing that the initial decision contains:

(i) A finding of fact or conclusion of law which is clearly erroneous, or

(ii) An exercise of discretion or policy which is important and which the Environmental Appeals Board should review.

(2) Within 15 days after service of a petition for review under paragraph (c)(1) of this section, any other party to the proceeding may file a responsive petition.

(3) Policy decisions made or legal conclusions drawn in the course of denying a request for an evidentiary hearing may be reviewed and changed by the Environmental Appeals Board in an appeal under this section.

(b) Within 30 days of an initial decision or denial of a request for an evidentiary hearing, the Environmental Appeals Board may, *sua sponte*, review such decision. Within 7 days after the Environmental Appeals Board has decided under this section to review an initial decision or the denial of a request for an evidentiary hearing, notice of that decision shall be served by mail upon all affected parties and the Regional Administrator.

(c)(1) Within a reasonable time following the filing of the petition for review, the Environmental Appeals Board shall issue an order either granting or denying the petition for review. When the Environmental Appeals Board grants a petition for review or determines under paragraph (b) of this

section to review a decision, the Environmental Appeals Board may notify the parties that only certain issues shall be briefed.

(2) Upon granting a petition for review, the Regional Hearing Clerk shall promptly forward a copy of the record to the Environmental Appeals Board and shall retain a complete duplicate copy of the record in the Regional Office.

(d) Notwithstanding the grant of a petition for review or a determination under paragraph (b) of this section to review a decision, the Environmental Appeals Board may summarily affirm without opinion an initial decision or the denial of a request for an evidentiary hearing.

(e) A petition to the Environmental Appeals Board under paragraph (a) of this section for review of any initial decision or the denial of an evidentiary hearing is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final decision of the Agency.

(f) If a party timely files a petition for review or if the Environmental Appeals Board *sua sponte* orders review, then, for purposes of judicial review, final Agency action on an issue occurs as follows:

(1) If the Environmental Appeals Board denies review or summarily affirms without opinion as provided in § 124.91(d), then the initial decision or denial becomes the final Agency action and occurs upon the service of notice of the Environmental Appeals Board's action.

(2) If the Environmental Appeals Board issues a decision without remanding the proceeding then the final permit, redrafted as required by the Environmental Appeals Board's original decision, shall be reissued and served upon all parties to the appeal.

(3) If the Environmental Appeals Board issues a decision remanding the proceeding, then final Agency action occurs upon completion of the remanded proceeding, inlcuding any appeals to the Environmental Appeals Board from the results of the remanded proceeding.

(g) The petitioner may file a brief in support of the petition within 21 days after the Environmental Appeals Board has granted a petition for review. Any other party may file a responsive brief within 21 days of service of the petitioner's brief. The petitioner then may file a reply brief within 14 days of service of the responsive brief. Any person may file an *amicus brief* for the consideration of the Environmental Appeals Board within the same time periods that govern reply briefs. If the Environmental Appeals Board determines, *sua sponte*, to review an initial Regional Administrator's decision or the denial of a request for an evidentiary hearing, the Environmental Appeals Board shall notify the parties of the schedule for filing briefs.

(h) Review by the Environmental Appeals Board of an initial decision or the denial of an evidentiary hearing shall be limited to the issues specified under paragraph (a) of this section, except that after notice to all the parties, the Environmental Appeals Board may raise and decide other matters which it considers material on the basis of the record.

(i) Motions to reconsider a final order shall be filed within ten (10) days after service of the final order. Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Motions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Motions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to § 124.72 and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless specifically so ordered by the Environmental Appeals Board.

[48 FR 14264, Apr. 1, 1983, as amended at 57 FR 5336, Feb. 13, 1992]

Subpart F—Non-Adversary Panel Procedures

§ 124.111 Applicability.

(a) Except as set forth in this subpart, this subpart applies in lieu of, and to complete exclusion of, subparts A through E in the following cases:

(1)(i) In any proceedings for the issuance of any NPDES permit under CWA sections 402 and 405(f) which constitute ''initial licensing'' under the Administrative Procedure Act, when the Regional Administrator elects to apply this subpart and explicitly so states in the public notice of the draft permit under § 124.10 or in a supplemental notice under § 124.14. If an NPDES draft permit is processed under this subpart, any other draft permits which have been consolidated with the NPDES draft permit under § 124.4 shall likewise be processed under this subpart, except for PSD permits when the Regional Administrator makes a finding under § 124.4(e) that consolidation would be likely to result in missing the one year statutory deadline for issuing a final PSD permit under the CAA.

(ii) ''Initial licensing'' includes both the first decision on an NPDES permit applied for by a discharger that has not previously held one and the first decision on any variance requested by a discharger.

(iii) To the extent this subpart is used to process a request for a variance under CWA section

301(h), the term ''Administrator or a person designated by the Administrator'' shall be substituted for the term ''Regional Administrator''.

(2) In any proceeding for which a hearing under this subpart was granted under § 124.75 following a request for a formal hearing under § 124.74. See §§ 124.74(c)(8) and 124.75(a)(2).

(3) Whenever the Regional Administrator determines as a matter of discretion that the more formalized mechanisms of this subpart should be used to process draft NPDES general permits (for which evidentiary hearings are unavailable under § 124.71), or draft RCRA or draft UIC permits.

(b) EPA shall not apply these procedures to a decision on a variance where subpart E proceedings are simultaneously pending on the other conditions of the permit. See § 124.64(b).

[48 FR 14264, Apr. 1, 1983, as amended at 54 FR 18786, May 2, 1989]

§ 124.112 Relation to other subparts.

The following provisions of subparts A through E apply to proceedings under this subpart:

(a)(1) Sections 124.1 through 124.10.

(2) Section 124.14 ''Reopening of comment period.''

(3) Section 124.16 ''Stays of contested permit conditions.''

(4) Section 124.20 ''Computation of time.''

(b)(1) Section 124.41 ''Definitions applicable to PSD Permits.''

(2) Section 124.42 ''Additional procedures for PSD permits affecting Class I Areas.''

(c)(1) Sections 124.51 through 124.56.

(2) Section 124.57(c) ''Public notice.''

(3) Sections 124.58 through 124.66.

(d)(1) Section 124.72 ''Definitions,'' except for the definition of ''Presiding Officer,'' see section 124.119.

(2) Section 124.73 ''Filing.''

(3) Section 124.78 ''*Ex parte* communications.''

(4) Section 124.80 ''Filing and service.''

(5) Section 124.85(a) (Burden of proof).

(6) Section 124.86 ''Motions.''

(7) Section 124.87 ''Record of hearings.''

(8) Section 124.90 ''Interlocutory appeal.''

(e) In the case of permits to which this subpart is made applicable after a final permit has been issued under § 124.15, either by the grant under § 124.75 of a hearing request under § 124.74, or by notice of supplemental proceedings under § 124.14, §§ 124.13 and 124.76 shall also apply.

§ 124.113 Public notice of draft permits and public comment period.

Public notice of a draft permit under this subpart shall be given as provided in §§ 124.10 and 124.57. At the discretion of the Regional Administrator, the public comment period specified in this notice may include an opportunity for a public hearing under § 124.12.

§ 124.114 Request for hearing.

(a) By the close of the comment period under § 124.113, any person may request the Regional Administrator to hold a panel hearing on the draft permit by submitting a written request containing the following:

(1) A brief statement of the interest of the person requesting the hearing;

(2) A statement of any objections to the draft permit;

(3) A statement of the issues which such person proposes to raise for consideration at the hearing; and

(4) Statements meeting the requirements of § 124.74(c)(1)–(5).

(b) Whenever (1) a written request satisfying the requirements of paragraph (a) of this section has been received and presents genuine issues of material fact, or (2) the Regional Administrator determines *sua sponte* that a hearing under this subpart is necessary or appropriate, the Regional Administrator shall notify each person requesting the hearing and the applicant, and shall provide public notice under § 124.57(c). If the Regional Administrator determines that a request does not meet the requirements of paragraph (a) of this section or does not present genuine issues of fact, the Regional Administrator may deny the request for the hearing and shall serve written notice of that determination on all persons requesting the hearing.

(c) The Regional Administrator may also decide before a draft permit is prepared under § 124.6 that a hearing should be held under this section. In such cases, the public notice of the draft permit shall explicitly so state and shall contain the information required by § 124.57(c). This notice may also provide for a hearing under § 124.12 before a hearing is conducted under this section.

§ 124.115 Effect of denial of or absence of request for hearing.

If no request for a hearing is made under § 124.114, or if all such requests are denied under that section, the Regional Administrator shall then prepare a recommended decision under § 124.124. Any person whose hearing request has been denied may then appeal that recommended decision to the Environmental Appeals Board as provided in § 124.91.

[48 FR 14264, Apr. 1, 1983, as amended at 57 FR 5337, Feb. 13, 1992]

§ 124.116 Notice of hearing.

(a) Upon granting a request for a hearing under § 124.114 the Regional Administrator shall

promptly publish a notice of the hearing as required under § 124.57(c). The mailed notice shall include a statement which indicates whether the Presiding Officer or the Regional Administrator will issue the Recommended decision. The mailed notice shall also allow the participants at least 30 days to submit written comments as provided under § 124.118.

(b) The Regional Administrator may also give notice of a hearing under this section at the same time as notice of a draft permit under § 124.113. In that case the comment periods under §§ 124.113 and 124.118 shall be merged and held as a single public comment period.

(c) The Regional Administrator may also give notice of hearing under this section in response to a hearing request under § 124.74 as provided in § 124.75.

§ 124.117 Request to participate in hearing.

(a) Persons desiring to participate in any hearing noticed under this section, shall file a request to participate with the Regional Hearing Clerk before the deadline set forth in the notice of the grant of the hearing. Any person filing such a request becomes a party to the proceedings within the meaning of the Administrative Procedure Act. The request shall include:

(1) A brief statement of the interest of the person in the proceeding;

(2) A brief outline of the points to be addressed;

(3) An estimate of the time required; and

(4) The requirements of § 124.74(c)(1)–(5).

(5) If the request is submitted by an organization, a nonbinding list of the persons to take part in the presentation.

(b) As soon as practicable, but in no event later than 2 weeks before the scheduled date of the hearing, the Presiding Officer shall make a hearing schedule available to the public and shall mail it to each person who requested to participate in the hearing.

§ 124.118 Submission of written comments on draft permit.

(a) No later than 30 days before the scheduled start of the hearing (or such other date as may be set forth in the notice of hearing), each party shall file all of its comments on the draft permit, based on information in the administrative record and any other information which is or reasonably could have been available to that party. All comments shall include any affidavits, studies, data, tests, or other materials relied upon for making any factual statements in the comments.

(b)(1) Written comments filed under paragraph (a) of this section shall constitute the bulk of the evidence submitted at the hearing. Oral statements at the hearing should be brief and in the nature of argument. They shall be restricted either to points that could not have been made in written comments, or to emphasize points which are made in the comments, but which the party believes can more effectively be argued in the hearing context.

(2) Notwithstanding the foregoing, within two weeks prior to the deadline specified in paragraph (a) of this section for the filing of comments, any party may move to submit all or part of its comments orally at the hearing in lieu of submitting written comments and the Presiding Officer shall, within one week, grant such motion if the Presiding Officer finds that the party will be prejudiced if required to submit the comments in written form.

(c) Parties to any hearing may submit written material in response to the comments filed by other parties under paragraph (a) of this section at the time they appear at the panel stage of the hearing under § 124.120.

§ 124.119 Presiding Officer.

(a)(1)(i) Before giving notice of a hearing under this subpart in a proceeding involving an NPDES permit, the Regional Administrator shall request that the Chief Administrative Law Judge assign an Administrative Law Judge as the Presiding Officer. The Chief Administrative Law Judge shall then make the assignment.

(ii) If all parties to such a hearing waive in writing their statutory right to have an Administrative Law Judge named as the Presiding Officer in a hearing subject to this subparagraph the Regional Administrator may name a Presiding Officer under paragraph (a)(2)(ii) of this section.

(2) Before giving notice of a hearing under this subpart in a proceeding which does not involve an NPDES permit or a RCRA permit termination, the Regional Administrator shall either:

(i) Request that the Chief Administrative Law Judge assign an Administrative Law Judge as the Presiding Officer. The Chief Administrative Law Judge may thereupon make such an assignment if he concludes that the other duties of his office allow, or

(ii) Name a lawyer permanently or temporarily employed by the Agency and without prior connection with the proceeding to serve as Presiding Officer;

(iii) If the Chief Administrative Law Judge declines to name an Administrative Law Judge as Presiding Officer upon receiving a request under paragraph (a)(2)(i) of this section, the Regional Administrator shall name a Presiding Officer under paragraph (a)(2)(ii) of this section.

(b) It shall be the duty of the Presiding Officer to conduct a fair and impartial hearing. The Presiding Officer shall have the authority:

(1) Conferred by § 124.85(b)(1)–(15), § 124.83 (b) and (c), and;

(2) To receive relevant evidence, provided that all comments under §§ 124.113 and 124.118, the record of the panel hearing under § 124.120, and the administrative record, as defined in § 124.9 or in § 124.18 as the case may be shall be received in evidence, and

(3) Either upon motion or *sua sponte,* to change the date of the hearing under § 124.120, or to recess such a hearing until a future date. In any such case the notice required by § 124.10 shall be given.

(c) Whenever a panel hearing will be held on an individual draft NPDES permit for a source which does not have an existing permit, the Presiding Officer, on motion by the source, may issue an order authorizing it to begin discharging if it complies with all conditions of the draft permit or such other conditions as may be imposed by the Presiding Officer in consultation with the panel. The motion shall be granted if no party opposes it, or if the source demonstrates that:

(1) It is likely to receive a permit to discharge at that site;

(2) The environment will not be irreparably harmed if the source is allowed to begin discharging in compliance with the conditions of the Presiding Officer's order pending final agency action; and

(3) Its discharge pending final agency action is in the public interest.

(d) If for any offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig which has never received a finally effective permit to discharge at a ''site,'' but which is not a ''new discharger'' or ''new source,'' the Regional Administrator finds that compliance with certain permit conditions may be necessary to avoid irreparable environmental harm during the nonadversary panel procedures, he may specify in the statement of basis or fact sheet that those conditions, even if contested, shall remain enforceable obligations of the discharger during administrative review unless otherwise modified by the Presiding Officer under paragraph (c) of this section.

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

[48 FR 14264, Apr. 1, 1983, as amended at 48 FR 39620, Sept. 1, 1983]

§ 124.120 Panel hearing.

(a) A Presiding Officer shall preside at each hearing held under this subpart. An EPA panel shall also take part in the hearing. The panel shall consist of three or more EPA temporary or permanent employees having special expertise or responsibility in areas related to the hearing issue, none of whom shall have taken part in formulating the draft permit. If appropriate for the evaluation of new or different issues presented at the hearing, the panel membership, at the discretion of the Regional Administrator, may change or may include persons not employed by EPA.

(b) At the time of the hearing notice under § 124.116, the Regional Administrator shall designate the persons who shall serve as panel members for the hearing and the Regional Administrator shall file with the Regional Hearing Clerk the name and address of each person so designated. The Regional Administrator may also designate EPA employees who will provide staff support to the panel but who may or may not serve as panel members. The designated persons shall be subject to the *ex parte* rules in § 124.78. The Regional Administrator may also designate Agency trial staff as defined in § 124.78 for the hearing.

(c) At any time before the close of the hearing the Presiding Officer, after consultation with the panel, may request that any person having knowledge concerning the issues raised in the hearing and not then scheduled to participate therein appear and testify at the hearing.

(d) The panel members may question any person participating in the panel hearing. Cross-examination by persons other than panel members shall not be permitted at this stage of the proceeding except when the Presiding Officer determines, after consultation with the panel, that the cross-examination would expedite consideration of the issues. However, the parties may submit written questions to the Presiding Officer for the Presiding Officer to ask the participants, and the Presiding Officer may, after consultation with the panel, and at his or her sole discretion, ask these questions.

(e) At any time before the close of the hearing, any party may submit to the Presiding Officer written questions specifically directed to any person appearing or testifying in the hearing. The Presiding Officer, after consultation with the panel may, at his sole discretion, ask the written question so submitted.

(f) Within 10 days after the close of the hearing, any party shall submit such additional written testimony, affidavits, information, or material as they consider relevant or which the panel may request. These additional submissions shall be filed with the Regional Hearing Clerk and shall be a part of the hearing record.

[48 FR 14264, Apr. 1, 1983, as amended at 49 FR 38052, Sept. 26, 1984]

§ 124.121 Opportunity for cross-examination.

(a) Any party to a panel hearing may submit a written request to cross-examine any issue of ma-

terial fact. The motion shall be submitted to the Presiding Officer within 15 days after a full transcript of the panel hearing is filed with the Regional Hearing Clerk and shall specify:

(1) The disputed issue(s) of material fact. This shall include an explanation of why the questions at issue are factual, the extent to which they are in dispute in light of the then existing record, and the extent to which they are material to the decision on the application; and

(2) The person(s) to be cross-examined, and an estimate of the time necessary to conduct the cross-examination. This shall include a statement explaining how the cross-examination will resolve the disputed issues of material fact.

(b) After receipt of all motions for cross-examination under paragraph (a) of this section, the Presiding Officer, after consultation with the hearing panel, shall promptly issue an order either granting or denying each request. No cross-examination shall be allowed on questions of policy except to the extent required to disclose the factual basis for permit requirements, or on questions of law, or regarding matters (such as the validity of effluent limitations guidelines) that are not subject to challenge in permit issuance proceedings. Orders granting requests for cross-examination shall be served on all parties and shall specify:

(1) The issues on which cross-examination is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons allowed to conduct cross-examination;

(4) Time limits for the examination of witnesses by each cross-examiner; and

(5) The date, time, and place of the supplementary hearing at which cross-examination shall take place.

(6) In issuing this order, the Presiding Officer may determine that two or more parties have the same or similar interests and that to prevent unduly repetitious cross-examination, they should be required to choose a single representative for purposes of cross-examination. In that case, the order shall simply assign time for cross-examination without further identifying the representative. If the designated parties fail to choose a single representative, the Presiding Officer may divide the assigned time among the representatives or issue any other order which justice may require.

(c) [Reserved]

(d) The Presiding Officer and, to the extent possible, the members of the hearing panel shall be present at the supplementary hearing. During the course of the hearing, the Presiding Officer shall have authority to modify any order issued under paragraph (b) of this section. A record will be made under § 124.87.

(e)(1) No later than the time set for requesting cross-examination, a party may request that alternative methods of clarifying the record (such as the submission of additional written information) be used in lieu of or in addition to cross-examination. The Presiding Officer shall issue an order granting or denying this request at the time he or she issues (or would have issued) an order granting or denying a request for cross-examination, under paragraph (b) of this section. If the request for an alternative method is granted, the order shall specify the alternative and any other relevant information (such as the due date for submitting written information).

(2) In passing on any request for cross-examination submitted under paragraph (a) of this section, the Presiding Officer may, as a precondition to ruling on the merits of the request, require alternative means of clarifying the record to be used whether or not a request to do so has been made. The party requesting cross-examination shall have one week to comment on the results of using the alternative method. After considering these comments the Presiding Officer shall issue an order granting or denying the request for cross-examination.

(f) The provisions of §§ 124.85(d)(2) and 124.84(e) apply to proceedings under this subpart.

[48 FR 14264, Apr. 1, 1983, as amended at 49 FR 38052, Sept. 26, 1984]

§ 124.122 Record for final permit.

The record on which the final permit shall be based in any proceeding under this subpart consists of:

(a) The administrative record compiled under § 124.9 or § 124.18 as the case may be;

(b) Any material submitted under § 124.78 relating to *ex parte* contacts;

(c) All notices issued under § 124.113;

(d) All requests for hearings, and rulings on those requests, received or issued under § 124.114;

(e) Any notice of hearing issued under § 124.116;

(f) Any request to participate in the hearing received under § 124.117;

(g) All comments submitted under § 124.118, any motions made under that section and the rulings on them, and any comments filed under § 124.113;

(h) The full transcript and other material received into the record of the panel hearing under § 124.120;

(i) Any motions for, or rulings on, cross-examination filed or issued under § 124.121;

(j) Any motions for, orders for, and the results of, any alternatives to cross-examination under § 124.121; and

(k) The full transcript of any cross-examination held.

§ 124.123 Filing of brief, proposed findings of fact and conclusions of law and proposed modified permit.

Unless otherwise ordered by the Presiding Officer, each party may, within 20 days after all requests for cross-examination are denied or after a transcript of the full hearing including any cross-examination becomes available, submit proposed findings of fact; conclusions regarding material issues of law, fact, or discretion; a proposed modified permit (if such person is urging that the draft or final permit be modified); and a brief in support thereof; together with references to relevant pages of transcript and to relevant exhibits. Within 10 days thereafter each party may file a reply brief concerning matters contained in opposing briefs and containing alternative findings of fact; conclusions regarding material issues of law, fact, or discretion; and a proposed modified permit where appropriate. Oral argument may be held at the discretion of the Presiding Officer on motion of any party or *sua sponte*.

§ 124.124 Recommended decision.

The person named to prepare the decision shall, as soon as practicable after the conclusion of the hearing, evaluate the record of the hearing and prepare and file a recommended decision with the Regional Hearing Clerk. That person may consult with, and receive assistance from, any member of the hearing panel in drafting the recommended decision, and may delegate the preparation of the recommended decision to the panel or to any member or members of it. This decision shall contain findings of fact, conclusions regarding all material issues of law, and a recommendation as to whether and in what respect the draft or final permit should be modified. After the recommended decision has been filed, the Regional Hearing Clerk shall serve a copy of that decision on each party and upon the Environmental Appeals Board.

[48 FR 14264, Apr. 1, 1983, as amended at 57 FR 5337, Feb. 13, 1992]

§ 124.125 Appeal from or review of recommended decision.

Within 30 days after service of the recommended decision, any party may take exception to any matter set forth in that decision or to any adverse order or ruling of the Presiding Officer to which that party objected, and may appeal those exceptions to the Environmental Appeals Board as provided in § 124.91, except that references to the *initial decision* will mean recommended decision under § 124.124.

[57 FR 5337, Feb. 13, 1992]

§ 124.126 Final decision.

As soon as practicable after all appeal proceedings have been completed, the Environmental Appeals Board shall issue a final decision. The Environmental Appeals Board may consult with the Presiding Officer, members of the hearing panel, or any other EPA employee other than members of the Agency Trial Staff under § 124.78 in preparing the final decision. The Hearing Clerk shall file a copy of the decision on all parties.

[57 FR 5337, Feb. 13, 1992]

§ 124.127 Final decision if there is no review.

If no party appeals a recommended decision to the Environmental Appeals Board, and if the Environmental Appeals Board does not elect to review it, the recommended decision becomes the final decision of the Agency upon the expiration of the time for filing any appeals.

[57 FR 5337, Feb. 13, 1992]

§ 124.128 Delegation of authority; time limitations.

(a) The Administrator delegates authority to the Environmental Appeals Board (which is described in § 1.25 of this title) to issue final decisions in appeals filed under this subpart. An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation does not preclude the Environmental Appeals Board from referring an appeal or a motion filed under this subpart to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and the rules in this subpart referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

(b) The failure of the Environmental Appeals Board, the Regional Administrator, or the Presiding Officer to do any act within the time periods specified under this part shall not waive or diminish any right, power, or authority of the United States Environmental Protection Agency.

(c) Upon a showing by any party that it has been prejudiced by a failure of the Environmental Appeals Board, the Regional Administrator, or the Presiding Officer to do any act within the time periods specified under this part, the Environmental Appeals Board, the Regional Administrator, and

the Presiding Officer, as the case may be, may grant that party such relief of a procedural nature (including extension of any time for compliance or other action) as may be appropriate.

[57 FR 5337, Feb. 13, 1992]

APPENDIX A TO PART 124—GUIDE TO DECISIONMAKING UNDER PART 124

This appendix is designed to assist in reading the procedural requirements set out in part 124. It consists of two flow charts.

Figure 1 diagrams the more conventional sequence of procedures EPA expects to follow in processing permits under this part. It outlines how a permit will be applied for, how a draft permit will be prepared and publicly noticed for comment, and how a final permit will be issued under the procedures in subpart A.

This permit may then be appealed to the Administrator, as specified both in subpart A (for RCRA, UIC, or PSD permits), or subpart E or F (for NPDES permits). The first flow chart also briefly outlines which permit decisions are eligible for which types of appeal.

Part 124 also contains special ''non-adversary panel hearing'' procedures based on the ''initial licensing'' provisions of the Administrative Procedure Act. These procedures are set forth in subpart F. In some cases, EPA may only decide to make those procedures applicable after it has gone through the normal subpart A procedures on a draft permit. This process is also diagrammed in Figure 1.

Figure 2 sets forth the general procedure to be followed where these subpart F procedures have been made applicable to a permit from the beginning.

Both flow charts outline a sequence of events directed by arrows. The boxes set forth elements of the permit process; and the diamonds indicate key decisionmaking points in the permit process.

The charts are discussed in more detail below.

Figure 1—Conventional EPA Permitting Procedures

This chart outlines the procedures for issuing permits whenever EPA does not make use of the special ''panel hearing'' procedures in subpart F. The major steps depicted on this chart are as follows:

1. The permit process can begin in any one of the following ways:

a. Normally, the process will begin when a person applies for a permit under §§ 122.21 (NPDES), 144.31 (UIC), 233.4 (404), and 270.10 (RCRA) and 124.3.

b. In other cases, EPA may decide to take action on its own initiative to change a permit or to issue a general permit. This leads directly to preparation of a draft permit under § 124.6.

c. In addition, the permittee or any interested person (other than for PSD permits) may request modification, revocation and reissuance or termination of a permit under §§ 122.62, 122.64 (NPDES), 144.39, 144.40 (UIC), 233.14, 233.15, (404), 270.41, 270.43 (RCRA), and 124.5.

Those requests can be handled in either of two ways:

i. EPA may tentatively decide to grant the request and issue a new draft permit for public comment, either with or without requiring a new application.

ii. If the request is denied, an informal appeal to the Environmental Appeals Board is available.

2. The next major step in the permit process is the preparation of a draft permit. As the chart indicates, preparing a draft permit also requires preparation of either a statement of basis (§ 124.7), a fact sheet (§ 124.5) or, compilation of an ''administrative record'' (§ 124.9), and public notice (§ 124.10).

3. The next stage is the public comment period (§ 124.11). A public hearing under § 124.12 may be requested before the close of the public comment period.

EPA has the discretion to hold a public hearing, even if there were no requests during the public comment period. If EPA decides to schedule one, the public comment period will be extended through the close of the hearing. EPA also has the discretion to conduct the public hearing under subpart F panel procedures. (See Figure 2.)

The regulations provide that all arguments and factual materials that a person wishes EPA to consider in connection with a particular permit must be placed in the record by the close of the public comment period (§ 124.13).

4. Section 124.14 states that EPA, at any time before issuing a final permit decision may decide to either reopen or extend the comment period, prepare a new draft permit and begin the process again from that point, or for RCRA and UIC permits, or for NPDES permits that constitute ''initial licensing'', to begin ''panel hearing'' proceedings under subpart F. These various results are shown schematically.

5. The public comment period and any public hearing will be followed by issuance of a final permit decision (§ 124.15). As the chart shows, the final permit must be accompanied by a response to comments (§ 124.17) and be based on the administrative record (§ 124.18).

6. After the final permit is issued, it may be appealed to higher agency authority. The exact form of the appeal depends on the type of permit involved.

a. RCRA, UIC, or PSD permits standing alone will be appealed directly to the Environmental Appeals Board under § 124.9.

b. NPDES permits which do not involve ''initial licensing'' may be appealed in an evidentiary hearing under subpart E. The regulations provide (§ 124.74) that if such a hearing is granted for an NPDES permit and if RCRA or UIC permits have been consolidated with that permit under § 124.4 then closely related conditions of those RCRA or UIC permits may be reexamined in an evidentiary hearing. PSD permits, however, may never be reexamined in a subpart E hearing.

c. NPDES permits which do involve ''initial licensing'' may be appealed in a panel hearing under subpart F. The regulations provide that if such a hearing is granted for an NPDES permit, consolidated RCRA, UIC, or PSD permits may also be reexamined in the same proceeding.

As discussed below, this is only one of several ways the panel hearing procedures may be used under these regulations.

7. This chart does not show EPA appeal procedures in detail. Procedures for appeal to the Environmental Appeals Board under § 124.19 are self-explanatory; subpart F procedures are diagrammed in Figure 2; and subpart E procedures are basically the same that would apply in any evidentiary hearing.

However, the chart at this stage does reflect the provisions of § 124.60(b), which allows EPA, even after a formal hearing has begun, to ''recycle'' a permit back to the draft permit stage at any time before that hearing has resulted in an initial decision.

Figure 2—Non-Adversary Panel Procedures

This chart outlines the procedures for processing permits under the special ''panel hearing'' procedures of subpart F. These procedures were designed for making decisions that involve ''initial licensing'' NPDES permits. Those permits include the first decisions on an NPDES permit applied for by any discharger that has not previously held one, and the first decision on any statutory variance. In addition, these procedures will be used for any RCRA, UIC, or PSD permit which has been consolidated with such an NPDES permit, and may be used, if the Regional Administrator so chooses, for the issuance of individual RCRA or UIC permits. The steps depicted on this chart are as follows:

1. *Application for a permit.* These proceedings will generally begin with an application, since NPDES initial licensing always will begin with an application.

2. *Preparation of a draft permit.* This is identical to the similar step in Figure 1.

3. *Public comment period.* This again is identical to the similar step in Figure 1. The Regional Administrator has the opportunity to schedule an informal public hearing under § 124.12 during this period.

4. Requests for a panel hearing must be received by the end of the public comment period under § 124.113. The recommended decision may then be appealed to the Environmental Appeals Board. See § 124.115.

If a hearing request is denied, or if no hearing requests are received, a recommended decision will be issued based on the comments received. The recommended decision may then be appealed to the Administrator. See § 124.115.

5. If a hearing is granted, notice of the hearing will be published in accordance with § 124.116 and will be followed by a second comment period during which requests to participate and the bulk of the remaining evidence for the final decision will be received (§§ 124.117 and 124.118).

The regulations also allow EPA to move directly to this stage by scheduling a hearing when the draft permit is prepared. In such cases the comment period on the draft permit under § 124.113 and the prehearing comment period under § 124.118 would occur at the same time. EPA anticipates that this will be the more frequent practice when permits are processed under panel procedures.

This is also a stage at which EPA can switch from the conventional procedures diagramed in Figure 1 to the panel hearing procedures. As the chart indicates, EPA would do this by scheduling a panel hearing either through use of the ''recycle'' provision in § 124.14 or in response to a request for a formal hearing under § 124.74.

6. After the close of the comment period, a panel hearing will be held under § 124.120, followed by any cross-examination granted under § 124.121. The recommended decision will then be prepared (§ 124.124) and an opportunity for appeal provided under § 124.125. A final decision will be issued after appeal proceedings, if any, are concluded.

EC01MR92.017

EC01MR92.018

EC01MR92.019

[48 FR 14264, Apr. 1, 1983, as amended at 57 FR 5337, 5338, Feb. 13, 1992]

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart A—Criteria and Standards for Imposing Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Act

Sec.

Subpart B—Criteria for Issuance of Permits to Aquaculture Projects

Subpart C [Reserved]

Subpart D—Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A), 301(b)(2) (A) and (E) of the Act

Subpart E—Criteria for Granting Economic Variances From Best Available Technology Economically Achievable Under Section 301(c) of the Act—[Reserved]

Subpart F—Criteria for Granting Water Quality Related Variances Under Section 301(g) of the Act—[Reserved]

Subpart G—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

Subpart H—Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Act

Subpart I—Criteria Applicable To Cooling Water Intake Structures Under Section 316(b) of the Act—[Reserved]

Subpart J [Reserved]

Subpart K—Criteria and Standards for Best Management Practices Authorized Under Section 304(e) of the Act

Subpart L—Criteria and Standards for Imposing Conditions for the Disposal of Sewage Sludge Under Section 405 of the Act—[Reserved]

Subpart M—Ocean Discharge Criteria

AUTHORITY: Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 *et seq.*, unless otherwise noted.

SOURCE: 44 FR 32948, June 7, 1979, unless otherwise noted.

Subpart A—Criteria and Standards for Imposing Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Act

§ 125.1 Purpose and scope.

This subpart establishes criteria and standards for the imposition of technology-based treatment requirements in permits under section 301(b) of the Act, including the application of EPA promulgated effluent limitations and case-by-case determinations of effluent limitations under section 402(a)(1) of the Act.

§ 125.2 Definitions.

For the purposes of this part, any reference to *the Act* shall mean the Clean Water Act of 1977 (CWA). Unless otherwise noted, the definitions in parts 122, 123 and 124 apply to this part.

[45 FR 33512, May 19, 1980]

§ 125.3 Technology-based treatment requirements in permits.

(a) *General.* Technology-based treatment requirements under section 301(b) of the Act represent the minimum level of control that must be imposed in a permit issued under section 402 of the Act. (See §§ 122.41, 122.42 and 122.44 for a discussion of additional or more stringent effluent limitations and conditions.) Permits shall contain the following technology-based treatment requirements in accordance with the following statutory deadlines;

(1) For POTW's, effluent limitations based upon:

(i) Secondary treatment—from date of permit issuance; and

(ii) The best practicable waste treatment technology—not later than July 1, 1983; and

(2) For dischargers other than POTWs except as provided in § 122.29(d), effluent limitations requiring:

(i) The best practicable control technology currently available (BPT)—

(A) For effluent limitations promulgated under Section 304(b) 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) and in no case later than March 31, 1989;

(B) For effluent limitations established on a case-by-case basis based on Best Professional Judgment (BPJ) under Section 402(a)(1)(B) of the Act in a permit issued after February 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) For all other BPT effluent limitations compliance is required from the date of permit issuance.

(ii) For conventional pollutants, the best conventional pollutant control technology (BCT)—

(A) For effluent limitations promulgated under section 304(b), as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989.

(B) For effluent limitations established on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the Act in a permit issued after February 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;

(iii) For all toxic pollutants referred to in Committee Print No. 95–30, House Committee on Public Works and Transportation, the best available technology economically achievable (BAT)—

(A) For effluent limitations established under section 304(b), as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989.

(B) For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the Act after February 4, 1987 establishing BAT effluent limitations, compliance is required as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated under section 304(b), and in no case later than March 31, 1989.

(iv) For all toxic pollutants other than those listed in Committee Print No. 95–30, effluent limitations based on BAT—

(A) For effluent limitations promulgated under section 304(b) compliance is required as expeditiously as practicable, but in no case later than three years after the date such limitations are promulgated under section 304(b) and in no case later than March 31, 1989.

(B) For permits issued on a case-by-case (BPJ) basis under Section 402(a)(1)(B) of the Act after February 4, 1987 establishing BAT effluent limitations, compliance is required 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.

(v) For all pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT—

(A) For effluent limitations promulgated under section 304(b), compliance is required 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.

(B) For permits issued on a case-by-case (BPJ) basis under section 402(a)(1)(B) of the Act after February 4, 1987 establishing BAT effluent limitations compliance is required 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.

(b) *Statutory variances and extensions.* (1) The following variances from technology-based treatment requirements are authorized by the Act and may be applied for under § 122.21;

(i) For POTW's, a section 301(h) marine discharge variance from secondary treatment (subpart G);

(ii) For dischargers other than POTW's;

(A) A section 301(c) economic variance from BAT (subpart E);

(B) A section 301(g) water quality related variance from BAT (subpart F); and

(C) A section 316(a) thermal variance from BPT, BCT and BAT (subpart H).

(2) The following extensions of deadlines for compliance with technology-based treatment requirements are authorized by the Act and may be applied for under § 124.53:

(i) For POTW's a section 301(i) extension of the secondary treatment deadline (subpart J);

(ii) For dischargers other than POTW's:

(A) A section 301(i) extension of the BPT deadline (subpart J); and

(B) A section 301(k) extension of the BAT deadline (subpart C).

(c) *Methods of imposing technology-based treatment requirements in permits.* Technology-based treatment requirements may be imposed through one of the following three methods:

(1) Application of EPA-promulgated effluent limitations developed under section 304 of the Act to dischargers by category or subcategory. These effluent limitations are not applicable to the extent that they have been remanded or withdrawn. However, in the case of a court remand, determinations underlying effluent limitations shall be binding in permit issuance proceedings where those determinations are not required to be reexamined by a court remanding the regulations. In addition, dischargers may seek fundamentally different factors variances from these effluent limitations under § 122.21 and subpart D of this part.

(2) On a case-by-case basis under section 402(a)(1) of the Act, to the extent that EPA-promulgated effluent limitations are inapplicable. The permit writer shall apply the appropriate factors listed in § 125.3(d) and shall consider:

(i) The appropriate technology for the category or class of point sources of which the applicant is a member, based upon all available information; and

(ii) Any unique factors relating to the applicant.

[*Comment:* These factors must be considered in all cases, regardless of whether the permit is being issued by EPA or an approved State.]

(3) Through a combination of the methods in paragraphs (d) (1) and (2) of this section. Where promulgated effluent limitations guidelines only apply to certain aspects of the discharger's operation, or to certain pollutants, other aspects or activities are subject to regulation on a case-by-case basis in order to carry out the provisions of the Act.

(4) Limitations developed under paragraph (d)(2) of this section may be expressed, where appropriate, in terms of toxicity (e.g., ''the LC_{50} for fat head minnow of the effluent from outfall 001 shall be greater than 25%''). *Provided,* That is shown that the limits reflect the appropriate requirements (for example, technology-based or water-quality-based standards) of the Act.

(d) In setting case-by-case limitations pursuant to § 125.3(c), the permit writer must consider the following factors:

(1) *For BPT requirements:* (i) The total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application;

(ii) The age of equipment and facilities involved;

(iii) The process employed;

(iv) The engineering aspects of the application of various types of control techniques;

(v) Process changes; and

(vi) Non-water quality environmental impact (including energy requirements).

(2) *For BCT requirements:* (i) The reasonableness of the relationship between the costs of attaining a reduction in effluent and the effluent reduction benefits derived;

(ii) The comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources;

(iii) The age of equipment and facilities involved;

(iv) The process employed;

(v) The engineering aspects of the application of various types of control techniques;

(vi) Process changes; and

(vii) Non-water quality environmental impact (including energy requirements).

(3) *For BAT requirements:* (i) The age of equipment and facilities involved;

(ii) The process employed;

(iii) The engineering aspects of the application of various types of control techniques;

(iv) Process changes;

(v) The cost of achieving such effluent reduction; and

(vi) Non-water quality environmental impact (including energy requirements).

(e) Technology-based treatment requirements are applied prior to or at the point of discharge.

(f) Technology-based treatment requirements cannot be satisfied through the use of ''non-treatment'' techniques such as flow augmentation and in-stream mechanical aerators. However, these techniques may be considered as a method of achieving water quality standards on a case-by-case basis when:

(1) The technology-based treatment requirements applicable to the discharge are not sufficient to achieve the standards;

(2) The discharger agrees to waive any opportunity to request a variance under section 301 (c), (g) or (h) of the Act; and

(3) The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available methods.

(g) Technology-based effluent limitations shall be established under this subpart for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

(h)(1) The Director may set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollution control technology (BCT), or a limit for a nonconventional pollutant which shall not be subject to modification under section 301 (c) or (g) of the Act where:

(i) Effluent limitations guidelines specify the pollutant as an indicator for a toxic pollutant, or

(ii)(A) The limitation reflects BAT-level control of discharges of one or more toxic pollutants which are present in the waste stream, and a specific BAT limitation upon the toxic pollutant(s) is not feasible for economic or technical reasons;

(B) The permit identifies which toxic pollutants are intended to be controlled by use of the limitation; and

(C) The fact sheet required by § 124.56 sets forth the basis for the limitation, including a finding that compliance with the limitation will result in BAT-level control of the toxic pollutant discharges identified in paragraph (h)(1)(ii)(B) of this section, and a finding that it would be economically or technically infeasible to directly limit the toxic pollutant(s).

(2) The Director may set a permit limit for a conventional pollutant at a level more stringent than BCT when:

(i) Effluent limitations guidelines specify the pollutant as an indicator for a hazardous substance, or

(ii)(A) The limitation reflects BAT-level control of discharges (or an appropriate level determined under section 301(c) or (g) of the Act) of one or more hazardous substance(s) which are present in the waste stream, and a specific BAT (or other appropriate) limitation upon the hazardous substance(s) is not feasible for economic or technical reasons;

(B) The permit identifies which hazardous substances are intended to be controlled by use of the limitation; and

(C) The fact sheet required by § 124.56 sets forth the basis for the limitation, including a finding that compliance with the limitations will result in BAT-level (or other appropriate level) control of the hazardous substances discharges identified in paragraph (h)(2)(ii)(B) of this section, and a finding that it would be economically or technically infeasible to directly limit the hazardous substance(s).

(iii) Hazardous substances which are also toxic pollutants are subject to paragraph (h)(1) of this section.

(3) The Director may not set a more stringent limit under the preceding paragraphs if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutant(s) or hazardous substance(s) controlled by the limit were limited directly.

(4) Toxic pollutants identified under paragraph (h)(1) of this section remain subject to the requirements of § 122.42(a)(1) (notification of increased discharges of toxic pollutants above levels reported in the application form).

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[44 FR 32948, June 7, 1979, as amended at 45 FR 33512, May 19, 1980; 48 FR 14293, Apr. 1, 1983; 49 FR 38052, Sept. 26, 1984; 50 FR 6941, Feb. 19, 1985; 54 FR 257, Jan. 4, 1989]

Subpart B—Criteria for Issuance of Permits to Aquaculture Projects

§ 125.10 Purpose and scope.

(a) These regulations establish guidelines under sections 318 and 402 of the Act for approval of any discharge of pollutants associated with an aquaculture project.

(b) The regulations authorize, on a selective basis, controlled discharges which would otherwise be unlawful under the Act in order to deter-

mine the feasibility of using pollutants to grow aquatic organisms which can be harvested and used beneficially. EPA policy is to encourage such projects, while at the same time protecting other beneficial uses of the waters.

(c) Permits issued for discharges into aquaculture projects under this subpart are NPDES permits and are subject to the applicable requirements of parts 122, 123 and 124. Any permit shall include such conditions (including monitoring and reporting requirements) as are necessary to comply with those parts. Technology-based effluent limitations need not be applied to discharges into the approved project except with respect to toxic pollutants.

§ 125.11 Criteria.

(a) No NPDES permit shall be issued to an aquaculture project unless:

(1) The Director determines that the aquaculture project:

(i) Is intended by the project operator to produce a crop which has significant direct or indirect commercial value (or is intended to be operated for research into possible production of such a crop); and

(ii) Does not occupy a designated project area which is larger than can be economically operated for the crop under cultivation or than is necessary for research purposes.

(2) The applicant has demonstrated, to the satisfaction of the Director, that the use of the pollutant to be discharged to the aquaculture project will result in an increased harvest of organisms under culture over what would naturally occur in the area;

(3) The applicant has demonstrated, to the satisfaction of the Director, that if the species to be cultivated in the aquaculture project is not indigenous to the immediate geographical area, there will be minimal adverse effects on the flora and fauna indigenous to the area, and the total commercial value of the introduced species is at least equal to that of the displaced or affected indigenous flora and fauna;

(4) The Director determines that the crop will not have a significant potential for human health hazards resulting from its consumption;

(5) The Director determines that migration of pollutants from the designated project area to water outside of the aquaculture project will not cause or contribute to a violation of water quality standards or a violation of the applicable standards and limitations applicable to the supplier of the pollutant that would govern if the aquaculture project were itself a point source. The approval of an aquaculture project shall not result in the enlargement of a pre-existing mixing zone area beyond what had been designated by the State for the original discharge.

(b) No permit shall be issued for any aquaculture project in conflict with a plan or an amendment to a plan approved under section 208(b) of the Act.

(c) No permit shall be issued for any aquaculture project located in the territorial sea, the waters of the contiguous zone, or the oceans, except in conformity with guidelines issued under section 403(c) of the Act.

(d) Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area. For example, the designated project area shall not include the entire width of a watercourse, since all organisms indigenous to that watercourse might be subjected to discharges of pollutants that would, except for the provisions of section 318 of the Act, violate section 301 of the Act.

(e) Any modifications caused by the construction or creation of a reef, barrier or containment structure shall not unduly alter the tidal regimen of an estuary or interfere with migrations of unconfined aquatic species.

[*Comment:* Any modifications described in this paragraph which result in the discharge of dredged or fill material into navigable waters may be subject to the permit requirements of section 404 of the Act.]

(f) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

Subpart C [Reserved]

Subpart D—Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A), 301(b)(2) (A) and (E) of the Act

§ 125.30 Purpose and scope.

(a) This subpart establishes the criteria and standards to be used in determining whether effluent limitations alternative to those required by promulgated EPA effluent limitations guidelines under sections 301 and 304 of the Act (hereinafter referred to as ''national limits'') should be imposed on a discharger because factors relating to the discharger's facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This subpart applies to all national limitations promulgated under sections 301 and 304 of the Act,

except for the BPT limits contained in 40 CFR 423.12 (steam electric generating point source category).

(b) In establishing national limits, EPA takes into account all the information it can collect, develop and solicit regarding the factors listed in sections 304(b) and 304(g) of the Act. In some cases, however, data which could affect these national limits as they apply to a particular discharge may not be available or may not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the national limits, and make them either more or less stringent as they apply to certain dischargers within an industrial category or subcategory. This will only be done if data specific to that discharger indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any interested person believing that factors relating to a discharger's facilities, equipment, processes or other facilities related to the discharger are fundamentally different from the factors considered during development of the national limits may request a fundamentally different factors variance under § 122.21(l)(1). In addition, such a variance may be proposed by the Director in the draft permit.

(Secs. 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92–500 as amended by the Clean Water Act of 1977, Pub. L. 95–217 (the ''Act''); Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[44 FR 32948, June 7, 1979, as amended at 45 FR 33512, May 19, 1980; 46 FR 9460, Jan. 28, 1981; 47 FR 52309, Nov. 19, 1982; 48 FR 14293, Apr. 1, 1983]

§ 125.31 Criteria.

(a) A request for the establishment of effluent limitations under this subpart (fundamentally different factors variance) shall be approved only if:

(1) There is an applicable national limit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested; and

(2) Factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limits; and

(3) The request for alternative effluent limitations or standards is made in accordance with the procedural requirements of part 124.

(b) A request for the establishment of effluent limitations less stringent than those required by national limits guidelines shall be approved only if:

(1) The alternative effluent limitation or standard requested is no less stringent than justified by the fundamental difference; and

(2) The alternative effluent limitation or standard will ensure compliance with sections 208(e) and 301(b)(1)(C) of the Act; and

(3) Compliance with the national limits (either by using the technologies upon which the national limits are based or by other control alternatives) would result in:

(i) A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

(ii) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits.

(c) A request for alternative limits more stringent than required by national limits shall be approved only if:

(1) The alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and

(2) Compliance with the alternative effluent limitation or standard would not result in:

(i) A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

(ii) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits.

(d) Factors which may be considered fundamentally different are:

(1) The nature or quality of pollutants contained in the raw waste load of the applicant's process wastewater;

[*Comment:* (1) In determining whether factors concerning the discharger are fundamentally different, EPA will consider, where relevant, the applicable development document for the national limits, associated technical and economic data collected for use in developing each respective national limit, records of legal proceedings, and written and printed documentation including records of communication, etc., relevant to the development of respective national limits which are kept on public file by EPA.

(2) Waste stream(s) associated with a discharger's process wastewater which were not considered in the development of the national limits will not ordinarily be treated as fundamentally different under paragraph (a) of this section. Instead, national limits should be applied to the other streams, and the unique stream(s) should be subject to limitations based on section 402(a)(1) of the Act. See § 125.2(c)(2).]

(2) The volume of the discharger's process wastewater and effluent discharged;

(3) Non-water quality environmental impact of control and treatment of the discharger's raw waste load;

(4) Energy requirements of the application of control and treatment technology;

(5) Age, size, land availability, and configuration as they relate to the discharger's equipment or facilities; processes employed; process changes; and engineering aspects of the application of control technology;

(6) Cost of compliance with required control technololgy.

(e) A variance request or portion of such a request under this section shall not be granted on any of the following grounds:

(1) The infeasibility of installing the required waste treatment equipment within the time the Act allows.

[*Comment:* Under this section a variance request may be approved if it is based on factors which relate to the discharger's ability ultimately to achieve national limits but not if it is based on factors which merely affect the discharger's ability to meet the statutory deadlines of sections 301 and 307 of the Act such as labor difficulties, construction schedules, or unavailability of equipment.]

(2) The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in paragraph (d) of this section;

[*Comment:* Review of the Administrator's action in promulgating national limits is available only through the judicial review procedures set forth in section 509(b) of the Act.]

(3) The discharger's ability to pay for the required waste treatment; or

(4) The impact of a discharge on local receiving water quality.

(f) Nothing in this section shall be construed to impair the right of any State or locality under section 510 of the Act to impose more stringent limitations than those required by Federal law.

§ 125.32 Method of application.

(a) A written request for a variance under this subpart shall be submitted in duplicate to the Director in accordance with part 124, subpart F.

(b) The burden is on the person requesting the variance to explain that:

(1) Factor(s) listed in § 125.31(b) regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The requester should refer to all relevant material and information, such as the published guideline regulations development document, all associated technical and economic data collected for use in developing each national limit, all records of legal proceedings, and all written and printed documentation including records of communication, etc., relevant to the regulations which are kept on public file by the EPA;

(2) The alternative limitations requested are justified by the fundamental difference alleged in paragraph (b)(1) of this section; and

(3) The appropriate requirements of § 125.31 have been met.

Subpart E—Criteria for Granting Economic Variances From Best Available Technology Economically Achievable Under Section 301(c) of the Act—[Reserved]

Subpart F—Criteria for Granting Water Quality Related Variances Under Section 301(g) of the Act—[Reserved]

Subpart G—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

AUTHORITY: Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 *et seq.*, unless otherwise noted.

SOURCE: 59 FR 40658, Aug. 9, 1994, unless otherwise noted.

§ 125.56 Scope and purpose.

This subpart establishes the criteria to be applied by EPA in acting on section 301(h) requests for modifications to the secondary treatment requirements. It also establishes special permit conditions which must be included in any permit incorporating a section 301(h) modification of the secondary treatment requirements (''section 301(h) modified permit'').

§ 125.57 Law governing issuance of a section 301(h) modified permit.

(a) Section 301(h) of the Clean Water Act provides that:

Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of paragraph (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) There is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

(2) 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 protection of public water supplies and 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 after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.

For the purposes of this section, 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 section, and section 101(a)(2) of this Act. 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 paragraph (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.

(b) Section 301(j)(1) of the Clean Water Act provides that:

Any application filed under this section for a modification of the provisions of—

(A) subsection (b)(1)(B) under subsection (h) of this section shall be filed not later than the 365th day which begins after the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, 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.

(c) Section 22(e) of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, Public Law 97–117, provides that:

The amendments made by this section shall take effect on the date of enactment of this Act except that no applicant, other than the city of Avalon, California, who applies after the date of enactment of this Act for a permit pursuant to subsection (h) of section 301 of the Federal Water Pollution Control Act which modifies the requirements of subsection (b)(1)(B) of section 301 of such Act shall receive such permit during the one-year period which begins on the date of enactment of this Act.

(d) Section 303(b)(2) of the Water Quality Act, Public Law 100–4, provides that:

Section 301(h)(3) shall only apply to modifications and renewals of modifications which are tentatively or finally approved after the date of the enactment of this Act.

(e) Section 303(g) of the Water Quality Act provides that:

The amendments made to sections 301(h) and (h)(2), as well as provisions of (h)(6) and (h)(9), shall not apply to an application for a permit under section 301(h) of the

Federal Water Pollution Control Act which has been tentatively or finally approved by the Administrator before the date of the enactment of this Act; except that such amendments shall apply to all renewals of such permits after such date of enactment.

§ 125.58 Definitions.

For the purpose of this subpart:

(a) *Administrator* means the EPA Administrator or a person designated by the EPA Administrator.

(b) *Altered discharge* means any discharge other than a current discharge or improved discharge, as defined in this regulation.

(c) *Applicant* means an applicant for a new or renewed section 301(h) modified permit. Large applicants have populations contributing to their POTWs equal to or more than 50,000 people or average dry weather flows of 5.0 million gallons per day (mgd) or more; small applicants have contributing populations of less than 50,000 people and average dry weather flows of less than 5.0 mgd. For the purposes of this definition the contributing population and flows shall be based on projections for the end of the five-year permit term. Average dry weather flows shall be the average daily total discharge flows for the maximum month of the dry weather season.

(d) *Application* means a final application previously submitted in accordance with the June 15, 1979, section 301(h) regulations (44 FR 34784); an application submitted between December 29, 1981, and December 29, 1982; or a section 301(h) renewal application submitted in accordance with these regulations. It does not include a preliminary application submitted in accordance with the June 15, 1979, section 301(h) regulations.

(e) *Application questionnaire* means EPA's ''Applicant Questionnaire for Modification of Secondary Treatment Requirements,'' published as an appendix to this subpart.

(f) *Balanced indigenous population* means an ecological community which:

(1) Exhibits characteristics similar to those of nearby, healthy communities existing under comparable but unpolluted environmental conditions; or

(2) May reasonably be expected to become reestablished in the polluted water body segment from adjacent waters if sources of pollution were removed.

(g) *Categorical pretreatment standard* means a standard promulgated by EPA under 40 CFR Chapter I, Subchapter N.

(h) *Current discharge* means the volume, composition, and location of an applicant's discharge at the time of permit application.

(i) *Improved discharge* means the volume, composition, and location of an applicant's discharge following:

(1) Construction of planned outfall improvements, including, without limitation, outfall relocation, outfall repair, or diffuser modification; or

(2) Construction of planned treatment system improvements to treatment levels or discharge characteristics; or

(3) Implementation of a planned program to improve operation and maintenance of an existing treatment system or to eliminate or control the introduction of pollutants into the applicant's treatment works.

(j) *Industrial discharger* or *industrial source* means any source of nondomestic pollutants regulated under section 307(b) or (c) of the Clean Water Act which discharges into a POTW.

(k) *Modified discharge* means the volume, composition, and location of the discharge proposed by the applicant for which a modification under section 301(h) of the Act is requested. A modified discharge may be a current discharge, improved discharge, or altered discharge.

(l) *New York Bight Apex* means the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

(m) *Nonindustrial source* means any source of pollutants which is not an industrial source.

(n) *Ocean waters* means those coastal waters landward of the baseline of the territorial seas, the deep waters of the territorial seas, or the waters of the contiguous zone. The term ''ocean waters'' excludes saline estuarine waters.

(o) *Permittee* means an NPDES permittee with an effective section 301(h) modified permit.

(p) *Pesticides* means demeton, guthion, malathion, mirex, methoxychlor, and parathion.

(q) *Pretreatment* means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes, or by other means, except as prohibited by 40 CFR part 403.

(r) *Primary or equivalent treatment* for the purposes of this subpart means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biochemical oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate.

(s) *Public water supplies* means water distributed from a public water system.

(t) *Public water system* means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. This term in-

cludes: (1) Any collection, treatment, storage, and distribution facilities under the control of the operator of the system and used primarily in connection with the system, and (2) Any collection or pretreatment storage facilities not under the control of the operator of the system which are used primarily in connection with the system.

(u) *Publicly owned treatment works* or *POTW* means a treatment works, as defined in section 212(2) of the Act, which is owned by a State, municipality, or intermunicipal or interstate agency.

(v) *Saline estuarine waters* means those semi-enclosed coastal waters which have a free connection to the territorial sea, undergo net seaward exchange with ocean waters, and have salinities comparable to those of the ocean. Generally, these waters are near the mouth of estuaries and have cross-sectional annual mean salinities greater than twenty-five (25) parts per thousand.

(w) *Secondary removal equivalency* means that the amount of a toxic pollutant removed by the combination of the applicant's own treatment of its influent and pretreatment by its industrial users is equal to or greater than the amount of the toxic pollutant that would be removed if the applicant were to apply secondary treatment to its discharge where the discharge has not undergone pretreatment by the applicant's industrial users.

(x) *Secondary treatment* means the term as defined in 40 CFR part 133.

(y) *Shellfish, fish, and wildlife* means any biological population or community that might be adversely affected by the applicant's modified discharge.

(z) *Stressed waters* means those ocean waters for which an applicant can demonstrate to the satisfaction of the Administrator, that the absence of a balanced indigenous population is caused solely by human perturbations other than the applicant's modified discharge.

(aa) *Toxic pollutants* means those substances listed in 40 CFR 401.15.

(bb) *Water quality criteria* means scientific data and guidance developed and periodically updated by EPA under section 304(a)(1) of the Clean Water Act, which are applicable to marine waters.

(cc) *Water quality standards* means applicable water quality standards which have been approved, left in effect, or promulgated under section 303 of the Clean Water Act.

(dd) *Zone of initial dilution* (ZID) means the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards.

§ 125.59 General.

(a) *Basis for application.* An application under this subpart shall be based on a current, improved, or altered discharge into ocean waters or saline estuarine waters.

(b) *Prohibitions.* No section 301(h) modified permit shall be issued:

(1) Where such issuance would not assure compliance with all applicable requirements of this subpart and part 122;

(2) For the discharge of sewage sludge;

(3) Where such issuance would conflict with applicable provisions of State, local, or other Federal laws or Executive Orders. This includes compliance with the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*; the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*; and Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*;

(4) Where the discharge of any pollutant enters 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; or

(5) Where the discharge of any pollutant is into the New York Bight Apex.

(c) *Applications.* Each applicant for a modified permit under this subpart shall submit an application to EPA signed in compliance with 40 CFR part 122, subpart B, which shall contain:

(1) A signed, completed NPDES Application Standard form A, parts I, II, III;

(2) A completed Application Questionnaire;

(3) The certification in accordance with 40 CFR 122.22(d);

(4) In addition to the requirements of § 125.59(c) (1) through (3), applicants for permit renewal shall support continuation of the modification by supplying to EPA the results of studies and monitoring performed in accordance with § 125.63 during the life of the permit. Upon a demonstration meeting the statutory criteria and requirements of this subpart, the permit may be renewed under the applicable procedures of 40 CFR part 124.

(d) *Revisions to applications.* (1) POTWs which submitted applications in accordance with the June 15, 1979, regulations (44 FR 34784) may revise

their applications one time following a tentative decision to propose changes to treatment levels and/or outfall and diffuser location and design in accordance with § 125.59(f)(2)(i); and

(2) Other applicants may revise their applications one time following a tentative decision to propose changes to treatment levels and/or outfall and diffuser location and design in accordance with § 125.59(f)(2)(i). Revisions by such applicants which propose downgrading treatment levels and/or outfall and diffuser location and design must be justified on the basis of substantial changes in circumstances beyond the applicant's control since the time of application submission.

(3) Applicants authorized or requested to submit additional information under § 125.59(g) may submit a revised application in accordance with § 125.59(f)(2)(ii) where such additional information supports changes in proposed treatment levels and/or outfall location and diffuser design. The opportunity for such revision shall be in addition to the one-time revision allowed under § 125.59(d)(1) and (2).

(4) POTWs which revise their applications must:

(i) Modify their NPDES form and Application Questionnaire as needed to ensure that the information filed with their application is correct and complete;

(ii) Provide additional analysis and data as needed to demonstrate compliance with this subpart;

(iii) Obtain new State determinations under §§ 125.61(b)(2) and 125.64(b); and

(iv) Provide the certification described in paragraph (c)(3) of this section.

(5) Applications for permit renewal may not be revised.

(e) *Submittal of additional information to demonstrate compliance with §§ 125.60 and 125.65.* (1) On or before the deadline established in paragraph (f)(3) of this section, applicants shall submit a letter of intent to demonstrate compliance with §§ 125.60 and 125.65. The letter of intent is subject to approval by the Administrator based on the requirements of this paragraph and paragraph (f)(3) of this section. The letter of intent shall consist of the following:

(i) For compliance with § 125.60: (A) A description of the proposed treatment system which upgrades treatment to satisfy the requirements of § 125.60.

(B) A project plan, including a schedule for data collection and for achieving compliance with § 125.60. The project plan shall include dates for design and construction of necessary facilities, submittal of influent/effluent data, and submittal of any other information necessary to demonstrate compliance with § 125.60. The Administrator will review the project plan and may require revisions prior to authorizing submission of the additional information.

(ii) For compliance with § 125.65: (A) A determination of what approach will be used to achieve compliance with § 125.65.

(B) A project plan for achieving compliance. The project plan shall include any necessary data collection activities, submittal of additional information, and/or development of appropriate pretreatment limits to demonstrate compliance with § 125.65. The Administrator will review the project plan and may require revisions prior to submission of the additional information.

(iii) POTWs which submit additional information must:

(A) Modify their NPDES form and Application Questionnaire as needed to ensure that the information filed with their application is correct and complete;

(B) Obtain new State determinations under §§ 125.61(b)(2) and 125.64(b); and

(C) Provide the certification described in paragraph (c)(3) of this section.

(2) The information required under this paragraph must be submitted in accordance with the schedules in § 125.59(f)(3)(ii). If the applicant does not meet these schedules for compliance, EPA may deny the application on that basis.

(f) *Deadlines and distribution*—(1) *Applications.*(i) The application for an original 301(h) permit for POTWs which directly discharges effluent into saline waters shall be submitted to the appropriate EPA Regional Administrator no later than December 29, 1982.

(ii) The application for renewal of a 301(h) modified permit shall be submitted no less than 180 days prior to the expiration of the existing permit, unless permission for a later date has been granted by the Administrator. (The Administrator shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

(iii) A copy of the application shall be provided to the State and interstate agency(s) authorized to provide certification/concurrence under §§ 124.53 through 124.55 on or before the date the application is submitted to EPA.

(2) *Revisions to Applications.* (i) Applicants desiring to revise their applications under § 125.59(d)(1) or (d)(2) must:

(A) Submit to the appropriate Regional Administrator a letter of intent to revise their application either within 45 days of the date of EPA's tentative decision on their original application or within 45 days of November 26, 1982, whichever is later. Following receipt by EPA of a letter of intent, further EPA proceedings on the tentative decision under 40 CFR part 124 will be stayed.

(B) Submit the revised application as described for new applications in § 125.59(f)(1) either within one year of the date of EPA's tentative decision on their original application or within one year of November 26, 1982, if a tentative decision has already been made, whichever is later.

(ii) Applicants desiring to revise their applications under § 125.59(d)(3) must submit the revised application as described for new applications in § 125.59(f)(1) concurrent with submission of the additional information under § 125.59(g).

(3) Deadline for additional information to demonstrate compliance with §§ 125.60 and 125.65.

(i) A letter of intent required under § 125.59(e)(1) must be submitted by the following dates: for permittees with 301(h) modifications or for applicants to which a tentative or final decision has been issued, November 7, 1994; for all others, within 90 days after the Administrator issues a tentative decision on an application. Following receipt by EPA of a letter of intent containing the information required in § 125.59(e)(1), further EPA proceedings on the tentative decision under 40 CFR part 124 will be stayed.

(ii) The project plan submitted under § 125.59(e)(1) shall ensure that the applicant meets all the requirements of §§ 125.60 and 125.65 by the following deadlines:

(A) By August 9, 1996 for applicants that are not grandfathered under § 125.59(j).

(B) At the time of permit renewal or by August 9, 1996, whichever is later, for applicants that are grandfathered under § 125.59(j).

(4) *State determination deadline.* State determinations, as required by §§ 125.61(b)(2) and 125.64(b) shall be filed by the applicant with the appropriate Regional Administrator no later than 90 days after submission of the revision to the application or additional information to EPA. Extensions to this deadline may be provided by EPA upon request. However, EPA will not begin review of the revision to the application or additional information until a favorable State determination is received by EPA. Failure to provide the State determination within the timeframe required by this paragraph (f)(4) is a basis for denial of the application.

(g)(1) The Administrator may authorize or request an applicant to submit additional information by a specified date not to exceed one year from the date of authorization or request.

(2) Applicants seeking authorization to submit additional information on current/modified discharge characteristics, water quality, biological conditions or oceanographic characteristics must:

(i) Demonstrate that they made a diligent effort to provide such information with their application and were unable to do so, and

(ii) Submit a plan of study, including a schedule, for data collection and submittal of the additional information. EPA will review the plan of study and may require revisions prior to authorizing submission of the additional information.

(h) *Tentative decisions on section 301(h) modifications.* The Administrator shall grant a tentative approval or a tentative denial of a section 301(h) modified permit application. To qualify for a tentative approval, the applicant shall demonstrate to the satisfaction of the Administrator that it is using good faith means to come into compliance with all the requirements of this subpart and that it will meet all such requirements based on a schedule approved by the Administrator. For compliance with §§ 125.60 and 125.65, such schedule shall be in accordance with § 125.59(f)(3)(ii).

(i) *Decisions on section 301(h) modifications.* (1) The decision to grant or deny a section 301(h) modification shall be made by the Administrator and shall be based on the applicant's demonstration that it has met all the requirements of §§ 125.59 through 125.68.

(2) No section 301(h) modified permit shall be issued until the appropriate State certification/concurrence is granted or waived pursuant to § 124.54 or if the State denies certification/ concurrence pursuant to § 124.54.

(3) In the case of a modification issued to an applicant in a State administering an approved permit program under 40 CFR part 123, the State Director may:

(i) Revoke an existing permit as of the effective date of the EPA issued section 301(h) modified permit; and

(ii) Cosign the section 301(h) modified permit if the Director has indicated an intent to do so in the written concurrence.

(4) Any section 301(h) modified permit shall:

(i) Be issued in accordance with the procedures set forth in 40 CFR part 124, except that, because section 301(h) permits may be issued only by EPA, the terms ''Administrator or a person designated by the Administrator'' shall be substituted for the term ''Director'' as appropriate; and

(ii) Contain all applicable terms and conditions set forth in 40 CFR part 122 and § 125.68.

(5) Appeals of section 301(h) determinations shall be governed by the procedures in 40 CFR part 124.

(j) *Grandfathering provision.* Applicants that received tentative or final approval for a section 301(h) modified permit prior to February 4, 1987, are not subject to § 125.60, the water quality criteria provisions of § 125.62(a)(1), or § 125.65 until the time of permit renewal. In addition, if permit renewal will occur prior to August 9, 1996, applicants may have additional time to come into compliance with §§ 125.60 and 125.65, as determined

appropriate by EPA on a case-by-case basis. Such additional time, however, shall not extend beyond August 9, 1996. This paragraph does not apply to any application that was initially tentatively approved, but as to which EPA withdrew its tentative approval or issued a tentative denial prior to February 4, 1987.

§ 125.60 Primary or equivalent treatment requirements.

(a) The applicant shall demonstrate that, at the time its modification becomes effective, it will be discharging effluent that has received at least primary or equivalent treatment.

(b) The applicant shall perform monitoring to ensure, based on the monthly average results of the monitoring, that the effluent it discharges has received primary or equivalent treatment.

(c)(1) An applicant may request that the demonstration of compliance with the requirement under paragraph (b) of this section to provide 30 percent removal of BOD be allowed on an averaging basis different from monthly (e.g., quarterly), subject to the demonstrations provided in paragraphs (c)(1)(i), (ii) and (iii) of this section. The Administrator may approve such requests if the applicant demonstrates to the Administrator's satisfaction that:

(i) The applicant's POTW is adequately designed and well operated;

(ii) The applicant will be able to meet all requirements under section 301(h) of the CWA and these subpart G regulations with the averaging basis selected; and

(iii) The applicant cannot achieve 30 percent removal on a monthly average basis because of circumstances beyond the applicant's control. Circumstances beyond the applicant's control may include seasonally dilute influent BOD concentrations due to relatively high (although nonexcessive) inflow and infiltration; relatively high soluble to insoluble BOD ratios on a fluctuating basis; or cold climates resulting in cold influent. Circumstances beyond the applicant's control shall not include less concentrated wastewater due to excessive inflow and infiltration (I&I). The determination of whether the less concentrated wastewater is the result of excessive I&I will be based on the definition of excessive I&I in 40 CFR 35.2005(b)(16) plus the additional criterion that inflow is nonexcessive if the total flow to the POTW (i.e., wastewater plus inflow plus infiltration) is less than 275 gallons per capita per day.

(2) In no event shall averaging on a less frequent basis than annually be allowed.

[59 FR 40658, Aug. 9, 1994, as amended at 61 FR 45833, Aug. 29, 1996]

§ 125.61 Existence of and compliance with applicable water quality standards.

(a) There must exist a water quality standard or standards applicable to the pollutant(s) for which a section 301(h) modified permit is requested, including:

(1) Water quality standards for biochemical oxygen demand or dissolved oxygen;

(2) Water quality standards for suspended solids, turbidity, light transmission, light scattering, or maintenance of the euphotic zone; and

(3) Water quality standards for pH.

(b) The applicant must: (1) Demonstrate that the modified discharge will comply with the above water quality standard(s); and

(2) Provide a determination signed by the State or interstate agency(s) authorized to provide certification under §§ 124.53 and 124.54 that the proposed modified discharge will comply with applicable provisions of State law including water quality standards. This determination shall include a discussion of the basis for the conclusion reached.

§ 125.62 Attainment or maintenance of water quality which assures protection of public water supplies; assures the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife; and allows recreational activities.

(a) *Physical characteristics of discharge.* (1) At the time the 301(h) modification becomes effective, the applicant's outfall and diffuser must be located and designed to provide adequate initial dilution, dispersion, and transport of wastewater such that the discharge does not exceed at and beyond the zone of initial dilution:

(i) All applicable water quality standards; and

(ii) All applicable EPA water quality criteria for pollutants for which there is no applicable EPA-approved water quality standard that directly corresponds to the EPA water quality criterion for the pollutant.

(iii) For purposes of paragraph (a)(1)(ii) of this section, a State water quality standard ''directly corresponds'' to an EPA water quality criterion only if:

(A) The State water quality standard addresses the same pollutant as the EPA water quality criterion and

(B) The State water quality standard specifies a numeric criterion for that pollutant or State objective methodology for deriving such a numeric criterion.

(iv) The evaluation of compliance with paragraphs (a)(1) (i) and (ii) of this section shall be based upon conditions reflecting periods of maximum stratification and during other periods when discharge characteristics, water quality, biological

seasons, or oceanographic conditions indicate more critical situations may exist.

(2) The evaluation under paragraph (a)(1)(ii) of this section as to compliance with applicable section 304(a)(1) water quality criteria shall be based on the following:

(i) *For aquatic life criteria:* The pollutant concentrations that must not be exceeded are the numeric ambient values, if any, specified in the EPA section 304(a)(1) water quality criteria documents as the concentrations at which acute and chronic toxicity to aquatic life occurs or that are otherwise identified as the criteria to protect aquatic life.

(ii) *For human health criteria for carcinogens:* (A) For a known or suspected carcinogen, the Administrator shall determine the pollutant concentration that shall not be exceeded. To make this determination, the Administrator shall first determine a level of risk associated with the pollutant that is acceptable for purposes of this section. The Administrator shall then use the information in the section 304(a)(1) water quality criterion document, supplemented by all other relevant information, to determine the specific pollutant concentration that corresponds to the identified risk level.

(B) For purposes of paragraph (a)(2)(ii)(A) of this section, an acceptable risk level will be a single level that has been consistently used, as determined by the Administrator, as the basis of the State's EPA-approved water quality standards for carcinogenic pollutants. Alternatively, the Administrator may consider a State's recommendation to use a risk level that has been otherwise adopted or formally proposed by the State. The State recommendation must demonstrate, to the satisfaction of the Administrator, that the recommended level is sufficiently protective of human health in light of the exposure and uncertainty factors associated with the estimate of the actual risk posed by the applicant's discharge. The State must include with its demonstration a showing that the risk level selected is based on the best information available and that the State has held a public hearing to review the selection of the risk level, in accordance with provisions of State law and public participation requirements of 40 CFR part 25. If the Administrator neither determines that there is a consistently used single risk level nor accepts a risk level recommended by the State, then the Administrator shall otherwise determine an acceptable risk level based on all relevant information.

(iii) *For human health criteria for noncarcinogens:* For noncarcinogenic pollutants, the pollutant concentrations that must not be exceeded are the numeric ambient values, if any, specified in the EPA section 304(a)(1) water quality criteria documents as protective against the potential toxicity of the contaminant through ingestion of contaminated aquatic organisms.

(3) The requirements of paragraphs (a)(1) and (a)(2) of this section apply in addition to, and do not waive or substitute for, the requirements of § 125.61.

(b) *Impact of discharge on public water supplies.* (1) The applicant's modified discharge must allow for the attainment or maintenance of water quality which assures protection of public water supplies.

(2) The applicant's modified discharge must not:

(i) Prevent a planned or existing public water supply from being used, or from continuing to be used, as a public water supply; or

(ii) Have the effect of requiring treatment over and above that which would be necessary in the absence of such discharge in order to comply with local and EPA drinking water standards.

(c) *Biological impact of discharge.* (1) The applicant's modified discharge must allow for the attainment or maintenance of water quality which assures protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

(2) A balanced indigenous population of shellfish, fish, and wildlife must exist:

(i) Immediately beyond the zone of initial dilution of the applicant's modified discharge; and

(ii) In all other areas beyond the zone of initial dilution where marine life is actually or potentially affected by the applicant's modified discharge.

(3) Conditions within the zone of initial dilution must not contribute to extreme adverse biological impacts, including, but not limited to, the destruction of distinctive habitats of limited distribution, the presence of disease epicenter, or the stimulation of phytoplankton blooms which have adverse effects beyond the zone of initial dilution.

(4) In addition, for modified discharges into saline estuarine water:

(i) Benthic populations within the zone of initial dilution must not differ substantially from the balanced indigenous populations which exist immediately beyond the boundary of the zone of initial dilution;

(ii) The discharge must not interfere with estuarine migratory pathways within the zone of initial dilution; and

(iii) The discharge must not result in the accumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within the zone of initial dilution.

(d) *Impact of discharge on recreational activities.* (1) The applicant's modified discharge must allow for the attainment or maintenance of water quality which allows for recreational activities beyond the zone of initial dilution, including, with-

out limitation, swimming, diving, boating, fishing, and picnicking, and sports activities along shorelines and beaches.

(2) There must be no Federal, State, or local restrictions on recreational activities within the vicinity of the applicant's modified outfall unless such restrictions are routinely imposed around sewage outfalls. This exception shall not apply where the restriction would be lifted or modified, in whole or in part, if the applicant were discharging a secondary treatment effluent.

(e) *Additional requirements for applications based on improved or altered discharges.* An application for a section 301(h) modified permit on the basis of an improved or altered discharge must include:

(1) A demonstration that such improvements or alterations have been thoroughly planned and studied and can be completed or implemented expeditiously;

(2) Detailed analyses projecting changes in average and maximum monthly flow rates and composition of the applicant's discharge which are expected to result from proposed improvements or alterations;

(3) The assessments required by paragraphs (a) through (d) of this section based on its current discharge; and

(4) A detailed analysis of how the applicant's planned improvements or alterations will comply with the requirements of paragraphs (a) through (d) of this section.

(f) *Stressed waters.* An applicant must demonstrate compliance with paragraphs (a) through (e) of this section not only on the basis of the applicant's own modified discharge, but also taking into account the applicant's modified discharge in combination with pollutants from other sources. However, if an applicant which discharges into ocean waters believes that its failure to meet the requirements of paragraphs (a) through (e) of this section is entirely attributable to conditions resulting from human perturbations other than its modified discharge (including, without limitation, other municipal or industrial discharges, nonpoint source runoff, and the applicant's previous discharges), the applicant need not demonstrate compliance with those requirements if it demonstrates, to the satisfaction of the Administrator, that its modified discharge does not or will not:

(1) Contribute to, increase, or perpetuate such stressed conditions;

(2) Contribute to further degradation of the biota or water quality if the level of human perturbation from other sources increases; and

(3) Retard the recovery of the biota or water quality if the level of human perturbation from other sources decreases.

§ 125.63 Establishment of a monitoring program.

(a) *General requirements.* (1) The applicant must:

(i) Have a monitoring program that is:

(A) Designed to provide data to evaluate the impact of the modified discharge on the marine biota, demonstrate compliance with applicable water quality standards or water quality criteria, as applicable, and measure toxic substances in the discharge, and

(B) Limited to include only those scientific investigations necessary to study the effects of the proposed discharge;

(ii) Describe the sampling techniques, schedules and locations (including appropriate control sites), analytical techniques, quality control and verification procedures to be used in the monitoring program;

(iii) Demonstrate that it has the resources necessary to implement the program upon issuance of the modified permit and to carry it out for the life of the modified permit; and

(iv) Determine the frequency and extent of the monitoring program taking into consideration the applicant's rate of discharge, quantities of toxic pollutants discharged, and potentially significant impacts on receiving water quality, marine biota, and designated water uses.

(2) The Administrator may require revision of the proposed monitoring program before issuing a modified permit and during the term of any modified permit.

(b) *Biological monitoring program.* The biological monitoring program for both small and large applicants shall provide data adequate to evaluate the impact of the modified discharge on the marine biota.

(1) Biological monitoring shall include to the extent practicable:

(i) Periodic surveys of the biological communities and populations which are most likely affected by the discharge to enable comparisons with baseline conditions described in the application and verified by sampling at the control stations/reference sites during the periodic surveys;

(ii) Periodic determinations of the accumulation of toxic pollutants and pesticides in organisms and examination of adverse effects, such as disease, growth abnormalities, physiological stress, or death;

(iii) Sampling of sediments in areas of solids deposition in the vicinity of the ZID, in other areas of expected impact, and at appropriate reference sites to support the water quality and biological surveys and to measure the accumulation of toxic pollutants and pesticides; and

(iv) Where the discharge would affect commercial or recreational fisheries, periodic assessments of the conditions and productivity of fisheries.

(2) Small applicants are not subject to the requirements of paragraph (b)(1) (ii) through (iv) of this section if they discharge at depths greater than 10 meters and can demonstrate through a suspended solids deposition analysis that there will be negligible seabed accumulation in the vicinity of the modified discharge.

(3) For applicants seeking a section 301(h) modified permit based on:

(i) A current discharge, biological monitoring shall be designed to demonstrate ongoing compliance with the requirements of § 125.62(c);

(ii) An improved discharge or altered discharge other than outfall relocation, biological monitoring shall provide baseline data on the current impact of the discharge and data which demonstrate, upon completion of improvements or alterations, that the requirements of § 125.62(c) are met; or

(iii) An improved or altered discharge involving outfall relocation, the biological monitoring shall:

(A) Include the current discharge site until such discharge ceases; and

(B) Provide baseline data at the relocation site to demonstrate the impact of the discharge and to provide the basis for demonstrating that requirements of § 125.62(c) will be met.

(c) *Water quality monitoring program.* The water quality monitoring program shall to the extent practicable:

(1) Provide adequate data for evaluating compliance with water quality standards or water quality criteria, as applicable under § 125.62(a)(1);

(2) Measure the presence of toxic pollutants which have been identified or reasonably may be expected to be present in the discharge.

(d) *Effluent monitoring program.* (1) In addition to the requirements of 40 CFR part 122, to the extent practicable, monitoring of the POTW effluent shall provide quantitative and qualitative data which measure toxic substances and pesticides in the effluent and the effectiveness of the toxic control program.

(2) The permit shall require the collection of data on a frequency specified in the permit to provide adequate data for evaluating compliance with the percent removal efficiency requirements under § 125.60.

§ 125.64 Effect of the discharge on other point and nonpoint sources.

(a) No modified discharge may result in any additional pollution control requirements on any other point or nonpoint source.

(b) The applicant shall obtain a determination from the State or interstate agency(s) having authority to establish wasteload allocations indicating whether the applicant's discharge will result in an additional treatment pollution control, or other requirement on any other point or nonpoint sources. The State determination shall include a discussion of the basis for its conclusion.

§ 125.65 Urban area pretreatment program.

(a) *Scope and applicability.* (1) The requirements of this section apply to each POTW serving a population of 50,000 or more that has one or more toxic pollutants introduced into the POTW by one or more industrial dischargers and that seeks a section 301(h) modification.

(2) The requirements of this section apply in addition to any applicable requirements of 40 CFR part 403, and do not waive or substitute for the part 403 requirements in any way.

(b) *Toxic pollutant control.* (1) As to each toxic pollutant introduced by an industrial discharger, each POTW subject to the requirements of this section shall demonstrate that it either:

(i) Has an applicable pretreatment requirement in effect in accordance with paragraph (c) of this section; or

(ii) Has in effect a program that achieves secondary removal equivalency in accordance with paragraph (d) of this section.

(2) Each applicant shall demonstrate that industrial sources introducing waste into the applicant's treatment works are in compliance with all applicable pretreatment requirements, including numerical standards set by local limits, and that it will enforce those requirements.

(c) *Applicable pretreatment requirement.* (1) An applicable pretreatment requirement under paragraph (b)(1)(i) of this section with respect to a toxic pollutant shall consist of the following:

(i) As to a toxic pollutant introduced into the applicant's treatment works by an industrial discharger for which there is no applicable categorical pretreatment standard for the toxic pollutant, a local limit or limits on the toxic pollutant as necessary to satisfy the requirements of 40 CFR part 403; and

(ii) As to a toxic pollutant introduced into the applicant's treatment works by an industrial discharger that is subject to a categorical pretreatment standard for the toxic pollutant, the categorical standard and a local limit or limits as necessary to satisfy the requirements of 40 CFR part 403;

(iii) As to a toxic pollutant introduced into the applicant's treatment works by an industrial discharger for which there is no applicable categorical pretreatment standard for the toxic pollutant, and the 40 CFR part 403 analysis on the toxic pollutant shows that no local limit is necessary, the applicant shall demonstrate to EPA on an annual basis during the term of the permit through contin-

ued monitoring and appropriate technical review that a local limit is not necessary, and, where appropriate, require industrial management practices plans and other pollution prevention activities to reduce or control the discharge of each such pollutant by industrial dischargers to the POTW. If such monitoring and technical review of data indicate that a local limit is needed, the POTW shall establish and implement a local limit.

(2) Any local limits developed to meet the requirements of paragraphs (b)(1)(i) and (c)(1) of this section shall be:

(i) Consistent with all applicable requirements of 40 CFR part 403 and

(ii) Subject to approval by the Administrator as part of the 301(h) application review. The Administrator may require such local limits to be revised as necessary to meet the requirements of this section or 40 CFR part 403.

(d) *Secondary removal equivalency.* An applicant shall demonstrate that it achieves secondary removal equivalency through the use of a secondary treatment pilot (demonstration) plant at the applicant's facility which provides an empirical determination of the amount of a toxic pollutant removed by the application of secondary treatment to the applicant's influent where the applicant's influent has not been pretreated. Alternatively, an applicant may make this determination using influent that has received industrial pretreatment, notwithstanding the definition of secondary removal equivalency in § 125.58(w). The NPDES permit shall include effluent limits based on the data from the secondary equivalency demonstration when those limits are more stringent than effluent limits based on State water quality standards or water quality criteria, if applicable, or are otherwise required to assure that all applicable environmental protection criteria are met. Once such effluent limits are established in the NPDES permit, the POTW may either establish local limits or perform additional treatment at the POTW or a combination of the two to achieve the permit limit.

§ 125.66 Toxics control program.

(a) *Chemical analysis.* (1) The applicant shall submit at the time of application a chemical analysis of its current discharge for all toxic pollutants and pesticides as defined in § 125.58(aa) and (p). The analysis shall be performed on two 24-hour composite samples (one dry weather and one wet weather). Applicants may supplement or substitute chemical analyses if composition of the supplemental or substitute samples typifies that which occurs during dry and wet weather conditions.

(2) Unless required by the State, this requirement shall not apply to any small section 301(h) applicant which certifies that there are no known or suspected sources of toxic pollutants or pesticides and documents the certification with an industrial user survey as described by 40 CFR 403.8(f)(2).

(b) *Identification of sources.* The applicant shall submit at the time of application an analysis of the known or suspected sources of toxic pollutants or pesticides identified in § 125.66(a). The applicant shall to the extent practicable categorize the sources according to industrial and nonindustrial types.

(c) *Industrial pretreatment requirements.* (1) An applicant that has known or suspected industrial sources of toxic pollutants shall have an approved pretreatment program in accordance with 40 CFR part 403.

(2) This requirement shall not apply to any applicant which has no known or suspected industrial sources of toxic pollutants or pesticides and so certifies to the Administrator.

(3) The pretreatment program submitted by the applicant under this section shall be subject to revision as required by the Administrator prior to issuing or renewing any section 301(h) modified permit and during the term of any such permit.

(4) Implementation of all existing pretreatment requirements and authorities must be maintained through the period of development of any additional pretreatment requirements that may be necessary to comply with the requirements of this subpart.

(d) *Nonindustrial source control program.* (1) The applicant shall submit a proposed public education program designed to minimize the entrance of nonindustrial toxic pollutants and pesticides into its POTW(s) which shall be implemented no later than 18 months after issuance of a 301(h) modified permit.

(2) The applicant shall also develop and implement additional nonindustrial source control programs on the earliest possible schedule. This requirement shall not apply to a small applicant which certifies that there are no known or suspected water quality, sediment accumulation, or biological problems related to toxic pollutants or pesticides in its discharge.

(3) The applicant's nonindustrial source control programs under paragraph (d)(2) of this section shall include the following schedules which are to be implemented no later than 18 months after issuance of a section 301(h) modified permit:

(i) A schedule of activities for identifying nonindustrial sources of toxic pollutants and pesticides; and

(ii) A schedule for the development and implementation of control programs, to the extent practicable, for nonindustrial sources of toxic pollutants and pesticides.

(4) Each proposed nonindustrial source control program and/or schedule submitted by the appli-

cant under this section shall be subject to revision as determined by the Administrator prior to issuing or renewing any section 301(h) modified permit and during the term of any such permit.

§ 125.67 Increase in effluent volume or amount of pollutants discharged.

(a) No modified discharge may result in any new or substantially increased discharges of the pollutant to which the modification applies above the discharge specified in the section 301(h) modified permit.

(b) Where pollutant discharges are attributable in part to combined sewer overflows, the applicant shall minimize existing overflows and prevent increases in the amount of pollutants discharged.

(c) The applicant shall provide projections of effluent volume and mass loadings for any pollutants to which the modification applies in 5-year increments for the design life of its facility.

§ 125.68 Special conditions for section 301(h) modified permits.

Each section 301(h) modified permit issued shall contain, in addition to all applicable terms and conditions required by 40 CFR part 122, the following:

(a) Effluent limitations and mass loadings which will assure compliance with the requirements of this subpart;

(b) A schedule or schedules of compliance for:

(1) Pretreatment program development required by § 125.66(c);

(2) Nonindustrial toxics control program required by § 125.66(d); and

(3) Control of combined sewer overflows required by § 125.67.

(c) Monitoring program requirements that include:

(1) Biomonitoring requirements of § 125.63(b);

(2) Water quality requirements of § 125.63(c);

(3) Effluent monitoring requirements of §§ 125.60(b), 125.62(c) and (d), and 125.63(d).

(d) Reporting requirements that include the results of the monitoring programs required by paragraph (c) of this section at such frequency as prescribed in the approved monitoring program.

APPENDIX TO PART 125 TO SUBPART G—APPLICANT QUESTIONNAIRE FOR MODIFICATION OF SECONDARY TREATMENT REQUIREMENTS

OMB Control Number 2040–0088 Expires on 2/28/96 Public reporting burden for this collection of information is estimated to average 1,295 - 19,552 hours per response, for small and large applicants, respectively. The reporting burden includes time for reviewing instructions, gathering data, including monitoring and toxics control activities, and completing and reviewing the questionnaire. Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing the burden, to Chief, Information Policy Branch, U.S. Environmental Protection Agency, 401 M St., SW (2136), Washington, DC 20460 and Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for EPA, Washington, DC 20503.

I. INTRODUCTION

1. This questionnaire is to be submitted by both small and large applicants for modification of secondary treatment requirements under section 301(h) of the Clean Water Act (CWA). A small applicant is defined as a POTW that has a contributing population to its wastewater treatment facility of less than 50,000 and a projected average dry weather flow of less than 5.0 million gallons per day (mgd, 0.22 cubic meters/sec) [40 CFR 125.58(c)]. A large applicant is defined as a POTW that has a population contributing to its wastewater treatment facility of at least 50,000 or a projected average dry weather flow of its discharge of at least 5.0 million gallons per day (mgd, 0.22 cubic meters/sec) [40 CFR 125.58(c)]. The questionnaire is in two sections, a general information and basic requirements section (part II) and a technical evaluation section (part III). Satisfactory completion by small and large dischargers of the appropriate questions of this questionnaire is necessary to enable EPA to determine whether the applicant's modified discharge meets the criteria of section 301(h) and EPA regulations (40 CFR part 125, subpart G).

2. Most small applicants should be able to complete the questionnaire using available information. However, small POTWs with low initial dilution discharging into shallow waters or waters with poor dispersion and transport characteristics, discharging near distinctive and susceptible biological habitats, or discharging substantial quantities of toxics should anticipate the need to collect additional information and/or conduct additional analyses to demonstrate compliance with section 301(h) criteria. If there are questions in this regard, applicants should contact the appropriate EPA Regional Office for guidance.

3. Guidance for responding to this questionnaire is provided by the newly amended section 301(h) technical support document. Where available information is incomplete and the applicant needs to collect additional data during the period it is preparing the application or a letter of intent, EPA encourages the applicant to consult with EPA prior to data collection and submission. Such consultation, particularly if the applicant provides a project plan, will help ensure that the proper data are gathered in the most efficient matter.

4. The notation (L) means large applicants must respond to the question, and (S) means small applicants must respond.

II. GENERAL INFORMATION AND BASIC DATA REQUIREMENTS

A. Treatment System Description

1. (L,S) On which of the following are you basing your application: a current discharge, improved discharge, or altered discharge, as defined in 40 CFR 125.58? [40 CFR 125.59(a)]

2. (L,S) Description of the Treatment/Outfall System [40 CFR 125.62(a) and 125.62(e)]

a. Provide detailed descriptions and diagrams of the treatment system and outfall configuration which you pro-

pose to satisfy the requirements of section 301(h) and 40 CFR part 125, subpart G. What is the total discharge design flow upon which this application is based?

b. Provide a map showing the geographic location of proposed outfall(s) (i.e., discharge). What is the latitude and longitude of the proposed outfall(s)?

c. For a modification based on an improved or altered discharge, provide a description and diagram of your current treatment system and outfall configuration. Include the current outfall's latitude and longitude, if different from the proposed outfall.

3. (L,S) Primary or equivalent treatment requirements [40 CFR 125.60]

a. Provide data to demonstrate that your effluent meets at least primary or equivalent treatment requirements as defined in 40 CFR 125.58(r) [40 CFR 125.60]

b. If your effluent does not meet the primary or equivalent treatment requirements, when do you plan to meet them? Provide a detailed schedule, including design, construction, start-up and full operation, with your application. This requirement must be met by the effective date of the new section 301(h) modified permit.

4. (L,S) Effluent Limitations and Characteristics [40 CFR 125.61(b) and 125.62(e)(2)]

a. Identify the final effluent limitations for five-day biochemical oxygen demand (BOD_5), suspended solids, and pH upon which your application for a modification is based:

—BOD_5 _____ mg/L
—Suspended solids _____ mg/L
—pH _____ (range)

b. Provide data on the following effluent characteristics for your current discharge as well as for the modified discharge if different from the current discharge:

Flow (m^3/sec):
—minimum
—average dry weather
—average wet weather
—maximum
—annual average

BOD_5 (mg/L) for the following plant flows:
—minimum
—average dry weather
—average wet weather
—maximum
—annual average

Suspended solids (mg/L) for the following plant flows:
—minimum
—average dry weather
—average wet weather
—maximum
—annual average

Toxic pollutants and pesticides (ug/L):
—list each toxic pollutant and pesticide
—list each 304(a)(1) criteria and toxic pollutant and pesticide

pH:
—minimum
—maximum

Dissolved oxygen (mg/L, prior to chlorination) for the following plant flows:
—minimum
—average dry weather
—average wet weather
—maximum
—annual average

Immediate dissolved oxygen demand (mg/L).

5. (L,S) Effluent Volume and Mass Emissions [40 CFR 125.62(e)(2) and 125.67]

a. Provide detailed analyses showing projections of effluent volume (annual average, m^3/sec) and mass loadings (mt/yr) of BOD_5 and suspended solids for the design life of your treatment facility in five-year increments. If the application is based upon an improved or altered discharge, the projections must be provided with and without the proposed improvements or alterations.

b. Provide projections for the end of your five-year permit term for 1) the treatment facility contributing population and 2) the average daily total discharge flow for the maximum month of the dry weather season.

6. (L,S) Average Daily Industrial Flow (m^3/sec). Provide or estimate the average daily industrial inflow to your treatment facility for the same time increments as in question II.A.5 above. [40 CFR 125.66]

7. (L,S) Combined Sewer Overflows [40 CFR 125.67(b)]

a. Does (will) your treatment and collection system include combined sewer overflows?

b. If yes, provide a description of your plan for minimizing combined sewer overflows to the receiving water.

8. (L,S) Outfall/Diffuser Design. Provide the following data for your current discharge as well as for the modified discharge, if different from the current discharge: [40 CFR 125.62(a)(1)]

—Diameter and length of the outfall(s) (meters)
—Diameter and length of the diffuser(s) (meters)
—Angle(s) of port orientation(s) from horizontal (degrees)
—Port diameter(s) (meters)
—Orifice contraction coefficient(s), if known
—Vertical distance from mean lower low water (or mean low water) surface and outfall port(s) centerline (meters)
—Number of ports
—Port spacing (meters)
—Design flow rate for each port, if multiple ports are used (m^3/sec)

B. Receiving Water Description

1. (L,S) Are you applying for a modification based on a discharge to the ocean [40 CFR 125.58(n)] or to a saline estuary [40 CFR 125.58(v)]? [40 CFR 125.59(a)].

2. (L,S) Is your current discharge or modified discharge to stressed waters as defined in 40 CFR 125.58(z)? If yes, what are the pollution sources contributing to the stress? [40 CFR 125.59(b)(4) and 125.62(f)].

3. (L,S) Provide a description and data on the seasonal circulation patterns in the vicinity of your current and modified discharge(s). [40 CFR 125.62(a)].

4. (L) Oceanographic conditions in the vicinity of the current and proposed modified discharge(s). Provide data on the following: [40 CFR 125.62(a)].

—Lowest ten percentile current speed (m/sec)
—Predominant current speed (m/sec) and direction (true) during the four seasons
—Period(s) of maximum stratification (months)
—Period(s) of natural upwelling events (duration and frequency, months)
—Density profiles during period(s) of maximum stratification

5. (L,S) Do the receiving waters for your discharge contain significant amounts of effluent previously discharged from the treatment works for which you are applying for a section 301(h) modified permit? [40 CFR 125.57(a)(9)]

6. Ambient water quality conditions during the period(s) of maximum stratification: at the zone of initial dilution (ZID) boundary, at other areas of potential impact, and at control stations. [40 CFR 125.62(a)]

a. (L) Provide profiles (with depth) on the following for the current discharge location and for the modified discharge location, if different from the current discharge:

—BOD_5 (mg/L)
—Dissolved oxygen (mg/L)
—Suspended solids (mg/L)
—pH
—Temperature (°C)
—Salinity (ppt)
—Transparency (turbidity, percent light transmittance)
—Other significant variables (e.g., nutrients, 304(a)(1) criteria and toxic pollutants and pesticides, fecal coliform bacteria)

b. (S) Provide available data on the following in the vicinity of the current discharge location and for the modified discharge location, if different from the current discharge: [40 CFR 125.61(b)(1)]

—Dissolved oxygen (mg/L)
—Suspended solids (mg/L)
—pH
—Temperature (°C)
—Salinity (ppt)
—Transparency (turbidity, percent light transmittance)
—Other significant variables (e.g., nutrients, 304(a)(1) criteria and toxic pollutants and pesticides, fecal coliform bacteria)

c. (L,S)Are there other periods when receiving water quality conditions may be more critical than the period(s) of maximum stratification? If so, describe these and other critical periods and data requested in 6.a. for the other critical period(s). [40 CFR 125.62(a)(1)].

7. (L) Provide data on steady state sediment dissolved oxygen demand and dissolved oxygen demand due to resuspension of sediments in the vicinity of your current and modified discharge(s) (mg/L/day).

C. Biological Conditions

1. (L) Provide a detailed description of representative biological communities (e.g., plankton, macrobenthos, demersal fish, etc.) in the vicinity of your current and modified discharge(s): within the ZID, at the ZID boundary, at other areas of potential discharge-related impact, and at reference (control) sites. Community characteristics to be described shall include (but not be limited to) species composition; abundance; dominance and diversity; spatial/temporal distribution; growth and reproduction; disease frequency; trophic structure and productivity patterns; presence of opportunistic species; bioaccumulation of toxic materials; and the occurrence of mass mortalities.

2. (L,S)a. Are distinctive habitats of limited distribution (such as kelp beds or coral reefs) located in areas potentially affected by the modified discharge? [40 CFR 125.62(c)]

b. If yes, provide information on type, extent, and location of habitats.

3. (L,S)a. Are commercial or recreational fisheries located in areas potentially affected by the discharge? [40 CFR 125.62 (c) and (d)]

b. If yes, provide information on types, location, and value of fisheries.

D. State and Federal Laws [40 CFR 125.61 and 125.62(a)(1)]

1. (L,S) Are there water quality standards applicable to the following pollutants for which a modification is requested:

—Biochemical oxygen demand or dissolved oxygen?
—Suspended solids, turbidity, light transmission, light scattering, or maintenance of the euphotic zone?
—pH of the receiving water?

2. (L,S) If yes, what is the water use classification for your discharge area? What are the applicable standards for your discharge area for each of the parameters for which a modification is requested? Provide a copy of all applicable water quality standards or a citation to where they can be found.

3. (L,S) Will the modified discharge: [40 CFR 125.59(b)(3)].

—Be consistent with applicable State coastal zone management program(s) approved under the Coastal Zone Management Act as amended, 16 U.S.C. 1451 et seq.? [See 16 U.S.C. 1456(c)(3)(A)]
—Be located in a marine sanctuary designated under Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA) as amended, 16 U.S.C. 1431 et seq., or in an estuarine sanctuary designated under the Coastal Zone Management Act as amended, 16 U.S.C. 1461? If located in a marine sanctuary designated under Title III of the MPRSA, attach a copy of any certification or permit required under regulations governing such marine sanctuary. [See 16 U.S.C. 1432(f)(2)]
—Be consistent with the Endangered Species Act as amended, 16 U.S.C. 1531 et seq.? Provide the names of any threatened or endangered species that inhabit or obtain nutrients from waters that may be affected by the modified discharge. Identify any critical habitat that may be affected by the modified discharge and evaluate whether the modified discharge will affect threatened or endangered species or modify a critical habitat. [See 16 U.S.C. 1536(a)(2)].

4. (L,S) Are you aware of any State or Federal laws or regulations (other than the Clean Water Act or the three statutes identified in item 3 above) or an Executive Order which is applicable to your discharge? If yes, provide sufficient information to demonstrate that your modified discharge will comply with such law(s), regulation(s), or order(s). [40 CFR 125.59 (b)(3)].

III. Technical Evaluation

A. Physical Characteristics of Discharge [40 CFR 125.62(a)]

1. (L,S) What is the critical initial dilution for your current and modified discharge(s) during (1) the period(s) of maximum stratification? and (2) any other critical period(s) of discharge volume/composition, water quality, biological seasons, or oceanographic conditions?

2. (L,S) What are the dimensions of the zone of initial dilution for your modified discharge(s)?

3. (L) What are the effects of ambient currents and stratification on dispersion and transport of the discharge plume/wastefield?

4. (S) Will there be significant sedimentation of suspended solids in the vicinity of the modified discharge?

5. (L) Sedimentation of suspended solids

a. What fraction of the modified discharge's suspended solids will accumulate within the vicinity of the modified discharge?

b. What are the calculated area(s) and rate(s) of sediment accumulation within the vicinity of the modified discharge(s) ($g/m^2/yr$)?

c. What is the fate of settleable solids transported beyond the calculated sediment accumulation area?

B. Compliance with Applicable Water Quality Standards and CWA §304(a)(1) water quality criteria [40 CFR 125.61(b) and 125.62(a)]

1. (L,S) What is the concentration of dissolved oxygen immediately following initial dilution for the period(s) of maximum stratification and any other critical period(s) of discharge volume/composition, water quality, biological seasons, or oceanographic conditions?

2. (L,S) What is the farfield dissolved oxygen depression and resulting concentration due to BOD exertion of the wastefield during the period(s) of maximum stratification and any other critical period(s)?

3. (L) What are the dissolved oxygen depressions and resulting concentrations near the bottom due to steady sediment demand and resuspension of sediments?

4. (L,S) What is the increase in receiving water suspended solids concentration immediately following initial dilution of the modified discharge(s)?

5. (L) What is the change in receiving water pH immediately following initial dilution of the modified discharge(s)?

6. (L,S) Does (will) the modified discharge comply with applicable water quality standards for:

—Dissolved oxygen?
—Suspended solids or surrogate standards?
—pH?

7. (L,S) Provide data to demonstrate that all applicable State water quality standards, and all applicable water quality criteria established under Section 304(a)(1) of the Clean Water Act for which there are no directly corresponding numerical applicable water quality standards approved by EPA, are met at and beyond the boundary of the ZID under critical environmental and treatment plant conditions in the waters surrounding or adjacent to the point at which your effluent is discharged. [40 CFR 125.62(a)(1)]

8. (L,S) Provide the determination required by 40 CFR 125.61(b)(2) for compliance with all applicable provisions of State law, including water quality standards or, if the determination has not yet been received, a copy of a letter to the appropriate agency(s) requesting the required determination.

C. Impact on Public Water Supplies [40 CFR 125.62(b)]

1. (L,S) Is there a planned or existing public water supply (desalinization facility) intake in the vicinity of the current or modified discharge?

2. (L,S) If yes:

a. What is the location of the intake(s) (latitude and longitude)?

b. Will the modified discharge(s) prevent the use of intake(s) for public water supply?

c. Will the modified discharge(s) cause increased treatment requirements for public water supply(s) to meet local, State, and EPA drinking water standards?

D. Biological Impact of Discharge [40 CFR 125.62(c)]

1. (L,S) Does (will) a balanced indigenous population of shellfish, fish, and wildlife exist:

—Immediately beyond the ZID of the current and modified discharge(s)?
—In all other areas beyond the ZID where marine life is actually or potentially affected by the current and modified discharge(s)?

2. (L,S) Have distinctive habitats of limited distribution been impacted adversely by the current discharge and will such habitats be impacted adversely by the modified discharge?

3. (L,S) Have commercial or recreational fisheries been impacted adversely by the current discharge (e.g., warnings, restrictions, closures, or mass mortalities) or will they be impacted adversely by the modified discharge?

4. (L,S*) Does the current or modified discharge cause the following within or beyond the ZID: [40 CFR 125.62(c)(3)]

—Mass mortality of fishes or invertebrates due to oxygen depletion, high concentrations of toxics, or other conditions?
—An increased incidence of disease in marine organisms?
—An abnormal body burden of any toxic material in marine organisms?
—Any other extreme, adverse biological impacts?

5. (L,S) For discharges into saline estuarine waters: [40 CFR 125.62 (c)(4)]

—Does or will the current or modified discharge cause substantial differences in the benthic population within the ZID and beyond the ZID?
—Does or will the current or modified discharge interfere with migratory pathways within the ZID?
—Does or will the current or modified discharge result in bioaccumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within the ZID?

No section (h) modified permit shall be issued where the discharge enters into stressed saline estuarine waters as stated in 40 CFR 125.59(b)(4).

6. (L,S) For improved discharges, will the proposed improved discharge(s) comply with the requirements of 40 CFR 125.62(a) through 125.62(d)? [40 CFR 125.62(e)]

7. (L,S) For altered discharge(s), will the altered discharge(s) comply with the requirements of 40 CFR 125.62(a) through 125.62(d)? [40 CFR 125.62(e)]

8. (L,S) If your current discharge is to stressed ocean waters, does or will your current or modified discharge: [40 CFR 125.62(f)]

—Contribute to, increase, or perpetuate such stressed condition?
—Contribute to further degradation of the biota or water quality if the level of human perturbation from other sources increases?
—Retard the recovery of the biota or water quality if human perturbation from other sources decreases?

E. Impacts of Discharge on Recreational Activities [40 CFR 125.62(d)]

1. (L,S) Describe the existing or potential recreational activities likely to be affected by the modified discharge(s) beyond the zone of initial dilution.

2. (L,S) What are the existing and potential impacts of the modified discharge(s) on recreational activities? Your answer should include, but not be limited to, a discussion of fecal coliform bacteria.

3. (L,S) Are there any Federal, State, or local restrictions on recreational activities in the vicinity of the modified discharge(s)? If yes, describe the restrictions and provide citations to available references.

4. (L,S) If recreational restrictions exist, would such restrictions be lifted or modified if you were discharging a secondary treatment effluent?

F. Establishment of a Monitoring Program [40 CFR 125.63]

1. (L,S) Describe the biological, water quality, and effluent monitoring programs which you propose to meet the criteria of 40 CFR 125.63. Only those scientific investigations that are necessary to study the effects of the proposed discharge should be included in the scope of the 301(h) monitoring program [40 CFR 125.63(a)(1)(i)(B)].

2. (L,S) Describe the sampling techniques, schedules, and locations, analytical techniques, quality control and verification procedures to be used.

3. (L,S) Describe the personnel and financial resources available to implement the monitoring programs upon issuance of a modified permit and to carry it out for the life of the modified permit.

G. Effect of Discharge on Other Point and Nonpoint Sources [40 CFR 125.64]

1. (L,S) Does (will) your modified discharge(s) cause additional treatment or control requirements for any other point or nonpoint pollution source(s)?

2. (L,S) Provide the determination required by 40 CFR 125.64(b) or, if the determination has not yet been received, a copy of a letter to the appropriate agency(s) requesting the required determination.

H. Toxics Control Program and Urban Area Pretreatment Program [40 CFR 125.65 and 125.66]

1. a. (L,S) Do you have any known or suspected industrial sources of toxic pollutants or pesticides?

b. (L,S) If no, provide the certification required by 40 CFR 125.66(a)(2) for small dischargers, and required by 40 CFR 125.66(c)(2) for large dischargers.

c. (L,S*) Provide the results of wet and dry weather effluent analyses for toxic pollutants and pesticides as required by 40 CFR 125.66(a)(1). (* to the extent practicable)

d. (L,S*) Provide an analysis of known or suspected industrial sources of toxic pollutants and pesticides identified in (1)(c) above as required by 40 CFR 125.66(b). (* to the extent practicable)

2. (S)a. Are there any known or suspected water quality, sediment accumulation, or biological problems related to toxic pollutants or pesticides from your modified discharge(s)?

(S)b. If no, provide the certification required by 40 CFR 125.66(d)(2) together with available supporting data.

(S)c. If yes, provide a schedule for development and implementation of nonindustrial toxics control programs to meet the requirements of 40 CFR 126.66(d)(3).

(L)d. Provide a schedule for development and implementation of a nonindustrial toxics control program to meet the requirements of 40 CFR 125.66(d)(3).

3. (L,S) Describe the public education program you propose to minimize the entrance of nonindustrial toxic pollutants and pesticides into your treatment system. [40 CFR 125.66(d)(1)]

4. (L,S) Do you have an approved industrial pretreatment program?

a. If yes, provide the date of EPA approval.

b. If no, and if required by 40 CFR part 403 to have an industrial pretreatment program, provide a proposed schedule for development and implementation of your industrial pretreatment program to meet the requirements of 40 CFR part 403.

5. Urban area pretreatment requirement [40 CFR 125.65] Dischargers serving a population of 50,000 or more must respond.

a. Provide data on all toxic pollutants introduced into the treatment works from industrial sources (categorical and noncategorical).

b. Note whether applicable pretreatment requirements are in effect for each toxic pollutant. Are the industrial sources introducing such toxic pollutants in compliance with all of their pretreatment requirements? Are these pretreatment requirements being enforced? [40 CFR 125.65(b)(2)]

c. If applicable pretreatment requirements do not exist for each toxic pollutant in the POTW effluent introduced by industrial sources,

—provide a description and a schedule for your development and implementation of applicable pretreatment requirements [40 CFR 125.65(c)], or

—describe how you propose to demonstrate secondary removal equivalency for each of those toxic pollutants, including a schedule for compliance, by using a secondary treatment pilot plant. [40 CFR 125.65(d)]

Subpart H—Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Act

§ 125.70 Purpose and scope.

Section 316(a) of the Act provides that:

''With respect to any point source otherwise subject to the provisions of section 301 or section 306 of this Act, whenever the owner or operator of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the projection [sic] and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose an effluent limitation under such sections on such plant, with respect to the thermal component of such discharge (taking into account the interaction of such thermal component with other pollut-

ants), that will assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on that body of water.''

This subpart describes the factors, criteria and standards for the establishment of alternative thermal effluent limitations under section 316(a) of the Act in permits issued under section 402(a) of the Act.

§ 125.71 Definitions.

For the purpose of this subpart:

(a) *Alternative effluent limitations* means all effluent limitations or standards of performance for the control of the thermal component of any discharge which are established under section 316(a) and this subpart.

(b) *Representative important species* means species which are representative, in terms of their biological needs, of a balanced, indigenous community of shellfish, fish and wildlife in the body of water into which a discharge of heat is made.

(c) The term *balanced, indigenous community* is synonymous with the term *balanced, indigenous population* in the Act and means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species and by a lack of domination by pollution tolerant species. Such a community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modifications. Normally, however, such a community will not include species whose presence or abundance is attributable to the introduction of pollutants that will be eliminated by compliance by all sources with section 301(b)(2) of the Act; and may not include species whose presence or abundance is attributable to alternative effluent limitations imposed pursuant to section 316(a).

§ 125.72 Early screening of applications for section 316(a) variances.

(a) Any initial application for a section 316(a) variance shall include the following early screening information:

(1) A description of the alternative effluent limitation requested;

(2) A general description of the method by which the discharger proposes to demonstrate that the otherwise applicable thermal discharge effluent limitations are more stringent than necessary;

(3) A general description of the type of data, studies, experiments and other information which the discharger intends to submit for the demonstration; and

(4) Such data and information as may be available to assist the Director in selecting the appropriate representative important species.

(b) After submitting the early screening information under paragraph (a) of this section, the discharger shall consult with the Director at the earliest practicable time (but not later than 30 days after the application is filed) to discuss the discharger's early screening information. Within 60 days after the application is filed, the discharger shall submit for the Director's approval a detailed plan of study which the discharger will undertake to support its section 316(a) demonstration. The discharger shall specify the nature and extent of the following type of information to be included in the plan of study: Biological, hydrographical and meteorological data; physical monitoring data; engineering or diffusion models; laboratory studies; representative important species; and other relevant information. In selecting representative important species, special consideration shall be given to species mentioned in applicable water quality standards. After the discharger submits its detailed plan of study, the Director shall either approve the plan or specify any necessary revisions to the plan. The discharger shall provide any additional information or studies which the Director subsequently determines necessary to support the demonstration, including such studies or inspections as may be necessary to select representative important species. The discharger may provide any additional information or studies which the discharger feels are appropriate to support the demonstration.

(c) Any application for the renewal of a section 316(a) variance shall include only such information described in paragraphs (a) and (b) of this section and § 124.73(c)(1) as the Director requests within 60 days after receipt of the permit application.

(d) The Director shall promptly notify the Secretary of Commerce and the Secretary of the Interior, and any affected State of the filing of the request and shall consider any timely recommendations they submit.

(e) In making the demonstration the discharger shall consider any information or guidance published by EPA to assist in making such demonstrations.

(f) If an applicant desires a ruling on a section 316(a) application before the ruling on any other necessary permit terms and conditions, (as provided by § 124.65), it shall so request upon filing its application under paragraph (a) of this section. This request shall be granted or denied at the discretion of the Director.

NOTE: At the expiration of the permit, any discharger holding a section 316(a) variance should be prepared to

support the continuation of the variance with studies based on the discharger's actual operation experience.

[44 FR 32948, June 7, 1979, as amended at 45 FR 33513, May 19, 1980]

§ 125.73 Criteria and standards for the determination of alternative effluent limitations under section 316(a).

(a) Thermal discharge effluent limitations or standards established in permits may be less stringent than those required by applicable standards and limitations if the discharger demonstrates to the satisfaction of the director that such effluent limitations are more stringent than necessary to assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made. This demonstration must show that the alternative effluent limitation desired by the discharger, considering the cumulative impact of its thermal discharge together with all other significant impacts on the species affected, will assure the protection and propagation of a balanced indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made.

(b) In determining whether or not the protection and propagation of the affected species will be assured, the Director may consider any information contained or referenced in any applicable thermal water quality criteria and thermal water quality information published by the Administrator under section 304(a) of the Act, or any other information he deems relevant.

(c) (1) Existing dischargers may base their demonstration upon the absence of prior appreciable harm in lieu of predictive studies. Any such demonstrations shall show:

(i) That no appreciable harm has resulted from the normal component of the discharge (taking into account the interaction of such thermal component with other pollutants and the additive effect of other thermal sources to a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge has been made; or

(ii) That despite the occurrence of such previous harm, the desired alternative effluent limitations (or appropriate modifications thereof) will nevertheless assure the protection and propagation of a balanced, indigenous community of shellfish, fish and wildlife in and on the body of water into which the discharge is made.

(2) In determining whether or not prior appreciable harm has occurred, the Director shall consider the length of time in which the applicant has been discharging and the nature of the discharge.

Subpart I—Criteria Applicable to Cooling Water Intake Structures Under Section 316(b) of the Act—[Reserved]

Subpart J [Reserved]

Subpart K—Criteria and Standards for Best Management Practices Authorized Under Section 304(e) of the Act

§ 125.100 Purpose and scope.

This subpart describes how best management practices (BMPs) for ancillary industrial activities under section 304(e) of the Act shall be reflected in permits, including best management practices promulgated in effluent limitations under section 304 and established on a case-by-case basis in permits under section 402(a)(1) of the Act. Best management practices authorized by section 304(e) are included in permits as requirements for the purposes of section 301, 302, 306, 307, or 403 of the Act, as the case may be.

§ 125.101 Definition.

Manufacture means to produce as an intermediate or final product, or by-product.

§ 125.102 Applicability of best management practices.

Dischargers who use, manufacture, store, handle or discharge any pollutant listed as toxic under section 307(a)(1) of the Act or any pollutant listed as hazardous under section 311 of the Act are subject to the requirements of this Subpart for all activities which may result in significant amounts of those pollutants reaching waters of the United States. These activities are ancillary manufacturing operations including: Materials storage areas; in-plant transfer, process and material handling areas; loading and unloading operations; plant site runoff; and sludge and waste disposal areas.

§ 125.103 Permit terms and conditions.

(a) Best management practices shall be expressly incorporated into a permit where required by an applicable EPA promulgated effluent limitations guideline under section 304(e);

(b) Best management practices may be expressly incorporated into a permit on a case-by-case basis where determined necessary to carry out the provisions of the Act under section 402(a)(1). In issuing a permit containing BMP requirements, the Director shall consider the following factors:

(1) Toxicity of the pollutant(s);

(2) Quantity of the pollutant(s) used, produced, or discharged;

(3) History of NPDES permit violations;

(4) History of significant leaks or spills of toxic or hazardous pollutants;

(5) Potential for adverse impact on public health (e.g., proximity to a public water supply) or the environment (e.g., proximity to a sport or commerical fishery); and

(6) Any other factors determined to be relevant to the control of toxic or hazardous pollutants.

(c) Best management practices may be established in permits under paragraph (b) of this section alone or in combination with those required under paragraph (a) of this section.

(d) In addition to the requirements of paragraphs (a) and (b) of this section, dischargers covered under § 125.102 shall develop and implement a best management practices program in accordance with § 125.104 which prevents, or minimizes the potential for, the release of toxic or hazardous pollutants from ancillary activities to waters of the United States.

§ 125.104 Best management practices programs.

(a) BMP programs shall be developed in accordance with good engineering practices and with the provisions of this subpart.

(b) The BMP program shall:

(1) Be documented in narrative form, and shall include any necessary plot plans, drawings or maps;

(2) Establish specific objectives for the control of toxic and hazardous pollutants.

(i) Each facility component or system shall be examined for its potential for causing a release of significant amounts of toxic or hazardous pollutants to waters of the United States due to equipment failure, improper operation, natural phenomena such as rain or snowfall, etc.

(ii) Where experience indicates a reasonable potential for equipment failure (e.g., a tank overflow or leakage), natural condition (e.g., precipitation), or other circumstances to result in significant amounts of toxic or hazardous pollutants reaching surface waters, the program should include a prediction of the direction, rate of flow and total quantity of toxic or hazardous pollutants which could be discharged from the facility as a result of each condition or circumstance;

(3) Establish specific best management practices to meet the objectives identified under paragraph (b)(2) of this section, addressing each component or system capable of causing a release of significant amounts of toxic or hazardous pollutants to the waters of the United States;

(4) *The BMP program:* (i) May reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans under section 311 of the Act and 40 CFR part 151, and may incorporate any part of such plans into the BMP program by reference;

[*Comment:* EPA has proposed section 311(j)(1)(c) regulations (43 FR 39276) which require facilities subject to NPDES to develop and implement SPCC plans to prevent discharges of reportable quantities of designated hazardous substances. While subpart K requires only procedural activities and minor construction, the proposed 40 CFR part 151 (SPCC regulations) are more stringent and comprehensive with respect to their requirements for spill prevention. In developing BMP programs in accordance with subpart K, owners or operators should also consider the requirements of proposed 40 CFR part 151 which may address many of the same areas of the facility covered by this subpart.]

(ii) Shall assure the proper management of solid and hazardous waste in accordance with regulations promulgated under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA) (40 U.S.C. 6901 *et seq).* Management practices required under RCRA regulations shall be expressly incorporated into the BMP program; and

(iii) Shall address the following points for the ancillary activities in § 125.102:

(A) Statement of policy;
(B) Spill Control Committee;
(C) Material inventory;
(D) Material compatibility;
(E) Employee training:
(F) Reporting and notification procedures;
(G) Visual inspections;
(H) Preventive maintenance;
(I) Housekeeping; and
(J) Security.

[*Comment:* Additional technical information on BMPs and the elements of a BMP program is contained in publication entitled ''Guidance Manual for Developing Best Management Practices (BMP).'' Copies may be obtained by written request to the Office of Water Resource Center (mail code: 4100), Environmental Protection Agency, Washington, DC 20460].

(c)(1) The BMP program must be clearly described and submitted as part of the permit application. An application which does not contain a BMP program shall be considered incomplete. Upon receipt of the application, the Director shall approve or modify the program in accordance with the requirements of this subpart. The BMP program as approved or modified shall be included in the draft permit (§ 124.6). The BMP program shall be subject to the applicable permit issuance requirements of part 124, resulting in the incorporation of the program (including any modifications of the program resulting from the permit issuance procedures) into the final permit.

(2) Proposed modifications to the BMP program which affect the discharger's permit obligations

shall be submitted to the Director for approval. If the Director approves the proposed BMP program modification, the permit shall be modified in accordance with § 122.62, provided that the Director may waive the requirements for public notice and opportunity for hearing on such modification if he or she determines that the modification is not significant. The BMP program, or modification thereof, shall be fully implemented as soon as possible but not later than one year after permit issuance, modification, or revocation and reissuance unless the Director specifies a later date in the permit.

NOTE: A later date may be specified in the permit, for example, to enable coordinated preparation of the BMP program required under these regulations and the SPCC plan required under 40 CFR part 151 or to allow for the completion of construction projects related to the facility's BMP or SPCC program.

(d) The discharger shall maintain a description of the BMP program at the facility and shall make the description available to the Director upon request.

(e) The owner or operator of a facility subject to this subpart shall amend the BMP program in accordance with the provisions of this subpart whenever there is a change in facility design, construction, operation, or maintenance which materially affects the facility's potential for discharge of significant amounts of hazardous or toxic pollutants into the waters of the United States.

(f) If the BMP program proves to be ineffective in achieving the general objective of preventing the release of significant amounts of toxic or hazardous pollutants to those waters and the specific objectives and requirements under paragraph (b) of this section, the permit and/or the BMP program shall be subject to modification to incorporate revised BMP requirements.

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6027, 6974)

[44 FR 32948, June 7, 1979, as amended at 45 FR 33513, May 19, 1980; 48 FR 14293, Apr. 1, 1983; 60 FR 53875, Oct. 18, 1995]

Subpart L—Criteria and Standards for Imposing Conditions for the Disposal of Sewage Sludge Under Section 405 of the Act [Reserved]

Subpart M—Ocean Discharge Criteria

SOURCE: 45 FR 65953, Oct. 3, 1980, unless otherwise noted.

§ 125.120 Scope and purpose.

This subpart establishes guidelines for issuance of National Pollutant Discharge Elimination System (NPDES) permits for the discharge of pollutants from a point source into the territorial seas, the contiguous zone, and the oceans.

§ 125.121 Definitions.

(a) *Irreparable harm* means significant undesirable effects occurring after the date of permit issuance which will not be reversed after cessation or modification of the discharge.

(b) *Marine environment* means that territorial seas, the contiguous zone and the oceans.

(c) *Mixing zone* means the zone extending from the sea's surface to seabed and extending laterally to a distance of 100 meters in all directions from the discharge point(s) or to the boundary of the zone of initial dilution as calculated by a plume model approved by the director, whichever is greater, unless the director determines that the more restrictive mixing zone or another definition of the mixing zone is more appropriate for a specific discharge.

(d) *No reasonable alternatives* means:

(1) No land-based disposal sites, discharge point(s) within internal waters, or approved ocean dumping sites within a reasonable distance of the site of the proposed discharge the use of which would not cause unwarranted economic impacts on the discharger, or, notwithstanding the availability of such sites,

(2) On-site disposal is environmentally preferable to other alternative means of disposal after consideration of:

(i) The relative environmental harm of disposal on-site, in disposal sites located on land, from discharge point(s) within internal waters, or in approved ocean dumping sites, and

(ii) The risk to the environment and human safety posed by the transportation of the pollutants.

(e) *Unreasonable degradation of the marine environment* means: (1) Significant adverse changes in ecosystem diversity, productivity and stability of the biological community within the area of discharge and surrounding biological communities,

(2) Threat to human health through direct exposure to pollutants or through consumption of exposed aquatic organisms, or

(3) Loss of esthetic, recreational, scientific or economic values which is unreasonable in relation to the benefit derived from the discharge.

§ 125.122 Determination of unreasonable degradation of the marine environment.

(a) The director shall determine whether a discharge will cause unreasonable degradation of the marine environment based on consideration of:

(1) The quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged;

(2) The potential transport of such pollutants by biological, physical or chemical processes;

(3) The composition and vulnerability of the biological communities which may be exposed to such pollutants, including the presence of unique species or communities of species, the presence of species identified as endangered or threatened pursuant to the Endangered Species Act, or the presence of those species critical to the structure or function of the ecosystem, such as those important for the food chain;

(4) The importance of the receiving water area to the surrounding biological community, including the presence of spawning sites, nursery/forage areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of an organism.

(5) The existence of special aquatic sites including, but not limited to marine sanctuaries and refuges, parks, national and historic monuments, national seashores, wilderness areas and coral reefs;

(6) The potential impacts on human health through direct and indirect pathways;

(7) Existing or potential recreational and commercial fishing, including finfishing and shellfishing;

(8) Any applicable requirements of an approved Coastal Zone Management plan;

(9) Such other factors relating to the effects of the discharge as may be appropriate;

(10) Marine water quality criteria developed pursuant to section 304(a)(1).

(b) Discharges in compliance with section 301(g), 301(h), or 316(a) variance requirements or State water quality standards shall be presumed not to cause unreasonable degradation of the marine environment, for any specific pollutants or conditions specified in the variance or the standard.

§ 125.123 Permit requirements.

(a) If the director on the basis of available information including that supplied by the applicant pursuant to § 125.124 determines prior to permit issuance that the discharge will not cause unreasonable degradation of the marine environment after application of any necessary conditions specified in § 125.123(d), he may issue an NPDES permit containing such conditions.

(b) If the director, on the basis of available information including that supplied by the applicant pursuant to § 125.124 determines prior to permit issuance that the discharge will cause unreasonable degradation of the marine environment after application of all possible permit conditions specified in § 125.123(d), he may not issue an NPDES permit which authorizes the discharge of pollutants.

(c) If the director has insufficient information to determine prior to permit issuance that there will be no unreasonable degradation of the marine environment pursuant to § 125.122, there shall be no discharge of pollutants into the marine environment unless the director on the basis of available information, including that supplied by the applicant pursuant to § 125.124 determines that:

(1) Such discharge will not cause irreparable harm to the marine environment during the period in which monitoring is undertaken, and

(2) There are no reasonable alternatives to the on-site disposal of these materials, and

(3) The discharge will be in compliance with all permit conditions established pursuant to paragraph (d) of this section.

(d) All permits which authorize the discharge of pollutants pursuant to paragraph (c) of this section shall:

(1) Require that a discharge of pollutants will: (i) Following dilution as measured at the boundary of the mixing zone not exceed the limiting permissible concentration for the liquid and suspended particulate phases of the waste material as described in § 227.27(a) (2) and (3), § 227.27(b), and § 227.27(c) of the Ocean Dumping Criteria; and (ii) not exceed the limiting permissible concentration for the solid phase of the waste material or cause an accumulation of toxic materials in the human food chain as described in § 227.27 (b) and (d) of the Ocean Dumping Criteria;

(2) Specify a monitoring program, which is sufficient to assess the impact of the discharge on water, sediment, and biological quality including, where appropriate, analysis of the bioaccumulative and/or persistent impact on aquatic life of the discharge;

(3) Contain any other conditions, such as performance of liquid or suspended particulate phase bioaccumulation tests, seasonal restrictions on discharge, process modifications, dispersion of pollutants, or schedule of compliance for existing discharges, which are determined to be necessary because of local environmental conditions, and

(4) Contain the following clause: In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the director determines that continued discharges may cause unreasonable degradation of the marine environment.

§ 125.124 Information required to be submitted by applicant.

The applicant is responsible for providing information which the director may request to make the determination required by this subpart. The director may require the following information as well as any other pertinent information:

(a) An analysis of the chemical constituents of any discharge;

(b) Appropriate bioassays necessary to determine the limiting permissible concentrations for the discharge;

(c) An analysis of initial dilution;

(d) Available process modifications which will reduce the quantities of pollutants which will be discharged;

(e) Analysis of the location where pollutants are sought to be discharged, including the biological community and the physical description of the discharge facility;

(f) Evaluation of available alternatives to the discharge of the pollutants including an evaluation of the possibility of land-based disposal or disposal in an approved ocean dumping site.

PART 129—TOXIC POLLUTANT EFFLUENT STANDARDS

Subpart A—Toxic Pollutant Effluent Standards and Prohibitions

AUTHORITY: Secs. 307, 308, 501, Federal Water Pollution Control Act Amendments of 1972 (Pub. L. 92–500, 86 Stat. 816, (33 U.S.C. 1251 *et seq.*)).

SOURCE: 42 FR 2613, Jan. 12, 1977, unless otherwise noted.

Subpart A—Toxic Pollutant Effluent Standards and Prohibitions

§ 129.1 Scope and purpose.

(a) The provisions of this subpart apply to owners or operators of specified facilities discharging into navigable waters.

(b) The effluent standards or prohibitions for toxic pollutants established in this subpart shall be applicable to the sources and pollutants hereinafter set forth, and may be incorporated in any NPDES permit, modification or renewal thereof, in accordance with the provisions of this subpart.

(c) The provisions of 40 CFR parts 124 and 125 shall apply to any NPDES permit proceedings for any point source discharge containing any toxic pollutant for which a standard or prohibition is established under this part.

§ 129.2 Definitions.

All terms not defined herein shall have the meaning given them in the Act or in 40 CFR part 124 or 125. As used in this part, the term:

(a) *Act* means the Federal Water Pollution Control Act, as amended (Pub. L. 92–500, 86 Stat. 816 *et seq.*, 33 U.S.C. 1251 *et seq.*). Specific references to sections within the Act will be according to Pub. L. 92–500 notation.

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

(c) *Effluent standard* means, for purposes of section 307, the equivalent of *effluent limitation* as that term is defined in section 502(11) of the Act with the exception that it does not include a schedule of compliance.

(d) *Prohibited* means that the constituent shall be absent in any discharge subject to these standards, as determined by any analytical method.

(e) *Permit* means a permit for the discharge of pollutants into navigable waters under the National Pollutant Discharge Elimination System established by section 402 of the Act and implemented in regulations in 40 CFR parts 124 and 125.

(f) *Working day* means the hours during a calendar day in which a facility discharges effluents subject to this part.

(g) *Ambient water criterion* means that concentration of a toxic pollutant in a navigable water that, based upon available data, will not result in adverse impact on important aquatic life, or on consumers of such aquatic life, after exposure of that aquatic life for periods of time exceeding 96 hours and continuing at least through one reproductive cycle; and will not result in a significant risk of adverse health effects in a large human population based on available information such as mammalian laboratory toxicity data, epidemiological studies of human occupational exposures, or human exposure data, or any other relevant data.

(h) *New source* means any source discharging a toxic pollutant, the construction of which is commenced after proposal of an effluent standard or prohibition applicable to such source if such effluent standard or prohibition is thereafter promulgated in accordance with section 307.

(i) *Existing source* means any source which is not a new source as defined above.

(j) *Source* means any building, structure, facility, or installation from which there is or may be the discharge of toxic pollutants designated as such by the Administration under section 307(a)(1) of the Act.

(k) *Owner or operator* means any person who owns, leases, operates, controls, or supervises a source as defined above.

(l) *Construction* means any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises.

(m) *Manufacturer* means any establishment engaged in the mechanical or chemical transformation of materials or substances into new products including but not limited to the blending

of materials such as pesticidal products, resins, or liquors.

(n) *Process wastes* means any designated toxic pollutant, whether in wastewater or otherwise present, which is inherent to or unavoidably resulting from any manufacturing process, including that which comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product or waste product and is discharged into the navigable waters.

(o) *Air emissions* means the release or discharge of a toxic pollutant by an owner or operator into the ambient air either (1) by means of a stack or (2) as a fugitive dust, mist or vapor as a result inherent to the manufacturing or formulating process.

(p) *Fugitive dust, mist or vapor* means dust, mist or vapor containing a toxic pollutant regulated under this part which is emitted from any source other than through a stack.

(q) *Stack* means any chimney, flue, conduit, or duct arranged to conduct emissions to the ambient air.

(r) *Ten year 24-hour rainfall event* means the maximum precipitation event with a probable recurrence interval of once in 10 years as defined by the National Weather Service in Technical Paper No. 40, *Rainfall Frequency Atlas of the United States*, May 1961, and subsequent amendments or equivalent regional or State rainfall probability information developed therefrom.

(s) *State Director* means the chief administrative officer of a State or interstate water pollution control agency operating an approved HPDES permit program. In the event responsibility for water pollution control and enforcement is divided among two or more State or interstate agencies, the term *State Director* means the administrative officer authorized to perform the particular procedure to which reference is made.

§ 129.3 Abbreviations.

The abbreviations used in this part represent the following terms:

lb=pound (or pounds).
g=gram.
µg/l=micrograms per liter (1 one-millionth gram/liter).
kg=kilogram(s).
kkg=1000 kilogram(s).

§ 129.4 Toxic pollutants.

The following are the pollutants subject to regulation under the provisions of this subpart:

(a) Aldrin/Dieldrin—*Aldrin* means the compound aldrin as identified by the chemical name, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-1,4 -endo-5,8-exo-dimethanonaphthalene; ''Dieldrin'' means the compound the dieldrin as identified by the chemical name 1,2,3,4,10,10-hexachloro-6,7 - epoxy - 1,4,4a,5,6,7,8,8a-octahydro-1,4-endo-5,8-exo-dimethanonaphthalene.

(b) DDT—*DDT* means the compounds DDT, DDD, and DDE as identified by the chemical names:(DDT)-1,1,1-trichloro-2,2 - bis(p - chlorophenyl) ethane and someo,p′-isomers; (DDD) or (TDE) -1,1 - dichloro - 2,2- bis(p-chlorophenyl) ethane and some o,p′-isomers; (DDE) - 1,1 - dichloro-2,2-bis(p-chlorophenyl) ethylene.

(c) Endrin—*Endrin* means the compound endrin as identified by the chemical name 1,2,3,4,10,10-hexachloro-6,7-epoxy - 1,4,4a,5,6,7,8,8a - octahydro - 1,4-endo-5,8-endodimethanonaphthalene.

(d) Toxaphene—*Toxaphene* means a material consisting of technical grade chlorinated camphene having the approximate formula of $C_{10}H_{10}Cl_8$ and normally containing 67–69 percent chlorine by weight.

(e) Benzidine—*Benzidine* means the compound benzidine and its salts as identified by the chemical name 4,4′–diaminobiphenyl.

(f) Polychlorinated Biphenyls (PCBs) *polychlorinated biphenyls* (PCBs) means a mixture of compounds composed of the biphenyl molecule which has been chlorinated to varying degrees.

[42 FR 2613, Jan. 12, 1977, as amended at 42 FR 2620, Jan. 12, 1977; 42 FR 6555, Feb. 2, 1977]

§ 129.5 Compliance.

(a)(1) Within 60 days from the date of promulgation of any toxic pollutant effluent standard or prohibition each owner or operator with a discharge subject to that standard or prohibition must notify the Regional Administrator (or State Director, if appropriate) of such discharge. Such notification shall include such information and follow such procedures as the Regional Administrator (or State Director, if appropriate) may require.

(2) Any owner or operator who does not have a discharge subject to any toxic pollutant effluent standard at the time of such promulgation but who thereafter commences or intends to commence any activity which would result in such a discharge shall first notify the Regional Administrator (or State Director, if appropriate) in the manner herein provided at least 60 days prior to any such discharge.

(b) Upon receipt of any application for issuance or reissuance of a permit or for a modification of an existing permit for a discharge subject to a toxic pollutant effluent standard or prohibition the permitting authority shall proceed thereon in accordance with 40 CFR part 124 or 125, whichever is applicable.

(c)(1) Every permit which contains limitations based upon a toxic pollutant effluent standard or prohibition under this part is subject to revision following the completion of any proceeding revising such toxic pollutant effluent standard or prohibition regardless of the duration specified on the permit.

(2) For purposes of this section, all toxic pollutants for which standards are set under this part are deemed to be injurious to human health within the meaning of section 402(k) of the Act unless otherwise specified in the standard established for any particular pollutant.

(d)(1) Upon the compliance date for any section 307(a) toxic pollutant effluent standard or prohibition, each owner or operator of a discharge subject to such standard or prohibition shall comply with such monitoring, sampling, recording, and reporting conditions as the Regional Administrator (or State Director, if appropriate) may require for that discharge. Notice of such conditions shall be provided in writing to the owner or operator.

(2) In addition to any conditions required pursuant to paragraph (d)(1) of this section and to the extent not required in conditions contained in NPDES permits, within 60 days following the close of each calendar year each owner or operator of a discharge subject to any toxic standard or prohibition shall report to the Regional Administrator (or State Director, if appropriate) concerning the compliance of such discharges. Such report shall include, as a minimum, information concerning (i) relevant identification of the discharger such as name, location of facility, discharge points, receiving waters, and the industrial process or operation emitting the toxic pollutant; (ii) relevant conditions (pursuant to paragraph (d)(1) of this section or to an NPDES permit) as to flow, section 307(a) toxic pollutant concentrations, and section 307(a) toxic pollutant mass emission rate; (iii) compliance by the discharger with such conditions.

(3) When samples collected for analysis are composited, such samples shall be composited in proportion to the flow at time of collection and preserved in compliance with requirements of the Regional Administrator (or State Director, if appropriate), but shall include at least five samples, collected at approximately equal intervals throughout the working day.

(e)(1) Nothing in these regulations shall preclude a Regional Administrator from requiring in any permit a more stringent effluent limitation or standard pursuant to section 301(b)(1)(C) of the Act and implemented in 40 CFR 125.11 and other related provisions of 40 CFR part 125.

(2) Nothing in these regulations shall preclude the Director of a State Water Pollution Control Agency or interstate agency operating a National Pollutant Discharge Elimination System Program which has been approved by the Administrator pursuant to section 402 of the Act from requiring in any permit a more stringent effluent limitation or standard pursuant to section 301(b)(1)(C) of the Act and implemented in 40 CFR 124.42 and other related provisions of 40 CFR part 124.

(f) Any owner or operator of a facility which discharges a toxic pollutant to the navigable waters and to a publicly owned treatment system shall limit the summation of the mass emissions from both discharges to the less restrictive standard, either the direct discharge standard or the pretreatment standard; but in no case will this paragraph allow a discharge to the navigable waters greater than the toxic pollutant effluent standard established for a direct discharge to the navigable waters.

(g) In any permit hearing or other administrative proceeding relating to the implementation or enforcement of these standards, or any modification thereof, or in any judicial proceeding other than a petition for review of these standards pursuant to section 509(b)(1)(C) of the Act, the parties thereto may not contest the validity of any national standards established in this part, or the ambient water criterion established herein for any toxic pollutant.

§ 129.6 Adjustment of effluent standard for presence of toxic pollutant in the intake water.

(a) Upon the request of the owner or operator of a facility discharging a pollutant subject to a toxic pollutant effluent standard or prohibition, the Regional Administrator (or State Director, if appropriate) shall give credit, and shall adjust the effluent standard(s) in such permit to reflect credit for the toxic pollutant(s) in the owner's or operator's water supply if (1) the source of the owner's or operator's water supply is the same body of water into which the discharge is made and if (2) it is demonstrated to the Regional Administrator (or State Director, if appropriate) that the toxic pollutant(s) present in the owner's or operator's intake water will not be removed by any wastewater treatment systems whose design capacity and operation were such as to reduce toxic pollutants to the levels required by the applicable toxic pollutant effluent standards in the absence of the toxic pollutant in the intake water.

(b) Effluent limitations established pursuant to this section shall be calculated on the basis of the amount of section 307(a) toxic pollutant(s) present in the water after any water supply treatment steps have been performed by or for the owner or operator.

(c) Any permit which includes toxic pollutant effluent limitations established pursuant to this section shall also contain conditions requiring the

permittee to conduct additional monitoring in the manner and locations determined by the Regional Administrator (or State Director, if appropriate) for those toxic pollutants for which the toxic pollutant effluent standards have been adjusted.

§ 129.7 Requirement and procedure for establishing a more stringent effluent limitation.

(a) *In exceptional cases:* (1) Where the Regional Administrator (or State Director, if appropriate) determines that the ambient water criterion established in these standards is not being met or will not be met in the receiving water as a result of one or more discharges at levels allowed by these standards, and

(2) Where he further determines that this is resulting in or may cause or contribute to significant adverse effects on aquatic or other organisms usually or potentially present, or on human health, he may issue to an owner or operator a permit or a permit modification containing a toxic pollutant effluent limitation at a more stringent level than that required by the standard set forth in these regulations. Any such action shall be taken pursuant to the procedural provisions of 40 CFR parts 124 and 125, as appropriate. In any proceeding in connection with such action the burden of proof and of going forward with evidence with regard to such more stringent effluent limitation shall be upon the Regional Administrator (or State Director, if appropriate) as the proponent of such more stringent effluent limitation.

(3) Evidence in such proceeding shall include at a minimum: An analysis using data and other information to demonstrate receiving water concentrations of the specified toxic pollutant, projections of the anticipated effects of the proposed modification on such receiving water concentrations, and the hydrologic and hydrographic characteristics of the receiving waters including the occurrence of dispersion of the effluent. Detailed specifications for presenting relevant information by any interested party may be prescribed in guidance documents published from time to time, whose availability will be announced in the FEDERAL REGISTER.

(b) Any effluent limitation in an NPDES permit which a State proposes to issue which is more stringent than the toxic pollutant effluent standards promulgated by the Administrator is subject to review by the Administrator under section 402(d) of the Act. The Administrator may approve or disapprove such limitation(s) or specify another limitation(s) upon review of any record of any proceedings held in connection with the permit issuance or modification and any other evidence available to him. If he takes no action within ninety days of his receipt of the notification of the action of the permit issuing authority and any record thereof, the action of the State permit issuing authority shall be deemed to be approved.

§ 129.8 Compliance date.

(a) The effluent standards or prohibitions set forth herein shall be complied with not later than one year after promulgation unless an earlier date is established by the Administrator for an industrial subcategory in the promulgation of the standards or prohibitions.

(b) Toxic pollutant effluent standards or prohibitions set forth herein shall become enforceable under sections 307(d) and 309 of the Act on the date established in paragraph (a) of this section regardless of proceedings in connection with the issuance of any NPDES permit or application therefor, or modification or renewal thereof.

§§ 129.9—129.99 [Reserved]

§ 129.100 Aldrin/dieldrin.

(a) *Specialized definitions.* (1) *Aldrin/Dieldrin manufacturer* means a manufacturer, excluding any source which is exclusively an aldrin/dieldrin formulator, who produces, prepares or processes technical aldrin or dieldrin or who uses aldrin or dieldrin as a material in the production, preparation or processing of another synthetic organic substance.

(2) *Aldrin/Dieldrin formulator* means a person who produces, prepares or processes a formulated product comprising a mixture of either aldrin or dieldrin and inert materials or other diluents, into a product intended for application in any use registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 135, *et seq.*).

(3) The ambient water criterion for aldrin/dieldrin in navigable waters is 0.003 μg/l.

(b) *Aldrin/dieldrin manufacturer*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the manufacturing areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by aldrin/dieldrin as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (b)(1)(ii) of this section; and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of aldrin/dieldrin; or to stormwater runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable.* Environmental Protection Agency method specified in 40 CFR part 136, except that a 1-liter sample size is required to increase the analytical sensitivity.

(3) *Effluent standard*—(i) *Existing sources.* Aldrin or dieldrin is prohibited in any discharge from any aldrin/dieldrin manufacturer.

(ii) *New Sources.* Aldrin or dieldrin is prohibited in any discharge from any aldrin/dieldrin manufacturer.

(c) *Aldrin/dieldrin formulator*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the formulating areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by aldrin/dieldrin as a result of the formulating process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (c)(1)(ii) of this section; and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of aldrin/dieldrin; or to stormwater runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable.* Environmental Protection Agency method specified in 40 CFR part 136, except that a 1-liter sample size is required to increase the analytical sensitivity.

(3) *Effluent standard*—(i) *Existing sources.* Aldrin or dieldrin is prohibited in any discharge from any aldrin/dieldrin formulator.

(ii) *New sources.* Aldrin or dieldrin is prohibited in any discharge from any aldrin/dieldrin formulator.

§ 129.101 DDT, DDD and DDE.

(a) *Specialized definitions.* (1) *DDT Manufacturer* means a manufacturer, excluding any source which is exclusively a DDT formulator, who produces, prepares or processes technical DDT, or who uses DDT as a material in the production, preparation or processing of another synthetic organic substance.

(2) *DDT formulator* means a person who produces, prepares or processes a formulated product comprising a mixture of DDT and inert materials or other diluents into a product intended for application in any use registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 135, et seq.).

(3) The ambient water criterion for DDT in navigable waters is 0.001 µg/l.

(b) *DDT manufacturer*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the manufacturing areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by DDT as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (b)(1)(ii) of this section; and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of DDT; or to stormwater runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable.* Environmental Protection Agency method specified in 40 CFR part 136, except that a 1-liter sample size is required to increase the analytical sensitivity.

(3) *Effluent standard*—(i) *Existing sources.* DDT is prohibited in any discharge from any DDT manufacturer.

(ii) *New sources.* DDT is prohibited in any discharge from any DDT manufacturer.

(c) *DDT formulator*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the formulating areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by DDT as a result of the formulating process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (c)(1)(ii) of this section; and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of DDT; or to stormwater runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable.* Environmental Protection Agency method specified in 40 CFR part 136, except that a 1-liter sample size is required to increase the analytical sensitivity.

(3) *Effluent standard*—(i) *Existing sources.* DDT is prohibited in any discharge from any DDT formulator.

(ii) *New Sources.* DDT is prohibited in any discharge from any DDT formulator.

§ 129.102 Endrin.

(a) *Specialized definitions.* (1) *Endrin Manufacturer* means a manufacturer, excluding any source which is exclusively an endrin formulator, who produces, prepares or processes technical endrin or who uses endrin as a material in the production,

preparation or processing of another synthetic organic substance.

(2) *Endrin Formulator* means a person who produces, prepares or processes a formulated product comprising a mixture of endrin and inert materials or other diluents into a product intended for application in any use registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 135, et seq.).

(3) The ambient water criterion for endrin in navigable waters is 0.004 µg/l.

(b) *Endrin manufacturer*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the manufacturing areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by endrin as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (b)(1)(ii) of this section; and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of endrin; or to stormwater runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable*—Environmental Protection Agency method specified in 40 CFR part 136.

(3) *Effluent standard*—(i) *Existing sources.* Discharges from an endrin manufacturer shall not contain endrin concentrations exceeding an average per working day of 1.5 µg/l calculated over any calendar month; and shall not exceed a monthly average daily loading of 0.0006 kg/kkg of endrin produced; and shall not exceed 7.5 µg/l in a sample(s) representing any working day.

(ii) *New sources.* Discharges from an endrin manufacturer shall not contain endrin concentrations exceeding an average per working day of 0.1 µg/l calculated over any calendar month; and shall not exceed a monthly average daily loading of 0.00004 kg/kkg of endrin produced; and shall not exceed 0.5 µg/l in a sample(s) representing any working day.

(iii) *Mass emission standard during shutdown of production.* In computing the allowable monthly average daily loading figure required under the preceding paragraphs (b)(3) (i) and (ii) of this section, for any calendar month for which there is no endrin being manufactured at any plant or facility which normally contributes to the discharge which is subject to these standards, the applicable production value shall be deemed to be the average monthly production level for the most recent preceding 360 days of actual operation of the plant or facility.

(c) *Endrin formulator*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the formulating areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by endrin as a result of the formulating process, including but not limited to: (*1*) Stormwater and other runoff except as hereinafter provided in paragraph (c)(1)(ii) of this section; and (*2*) water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of endrin; or to storm-water runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable*—Environmental Protection Agency method specified in 40 CFR part 136, except that a 1-liter sample size is required to increase the analytical sensitivity.

(3) *Effluent standard*—(i) *Existing sources.* Endrin is prohibited in any discharge from any endrin formulator.

(ii) New sources—Endrin is prohibited in any discharge from any endrin formulator.

(d) The standards set forth in this section shall apply to the total combined weight or concentration of endrin, excluding any associated element or compound.

§ 129.103 Toxaphene.

(a) *Specialized definitions.* (1) *Toxaphene manufacturer* means a manufacturer, excluding any source which is exclusively a toxaphene formulator, who produces, prepares or processes toxaphene or who uses toxaphene as a material in the production, preparation or processing of another synthetic organic substance.

(2) *Toxaphene formulator* means a person who produces, prepares or processes a formulated product comprising a mixture of toxaphene and inert materials or other diluents into a product intended for application in any use registered under the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 135, *et seq.*).

(3) The ambient water criterion for toxaphene in navigable waters is 0.005 µg/l.

(b) *Toxaphene manufacturer*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the manufacturing areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by toxaphene as a result of the manufacturing process, including but not limited to: (*1*) Stormwater and other runoff except as hereinafter provided in paragraph (b)(1)(ii) of this section;

and (*2*) water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of toxaphene; or to stormwater runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable*—Environmental Protection Agency method specified in 40 CFR part 136.

(3) *Effluent standard*—(i) *Existing sources.* Discharges from a toxaphene manufacturer shall not contain toxaphene concentrations exceeding an average per working day of 1.5 μg/l calculated over any calendar month; and shall not exceed a monthly average daily loading of 0.00003 kg/kkg of toxaphene produced, and shall not exceed 7.5 μg/l in a sample(s) representing any working day.

(ii) *New sources.* Discharges from a toxaphene manufacturer shall not contain toxaphene concentrations exceeding an average per working day of 0.1 μg/l calculated over any calendar month; and shall not exceed a monthly average daily loading of 0.000002 kg/kkg of toxaphene produced, and shall not exceed 0.5 μ/l in a sample(s) representing any working day.

(iii) *Mass emission during shutdown of production.* In computing the allowable monthly average daily loading figure required under the preceding paragraphs (b)(3)(i) and (ii) of this section, for any calendar month for which there is no toxaphene being manufactured at any plant or facility which normally contributes to the discharge which is subject to these standards, the applicable production value shall be deemed to be the average monthly production level for the most recent preceding 360 days of actual operation of the plant or facility.

(c) *Toxaphene formulator*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the formulating areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by toxaphene as a result of the formulating process, including but not limited to: (*1*) Stormwater and other runoff except as hereinafter provided in paragraph (c)(1)(ii) of this section; and (*2*) water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of toxaphene; or to stormwater runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable*—Environmental Protection Agency method specified in 40 CFR part 136, except that a 1-liter sample size is required to increase the analytical sensitivity.

(3) *Effluent standards*—(i) *Existing sources.* Toxaphene is prohibited in any discharge from any toxaphene formulator.

(ii) *New sources.* Toxaphene is prohibited in any discharge from any toxaphene formulator.

(d) The standards set forth in this section shall apply to the total combined weight or concentration of toxaphene, excluding any associated element or compound.

§ 129.104 Benzidine.

(a) *Specialized definitions.* (1) *Benzidine Manufacturer* means a manufacturer who produces benzidine or who produces benzidine as an intermediate product in the manufacture of dyes commonly used for textile, leather and paper dyeing.

(2) *Benzidine-Based Dye Applicator* means an owner or operator who uses benzidine-based dyes in the dyeing of textiles, leather or paper.

(3) The ambient water criterion for benzidine in navigable waters is 0.1 μg/l.

(b) *Benzidine manufacturer*—(1) *Applicability.* (i) These standards apply to:

(A) All discharges into the navigable waters of process wastes, and

(B) All discharges into the navigable waters of wastes containing benzidine from the manufacturing areas, loading and unloading areas, storage areas, and other areas subject to direct contamination by benzidine or benzidine-containing product as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (b)(1)(ii) of this section, and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of benzidine; or to stormwater runoff that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable*—Environmental Protection Agency method specified in 40 CFR part 136.

(3) *Effluent standards*—(i) *Existing sources.* Discharges from a benzidine manufacturer shall not contain benzidine concentrations exceeding an average per working day of 10 μg/l calculated over any calendar month, and shall not exceed a monthly average daily loading of 0.130 kg/kkg of benzidine produced, and shall not exceed 50 μg/l in a sample(s) representing any working day.

(ii) *New sources*. Discharges from a benzidine manufacturer shall not contain benzidine concentrations exceeding an average per working day of 10 μg/l calculated over any calendar month, and shall not exceed a monthly average daily loading of 0.130 kg/kkg of benzidine produced, and

shall not exceed 50 μg/l in a sample(s) representing any working day.

(4) The standards set forth in this paragraph (b) shall apply to the total combined weight or concentration of benzidine, excluding any associated element or compound.

(c) *Benzidine-based dye applicators*—(1) *Applicability.* (i) These standards apply to:

(A) All discharges into the navigable waters of process wastes, and

(B) All discharges into the navigable waters of wastes containing benzidine from the manufacturing areas, loading and unloading areas, storage areas, and other areas subject to direct contamination by benzidine or benzidine-containing product as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (c)(1)(ii) of this section, and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of benzidine; or to stormwater that exceeds that from the ten year 24-hour rainfall event.

(2) *Analytical method acceptable.* (i) Environmental Protection Agency method specified in 40 CFR part 136; or

(ii) Mass balance monitoring approach which requires the calculation of the benzidine concentration by dividing the total benzidine contained in dyes used during a working day (as certified in writing by the manufacturer) by the total quantity of water discharged during the working day.

[*Comment*: The Regional Administrator (or State Director, if appropriate) shall rely entirely upon the method specified in 40 CFR part 136 in analyses performed by him for enforcement purposes.]

(3) *Effluent standards*—(i) *Existing sources*. Discharges from benzidine-based dye applicators shall not contain benzidine concentrations exceeding an average per working day of 10 μg/l calculated over any calendar month; and shall not exceed 25 μg/l in a sample(s) or calculation(s) representing any working day.

(ii) *New sources*. Discharges from benzidine-based dye applicators shall not contain benzidine concentrations exceeding an average per working day of 10 μg/l calculated over any calendar month; and shall not exceed 25 μg/l in a sample(s) or calculation(s) representing any working day.

(4) The standards set forth in this paragraph (c) shall apply to the total combined concentrations of benzidine, excluding any associated element or compound.

[42 FR 2620, Jan. 12, 1977]

§ 129.105 Polychlorinated biphenyls (PCBs).

(a) *Specialized definitions.* (1) *PCB Manufacturer* means a manufacturer who produces polychlorinated biphenyls.

(2) *Electrical capacitor manufacturer* means a manufacturer who produces or assembles electrical capacitors in which PCB or PCB-containing compounds are part of the dielectric.

(3) *Electrical transformer manufacturer* means a manufacturer who produces or assembles electrical transformers in which PCB or PCB-containing compounds are part of the dielectric.

(4) The ambient water criterion for PCBs in navigable waters is 0.001 μg/l.

(b) *PCB manufacturer*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes;

(B) All discharges from the manufacturing or incinerator areas, loading and unloading areas, storage areas, and other areas which are subject to direct contamination by PCBs as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (b)(1)(ii) of this section; and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of PCBs; or to stormwater runoff that exceeds that from the ten-year 24-hour rainfall event.

(2) Analytical Method Acceptable—Environmental Protection Agency method specified in 40 CFR part 136 except that a 1-liter sample size is required to increase analytical sensitivity.

(3) *Effluent standards*—(i) *Existing sources.* PCBs are prohibited in any discharge from any PCB manufacturer;

(ii) *New sources.* PCBs are prohibited in any discharge from any PCB manufacturer.

(c) *Electrical capacitor manufacturer*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the manufacturing or incineration areas, loading and unloading areas, storage areas and other areas which are subject to direct contamination by PCBs as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (c)(1)(ii) of this section; and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of PCBs; or to stormwater runoff that exceeds that from the ten-year 24-hour rainfall event.

(2) *Analytical method acceptable.* Environmental Protection Agency method specified in 40 CFR part 136, except that a 1-liter sample size is required to increase analytical sensitivity.

(3) *Effluent standards*—(i) *Existing sources.* PCBs are prohibited in any discharge from any electrical capacitor manufacturer;

(ii) *New sources.* PCBs are prohibited in any discharge from any electrical capacitor manufacturer.

(d) *Electrical transformer manufacturer*—(1) *Applicability.* (i) These standards or prohibitions apply to:

(A) All discharges of process wastes; and

(B) All discharges from the manufacturing or incineration areas, loading and unloading areas, storage areas, and other areas which are subject to direct contamination by PCBs as a result of the manufacturing process, including but not limited to:

(*1*) Stormwater and other runoff except as hereinafter provided in paragraph (d)(1)(ii) of this section; and

(*2*) Water used for routine cleanup or cleanup of spills.

(ii) These standards do not apply to stormwater runoff or other discharges from areas subject to contamination solely by fallout from air emissions of PCBs; or to stormwater runoff that exceeds that from the ten-year 24-hour rainfall event.

(2) *Analytical method acceptable.* Environmental Protection Agency method specified in 40 CFR part 136, except that a 1-liter sample size is required to increase analytical sensitivity.

(3) *Effluent standards*—(i) *Existing sources.* PCBs are prohibited in any discharge from any electrical transformer manufacturer;

(ii) *New sources.* PCBs are prohibited in any discharge from any electrical transformer manufacturer.

(e) *Adjustment of effluent standard for presence of PCBs in intake water.* Whenever a facility which is subject to these standards has PCBs in its effluent which result from the presence of PCBs in its intake waters, the owner may apply to the Regional Administrator (or State Director, if appropriate), for a credit pursuant to the provisions of § 129.6, where the source of the water supply is the same body of water into which the discharge is made. The requirement of paragraph (1) of § 129.6(a), relating to the source of the water supply, shall be waived, and such facility shall be eligible to apply for a credit under § 129.6, upon a showing by the owner or operator of such facility to the Regional Administrator (or State Director, if appropriate) that the concentration of PCBs in the intake water supply of such facility does not exceed the concentration of PCBs in the receiving water body to which the plant discharges its effluent.

[42 FR 6555, Feb. 2, 1977]

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

Subpart A—General

Sec.

Subpart B—Maximum Contaminant Levels

Subpart C—Monitoring and Analytical Requirements

Subpart D—Reporting, Public Notification and Recordkeeping

Subpart E—Special Regulations, Including Monitoring Regulations and Prohibition on Lead Use

Subpart F—Maximum Contaminant Level Goals

Subpart G—National Revised Primary Drinking Water Regulations: Maximum Contaminant Levels

Subpart H—Filtration and Disinfection

Subpart I—Control of Lead and Copper

Subpart J—Use of Non-Centralized Treatment Devices

Subpart K—Treatment Techniques

Subpart M—Information Collection Requirements (ICR) for Public Water Systems

AUTHORITY: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

SOURCE: 40 FR 59570, Dec. 24, 1975, unless otherwise noted.

NOTE: For community water systems serving 75,000 or more persons, monitoring must begin 1 year following promulation and the effective date of the MCL is 2 years following promulgation. For community water systems serving 10,000 to 75,000 persons, monitoring must begin within 3 years from the date of promulgation and the effective date of the MCL is 4 years from the date of promulgation. Effective immediately, systems that plan to make significant modifications to their treatment processes for the purpose of complying with the TTHM MCL are required to seek and obtain State approval of their treatment modification plans. This note affects §§ 141.2, 141.6, 141.12, 141.24 and 141.30. For additional information see 44 FR 68641, Nov. 29, 1979.

Subpart A—General

§ 141.1 Applicability.

This part establishes primary drinking water regulations pursuant to section 1412 of the Public Health Service Act, as amended by the Safe Drinking Water Act (Pub. L. 93–523); and related regulations applicable to public water systems.

§ 141.2 Definitions.

As used in this part, the term:

Act means the Public Health Service Act, as amended by the Safe Drinking Water Act, Public Law 93–523.

Action level, is the concentration of lead or copper in water specified in § 141.80(c) which determines, in some cases, the treatment requirements contained in subpart I of this part that a water system is required to complete.

Best available technology or *BAT* means the best technology, treatment techniques, or other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purposes of setting MCLs for synthetic organic chemicals, any BAT must be at least as effective as granular activated carbon.

Coagulation means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.

Community water system means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

Compliance cycle means the nine-year calendar year cycle during which public water systems must monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle begins January 1, 1993 and ends December 31, 2001; the second begins January 1, 2002 and ends December 31, 2010; the third begins January 1, 2011 and ends December 31, 2019.

Compliance period means a three-year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to December 31, 1998; the third from January 1, 1999 to December 31, 2001.

Confluent growth means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

Contaminant means any physical, chemical, biological, or radiological substance or matter in water.

Conventional filtration treatment means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

Corrosion inhibitor means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

CT or *CTcalc* is the product of ''residual disinfectant concentration'' (C) in mg/1 determined before or at the first customer, and the corresponding ''disinfectant contact time'' (T) in minutes, i.e., ''C'' x ''T''. If a public water system applies disinfectants at more than one point prior to the first customer, it must determine the CT of each disinfectant sequence before or at the first customer to determine the total percent inactivation or ''total inactivation ratio.'' In determining the total inactivation ratio, the public water system must determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before any subsequent disinfection application point(s). ''$CT_{99.9}$'' is the CT value required for 99.9 percent (3–log) inactivation of *Giardia lamblia* cysts. $CT_{99.9}$ for a variety of disinfectants and conditions appear in tables 1.1–1.6, 2.1, and 3.1 of § 141.74(b)(3).

$$\frac{CTcalc}{CT_{99.9}}$$

is the inactivation ratio. The sum of the inactivation ratios, or total inactivation ratio shown as

$$\Sigma \frac{(CTcalc)}{(CT_{99.9})}$$

is calculated by adding together the inactivation ratio for each disinfection sequence. A total inactivation ratio equal to or greater than 1.0 is assumed to provide a 3-log inactivation of *Giardia lamblia* cysts.

Diatomaceous earth filtration means a process resulting in substantial particulate removal in which (1) a precoat cake of diatomaceous earth filter media is deposited on a support membrance (septum), and (2) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

Direct filtration means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

Disinfectant means any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

Disinfectant contact time (''T'' in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application or the previous point of disinfectant residual measurement to a point before or at the point where residual disinfectant concentration (''C'') is measured. Where only one ''C'' is measured, ''T'' is the time in minutes that it takes for water to move from the point of disinfectant application to a point before or at where residual disinfectant concentration (''C'') is measured. Where more than one ''C'' is measured, ''T'' is (a) for the first measurement of ''C'', the time in minutes that it takes for water to move from the first or only point of disinfectant application to a point before or at the point where the first ''C'' is measured and (b) for subsequent measurements of ''C'', the time in minutes that it takes for water to move from the previous ''C'' measurement point to the ''C'' measurement point for which the particular ''T'' is being calculated. Disinfectant contact time in pipelines must be calculated based on ''plug flow'' by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

Disinfection means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

Domestic or other non-distribution system plumbing problem means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which the coliform-positive sample was taken.

Dose equivalent means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission on Radiological Units and Measurements (ICRU).

Effective corrosion inhibitor residual, for the purpose of subpart I of this part only, means a concentration sufficient to form a passivating film on the interior walls of a pipe.

Filtration means a process for removing particulate matter from water by passage through porous media.

First draw sample means a one-liter sample of tap water, collected in accordance with § 141.86(b)(2), that has been standing in plumbing pipes at least 6 hours and is collected without flushing the tap.

Flocculation means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

Ground water under the direct influence of surface water means any water beneath the surface of the ground with (1) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia,* or (2) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence must be determined for individual sources in accordance with criteria established by the State. The State determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation.

Gross alpha particle activity means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

Gross beta particle activity means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

Halogen means one of the chemical elements chlorine, bromine or iodine.

Initial compliance period means the first full three-year compliance period which begins at least 18 months after promulgation, except for contaminants listed at § 141.61(a) (19)–(21), (c) (19)–(33), and § 141.62(b) (11)–(15), initial compliance period means the first full three-year compliance period after promulgation for systems with 150 or more service connections (January 1993–December 1995), and first full three-year compliance period after the effective date of the regulation (January 1996–December 1998) for systems having fewer than 150 service connections.

Large water system, for the purpose of subpart I of this part only, means a water system that serves more than 50,000 persons.

Lead service line means a service line made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting which is connected to such lead line.

Legionella means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

Man-made beta particle and photon emitters means all radionuclides emitting beta particles and/or photons listed in Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, NBS Handbook 69, except the daughter products of thorium–232, uranium–235 and uranium–238.

Maximum contaminant level means the maximum permissable level of a contaminant in water which is delivered to any user of a public water system.

Maximum contaminant level goal or *MCLG* means the maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. Maximum contaminant level goals are nonenforceable health goals.

Maximum Total Trihalomethane Potential (MTP) means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after 7 days at a temperature of 25° C or above.

Medium-size water system, for the purpose of subpart I of this part only, means a water system that serves greater than 3,300 and less than or equal to 50,000 persons.

Near the first service connection means at one of the 20 percent of all service connections in the entire system that are nearest the water supply treatment facility, as measured by water transport time within the distribution system.

Non-community water system means a public water system that is not a community water system.

Non-transient non-community water system or *NTNCWS* means a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year.

Optimal corrosion control treatment, for the purpose of subpart I of this part only, means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while insuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

Performance evaluation sample means a reference sample provided to a laboratory for the purpose of demonstrating that the laboratory can successfully analyze the sample within limits of performance specified by the Agency. The true value of the concentration of the reference material is unknown to the laboratory at the time of the analysis.

Person means an individual; corporation; company; association; partnership; municipality; or State, Federal, or tribal agency.

Picocurie (pCi) means the quantity of radioactive material producing 2.22 nuclear transformations per minute.

Point of disinfectant application is the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

Point-of-entry treatment device is a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

Point-of-use treatment device is a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

Public water system or PWS means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system is either a ''community water system'' or a ''noncommunity water system.''

Rem means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A ''millirem (mrem)'' is 1/1000 of a rem.

Repeat compliance period means any subsequent compliance period after the initial compliance period.

Residual disinfectant concentration (''C'' in CT calculations) means the concentration of disinfectant measured in mg/l in a representative sample of water.

Sanitary survey means an onsite review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.

Sedimentation means a process for removal of solids before filtration by gravity or separation.

Service line sample means a one-liter sample of water collected in accordance with § 141.86(b)(3), that has been standing for at least 6 hours in a service line.

Single family structure, for the purpose of subpart I of this part only, means a building constructed as a single-family residence that is currently used as either a residence or a place of business.

Slow sand filtration means a process involving passage of raw water through a bed of sand at low velocity (generally less than 0.4 m/h) resulting in substantial particulate removal by physical and biological mechanisms.

Small water system, for the purpose of subpart I of this part only, means a water system that serves 3,300 persons or fewer.

Standard sample means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

State means the agency of the State or Tribal government which has jurisdiction over public water systems. During any period when a State or Tribal government does not have primary enforcement responsibility pursuant to section 1413 of the Act, the term ''State'' means the Regional Administrator, U.S. Environmental Protection Agency.

Supplier of water means any person who owns or operates a public water system.

Surface water means all water which is open to the atmosphere and subject to surface runoff.

System with a single service connection means a system which supplies drinking water to consumers via a single service line.

Too numerous to count means that the total number of bacterial colonies exceeds 200 on a 47-mm diameter membrane filter used for coliform detection.

Total trihalomethanes (TTHM) means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane [chloroform], dibromochloromethane, bromodichloromethane and tribromomethane [bromoform]), rounded to two significant figures.

Transient non-community water system or *TWS* means a non-community water system that does not regularly serve at least 25 of the same persons over six months per year.

Trihalomethane (THM) means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

Virus means a virus of fecal origin which is infectious to humans by waterborne transmission.

Waterborne disease outbreak means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or State agency.

[40 FR 59570, Dec. 24, 1975, as amended at 41 FR 28403, July 9, 1976; 44 FR 68641, Nov. 29, 1979; 51 FR 11410, Apr. 2, 1986; 52 FR 20674, June 2, 1987; 52 FR 25712, July 8, 1987; 53 FR 37410, Sept. 26, 1988; 54 FR 27526, 27562, June 29, 1989; 56 FR 3578, Jan. 30, 1991; 56 FR 26547, June 7, 1991; 57 FR 31838, July 17, 1992; 59 FR 34322, July 1, 1994; 61 FR 24368, May 14, 1996]

EFFECTIVE DATE NOTE: At 61 FR 24368, May 14, 1996, § 141.2 was amended by adding ''or PWS'' to the definition for ''Public water system'', effective June 18, 1996 and will expire on Dec. 31, 2000.

§ 141.3 Coverage.

This part shall apply to each public water system, unless the public water system meets all of the following conditions:

(a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(b) Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply:

(c) Does not sell water to any person; and

(d) Is not a carrier which conveys passengers in interstate commerce.

§ 141.4 Variances and exemptions.

(a) Variances or exemptions from certain provisions of these regulations may be granted pursuant to sections 1415 and 1416 of the Act by the entity with primary enforcement responsibility, except that variances or exemptions from the MCL for total coliforms and variances from any of the treatment technique requirements of subpart H of this part may not be granted.

(b) EPA has stayed the effective date of this section relating to the total coliform MCL of § 141.63(a) for systems that demonstrate to the State that the violation of the total coliform MCL is due to a persistent growth of total coliforms in

the distribution system rather than fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system.

[54 FR 27562, June 29, 1989, as amended at 56 FR 1557, Jan. 15, 1991]

§ 141.5 Siting requirements.

Before a person may enter into a financial commitment for or initiate construction of a new public water system or increase the capacity of an existing public water system, he shall notify the State and, to the extent practicable, avoid locating part or all of the new or expanded facility at a site which:

(a) Is subject to a significant risk from earthquakes, floods, fires or other disasters which could cause a breakdown of the public water system or a portion thereof; or

(b) Except for intake structures, is within the floodplain of a 100–year flood or is lower than any recorded high tide where appropriate records exist. The U.S. Environmental Protection Agency will not seek to override land use decisions affecting public water systems siting which are made at the State or local government levels.

§ 141.6 Effective dates.

(a) Except as provided in paragraphs (a) through (i) of this section, and in § 141.80(a)(2), the regulations set forth in this part shall take effect on June 24, 1977.

(b) The regulations for total trihalomethanes set forth in § 141.12(c) shall take effect 2 years after the date of promulgation of these regulations for community water systems serving 75,000 or more individuals, and 4 years after the date of promulgation for communities serving 10,000 to 74,999 individuals.

(c) The regulations set forth in §§ 141.11 (a), (d) and (e); 141.14(a)(1); 141.14(b)(1)(i); 141.14(b)(2)(i); 141.14(d); 141.21 (a), (c) and (i); 141.22 (a) and (e); 141.23 (a)(3) and (a)(4); 141.23(f); 141.24(a)(3); 141.24 (e) and (f); 141.25(e); 141.27(a); 141.28 (a) and (b); 141.31 (a), (d) and (e); 141.32(b)(3); and 141.32(d) shall take effect immediately upon promulgation.

(d) The regulations set forth in § 141.41 shall take effect 18 months from the date of promulgation. Suppliers must complete the first round of sampling and reporting within 12 months following the effective date.

(e) The regulations set forth in § 141.42 shall take effect 18 months from the date of promulgation. All requirements in § 141.42 must be completed within 12 months following the effective date.

(f) The regulations set forth in § 141.11(c) and § 141.23(g) are effective May 2, 1986. Section 141.23(g)(4) is effective October 2, 1987.

(g) The regulations contained in § 141.6, paragraph (c) of the table in 141.12, and 141.62(b)(1) are effective July 1, 1991. The regulations contained in §§ 141.11(b), 141.23, 141.24, 142.57(b), 143.4(b)(12) and (b)(13), are effective July 30, 1992. The regulations contained in the revisions to §§ 141.32(e) (16), (25) through (27) and (46); 141.61(c)(16); and 141.62(b)(3) are effective January 1, 1993. The effective date of regulations contained in § 141.61(c) (2), (3), and (4) is postponed.

(h) Regulations for the analytic methods listed at § 141.23(k)(4) for measuring antimony, beryllium, cyanide, nickel, and thallium are effective August 17, 1992. Regulations for the analytic methods listed at § 141.24(f)(16) for dichloromethane, 1,2,4-trichlorobenzene, and 1,1,2-trichloroethane are effective August 17, 1992. Regulations for the analytic methods listed at § 141.24(h)(12) for measuring dalapon, dinoseb, diquat, endothall, endrin, glyphosate, oxamyl, picloram, simazine, benzo(a)pyrene, di(2-ethylhexyl)adipate, di(2-ethylhexyl)phthalate, hexachlorobenzene, hexachlorocyclopentadiene, and 2,3,7,8-TCDD are effective August 17, 1992. The revision to § 141.12(a) promulgated on July 17, 1992 is effective on August 17, 1992.

(i) Regulations for information collection requirements listed in subpart M are effective August 14, 1996, and shall remain effective until December 31, 2000.

[44 FR 68641, Nov. 29, 1979, as amended at 45 FR 57342, Aug. 27, 1980; 47 FR 10998, Mar. 12, 1982; 51 FR 11410, Apr. 2, 1986; 56 FR 30274, July 1, 1991; 57 FR 22178, May 27, 1992; 57 FR 31838, July 17, 1992; 59 FR 34322, July 1, 1994; 61 FR 24368, May 14, 1996]

EFFECTIVE DATE NOTE: At 61 FR 24368, May 14, 1996, § 141.6 is amended in paragraph (a) by revising the reference ''(a) through (h)'' to read ''(a) through (i)'' and by adding paragraph (i), effective June 18, 1996 and will expire on Dec. 31, 2000.

Subpart B—Maximum Contaminant Levels

§ 141.11 Maximum contaminant levels for inorganic chemicals.

(a) The maximum contaminant level for arsenic applies only to community water systems. Compliance with the MCL for arsenic is calculated pursuant to § 141.23.

(b) The maximum contaminant level for arsenic is 0.05 milligrams per liter.

(c) [Reserved]

(d) At the discretion of the State, nitrate levels not to exceed 20 mg/l may be allowed in a non-

community water system if the supplier of water demonstrates to the satisfaction of the State that:

(1) Such water will not be available to children under 6 months of age; and

(2) There will be continuous posting of the fact that nitrate levels exceed 10 mg/l and the potential health effects of exposure; and

(3) Local and State public health authorities will be notified annually of nitrate levels that exceed 10 mg/l; and

(4) No adverse health effects shall result.

[40 FR 59570, Dec. 24, 1975, as amended at 45 FR 57342, Aug. 27, 1980; 47 FR 10998, Mar. 12, 1982; 51 FR 11410, Apr. 2, 1986; 56 FR 3578, Jan. 30, 1991; 56 FR 26548, June 7, 1991; 56 FR 30274, July 1, 1991; 56 FR 32113, July 15, 1991; 60 FR 33932, June 29, 1995]

§ 141.12 Maximum contaminant levels for organic chemicals.

The following are the maximum contaminant levels for organic chemicals. The maximum contaminant levels for organic chemicals in paragraph (a) of this section apply to all community water systems. Compliance with the maximum contaminant level in paragraph (a) of this section is calculated pursuant to § 141.24. The maximum contaminant level for total trihalomethanes in paragraph (c) of this section applies only to community water systems which serve a population of 10,000 or more individuals and which add a disinfectant (oxidant) to the water in any part of the drinking water treatment process. Compliance with the maximum contaminant level for total trihalomethanes is calculated pursuant to § 141.30.

	Level, milligrams per liter
(a) [Reserved]	
(b) [Reserved]	
(c) Total trihalomethanes (the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform) and trichloromethane (chloroform))	0.10

[56 FR 3578, Jan. 30, 1991, as amended at 57 FR 31838, July 17, 1992]

§ 141.13 Maximum contaminant levels for turbidity.

The maximum contaminant levels for turbidity are applicable to both community water systems and non-community water systems using surface water sources in whole or in part. The maximum contaminant levels for turbidity in drinking water, measured at a representative entry point(s) to the distribution system, are:

EDITORIAL NOTE: At 54 FR 27527, June 29, 1988, § 141.13 was amended by adding introductory text, effective December 31, 1990. This section already contains an introductory text.

The requirements in this section apply to unfiltered systems until December 30, 1991, unless the State has determined prior to that date, in writing pursuant to § 1412(b)(7)(C)(iii), that filtration is required. The requirements in this section apply to filtered systems until June 29, 1993. The requirements in this section apply to unfiltered systems that the State has determined, in writing pursuant to § 1412(b)(7)(C)(iii), must install filtration, until June 29, 1993, or until filtration is installed, whichever is later.

(a) One turbidity unit (TU), as determined by a monthly average pursuant to § 141.22, except that five or fewer turbidity units may be allowed if the supplier of water can demonstrate to the State that the higher turbidity does not do any of the following:

(1) Interfere with disinfection;

(2) Prevent maintenance of an effective disinfectant agent throughout the distribution system; or

(3) Interfere with microbiological determinations.

(b) Five turbidity units based on an average for two consecutive days pursuant to § 141.22.

[40 FR 59570, Dec. 24, 1975]

§ 141.15 Maximum contaminant levels for radium-226, radium-228, and gross alpha particle radioactivity in community water systems.

The following are the maximum contaminant levels for radium-226, radium-228, and gross alpha particle radioactivity:

(a) Combined radium-226 and radium-228—5 pCi/1.

(b) Gross alpha particle activity (including radium-226 but excluding radon and uranium)—15 pCi/1.

[41 FR 28404, July 9, 1976]

§ 141.16 Maximum contaminant levels for beta particle and photon radioactivity from man-made radionuclides in community water systems.

(a) The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.

(b) Except for the radionuclides listed in Table A, the concentration of man-made radionuclides causing 4 mrem total body or organ dose equivalents shall be calculated on the basis of a 2 liter per day drinking water intake using the 168 hour

data listed in *''Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure,''* NBS Handbook 69 as amended August 1963, U.S. Department of Commerce. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed 4 millirem/year.

TABLE A—AVERAGE ANNUAL CONCENTRATIONS ASSUMED TO PRODUCE A TOTAL BODY OR ORGAN DOSE OF 4 MREM/YR

Radionuclide	Critical organ	pCi per liter
Tritium	Total body	20,000
Strontium–90	Bone marrow	8

[41 FR 28404, July 9, 1976]

Subpart C—Monitoring and Analytical Requirements

§ 141.21 Coliform sampling.

(a) *Routine monitoring.* (1) Public water systems must collect total coliform samples at sites which are representative of water throughout the distribution system according to a written sample siting plan. These plans are subject to State review and revision.

(2) The monitoring frequency for total coliforms for community water systems is based on the population served by the system, as follows:

TOTAL COLIFORM MONITORING FREQUENCY FOR COMMUNITY WATER SYSTEMS

Population served	Minimum number of samples per month
25 to 1,000[1]	1
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 12,900	10
12,901 to 17,200	15
17,201 to 21,500	20
21,501 to 25,000	25
25,001 to 33,000	30
33,001 to 41,000	40
41,001 to 50,000	50
50,001 to 59,000	60
59,001 to 70,000	70
70,001 to 83,000	80
83,001 to 96,000	90
96,001 to 130,000	100
130,001 to 220,000	120
220,001 to 320,000	150
320,001 to 450,000	180
450,001 to 600,000	210
600,001 to 780,000	240
780,001 to 970,000	270
970,001 to 1,230,000	300
1,230,001 to 1,520,000	330
1,520,001 to 1,850,000	360
1,850,001 to 2,270,000	390
2,270,001 to 3,020,000	420
3,020,001 to 3,960,000	450
3,960,001 or more	480

[1] Includes public water systems which have at least 15 service connections, but serve fewer than 25 persons.

If a community water system serving 25 to 1,000 persons has no history of total coliform contamination in its current configuration and a sanitary survey conducted in the past five years shows that the system is supplied solely by a protected groundwater source and is free of sanitary defects, the State may reduce the monitoring frequency specified above, except that in no case may the State reduce the monitoring frequency to less than one sample per quarter. The State must approve the reduced monitoring frequency in writing.

(3) The monitoring frequency for total coliforms for non-community water systems is as follows:

(i) A non-community water system using only ground water (except ground water under the direct influence of surface water, as defined in § 141.2) and serving 1,000 persons or fewer must monitor each calendar quarter that the system provides water to the public, except that the State may reduce this monitoring frequency, in writing, if a sanitary survey shows that the system is free of sanitary defects. Beginning June 29, 1994, the State cannot reduce the monitoring frequency for a non-community water system using only ground water (except ground water under the direct influence of surface water, as defined in § 141.2) and serving 1,000 persons or fewer to less than once/year.

(ii) A non-community water system using only ground water (except ground water under the direct influence of surface water, as defined in § 141.2) and serving more than 1,000 persons during any month must monitor at the same frequency as a like-sized community water system, as specified in paragraph (a)(2) of this section, except the State may reduce this monitoring frequency, in writing, for any month the system serves 1,000 persons or fewer. The State cannot reduce the monitoring frequency to less than once/year. For systems using ground water under the direct influence of surface water, paragraph (a)(3)(iv) of this section applies.

(iii) A non-community water system using surface water, in total or in part, must monitor at the same frequency as a like-sized community water system, as specified in paragraph (a)(2) of this section, regardless of the number of persons it serves.

(iv) A non-community water system using ground water under the direct influence of surface water, as defined in § 141.2, must monitor at the same frequency as a like-sized community water system, as specified in paragraph (a)(2) of this section. The system must begin monitoring at this frequency beginning six months after the State determines that the ground water is under the direct influence of surface water.

(4) The public water system must collect samples at regular time intervals throughout the month, except that a system which uses only ground water (except ground water under the direct influence of surface water, as defined in § 141.2), and serves 4,900 persons or fewer, may collect all required samples on a single day if they are taken from different sites.

(5) A public water system that uses surface water or ground water under the direct influence of surface water, as defined in § 141.2, and does not practice filtration in compliance with Subpart H must collect at least one sample near the first service connection each day the turbidity level of the source water, measured as specified in § 141.74(b)(2), exceeds 1 NTU. This sample must be analyzed for the presence of total coliforms. When one or more turbidity measurements in any day exceed 1 NTU, the system must collect this coliform sample within 24 hours of the first exceedance, unless the State determines that the system, for logistical reasons outside the system's control, cannot have the sample analyzed within 30 hours of collection. Sample results from this coliform monitoring must be included in determining compliance with the MCL for total coliforms in § 141.63.

(6) Special purpose samples, such as those taken to determine whether disinfection practices are sufficient following pipe placement, replacement, or repair, shall not be used to determine compliance with the MCL for total coliforms in § 141.63. Repeat samples taken pursuant to paragraph (b) of this section are not considered special purpose samples, and must be used to determine compliance with the MCL for total coliforms in § 141.63.

(b) *Repeat monitoring.* (1) If a routine sample is total coliform-positive, the public water system must collect a set of repeat samples within 24 hours of being notified of the positive result. A system which collects more than one routine sample/month must collect no fewer than three repeat samples for each total coliform-positive sample found. A system which collects one routine sample/month or fewer must collect no fewer than four repeat samples for each total coliform-positive sample found. The State may extend the 24-hour limit on a case-by-case basis if the system has a logistical problem in collecting the repeat samples within 24 hours that is beyond its control. In the case of an extension, the State must specify how much time the system has to collect the repeat samples.

(2) The system must collect at least one repeat sample from the sampling tap where the original total coliform-positive sample was taken, and at least one repeat sample at a tap within five service connections upstream and at least one repeat sample at a tap within five service connections downstream of the original sampling site. If a total coliform-positive sample is at the end of the distribution system, or one away from the end of the distribution system, the State may waive the requirement to collect at least one repeat sample upstream or downstream of the original sampling site.

(3) The system must collect all repeat samples on the same day, except that the State may allow a system with a single service connection to collect the required set of repeat samples over a four-day period or to collect a larger volume repeat sample(s) in one or more sample containers of any size, as long as the total volume collected is at least 400 ml (300 ml for systems which collect more than one routine sample/month).

(4) If one or more repeat samples in the set is total coliform-positive, the public water system must collect an additional set of repeat samples in the manner specified in paragraphs (b) (1)–(3) of this section. The additional samples must be collected within 24 hours of being notified of the positive result, unless the State extends the limit as provided in paragraph (b)(1) of this section. The system must repeat this process until either total coliforms are not detected in one complete set of repeat samples or the system determines that the MCL for total coliforms in § 141.63 has been exceeded and notifies the State.

(5) If a system collecting fewer than five routine samples/month has one or more total coliform-positive samples and the State does not invalidate the sample(s) under paragraph (c) of this section, it must collect at least five routine samples during the next month the system provides water to the public, except that the State may waive this requirement if the conditions of paragraph (b)(5) (i) or (ii) of this section are met. The State cannot waive the requirement for a system to collect repeat samples in paragraphs (b) (1)–(4) of this section.

(i) The State may waive the requirement to collect five routine samples the next month the system provides water to the public if the State, or

an agent approved by the State, performs a site visit before the end of the next month the system provides water to the public. Although a sanitary survey need not be performed, the site visit must be sufficiently detailed to allow the State to determine whether additional monitoring and/or any corrective action is needed. The State cannot approve an employee of the system to perform this site visit, even if the employee is an agent approved by the State to perform sanitary surveys.

(ii) The State may waive the requirement to collect five routine samples the next month the system provides water to the public if the State has determined why the sample was total coliform-positive and establishes that the system has corrected the problem or will correct the problem before the end of the next month the system serves water to the public. In this case, the State must document this decision to waive the following month's additional monitoring requirement in writing, have it approved and signed by the supervisor of the State official who recommends such a decision, and make this document available to the EPA and public. The written documentation must describe the specific cause of the total coliform-positive sample and what action the system has taken and/or will take to correct this problem. The State cannot waive the requirement to collect five routine samples the next month the system provides water to the public solely on the grounds that all repeat samples are total coliform-negative. Under this paragraph, a system must still take at least one routine sample before the end of the next month it serves water to the public and use it to determine compliance with the MCL for total coliforms in § 141.63, unless the State has determined that the system has corrected the contamination problem before the system took the set of repeat samples required in paragraphs (b) (1)–(4) of this section, and all repeat samples were total coliform-negative.

(6) After a system collects a routine sample and before it learns the results of the analysis of that sample, if it collects another routine sample(s) from within five adjacent service connections of the initial sample, and the initial sample, after analysis, is found to contain total coliforms, then the system may count the subsequent sample(s) as a repeat sample instead of as a routine sample.

(7) Results of all routine and repeat samples not invalidated by the State must be included in determining compliance with the MCL for total coliforms in § 141.63.

(c) *Invalidation of total coliform samples.* A total coliform-positive sample invalidated under this paragraph (c) does not count towards meeting the minimum monitoring requirements of this section. (1) The State may invalidate a total coliform-positive sample only if the conditions of paragraph (c)(1) (i), (ii), or (iii) of this section are met.

(i) The laboratory establishes that improper sample analysis caused the total coliform-positive result.

(ii) The State, on the basis of the results of repeat samples collected as required by paragraphs (b) (1) through (4) of this section, determines that the total coliform-positive sample resulted from a domestic or other non-distribution system plumbing problem. The State cannot invalidate a sample on the basis of repeat sample results unless all repeat sample(s) collected at the same tap as the original total coliform-positive sample are also total coliform-positive, and all repeat samples collected within five service connections of the original tap are total coliform-negative (e.g., a State cannot invalidate a total coliform-positive sample on the basis of repeat samples if all the repeat samples are total coliform-negative, or if the public water system has only one service connection).

(iii) The State has substantial grounds to believe that a total coliform-positive result is due to a circumstance or condition which does not reflect water quality in the distribution system. In this case, the system must still collect all repeat samples required under paragraphs (b) (1)–(4) of this section, and use them to determine compliance with the MCL for total coliforms in § 141.63. To invalidate a total coliform-positive sample under this paragraph, the decision with the rationale for the decision must be documented in writing, and approved and signed by the supervisor of the State official who recommended the decision. The State must make this document available to EPA and the public. The written documentation must state the specific cause of the total coliform-positive sample, and what action the system has taken, or will take, to correct this problem. The State may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative.

(2) A laboratory must invalidate a total coliform sample (unless total coliforms are detected) if the sample produces a turbid culture in the absence of gas production using an analytical method where gas formation is examined (e.g., the Multiple-Tube Fermentation Technique), produces a turbid culture in the absence of an acid reaction in the Presence-Absence (P–A) Coliform Test, or exhibits confluent growth or produces colonies too numerous to count with an analytical method using a membrane filter (e.g., Membrane Filter Technique). If a laboratory invalidates a sample because of such interference, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the interference problem, and have it analyzed for the presence of total coliforms. The system must continue

to re-sample within 24 hours and have the samples analyzed until it obtains a valid result. The State may waive the 24-hour time limit on a case-by-case basis.

(d) *Sanitary surveys.* (1)(i) Public water systems which do not collect five or more routine samples/month must undergo an initial sanitary survey by June 29, 1994, for community public water systems and June 29, 1999, for non-community water systems. Thereafter, systems must undergo another sanitary survey every five years, except that non-community water systems using only protected and disinfected ground water, as defined by the State, must undergo subsequent sanitary surveys at least every ten years after the initial sanitary survey. The State must review the results of each sanitary survey to determine whether the existing monitoring frequency is adequate and what additional measures, if any, the system needs to undertake to improve drinking water quality.

(ii) In conducting a sanitary survey of a system using ground water in a State having an EPA-approved wellhead protection program under section 1428 of the Safe Drinking Water Act, information on sources of contamination within the delineated wellhead protection area that was collected in the course of developing and implementing the program should be considered instead of collecting new information, if the information was collected since the last time the system was subject to a sanitary survey.

(2) Sanitary surveys must be performed by the State or an agent approved by the State. The system is responsible for ensuring the survey takes place.

(e) *Fecal coliforms/Escherichia coli (E. coli) testing.* (1) If any routine or repeat sample is total coliform-positive, the system must analyze that total coliform-positive culture medium to determine if fecal coliforms are present, except that the system may test for *E. coli* in lieu of fecal coliforms. If fecal coliforms or *E. coli* are present, the system must notify the State by the end of the day when the system is notified of the test result, unless the system is notified of the result after the State office is closed, in which case the system must notify the State before the end of the next business day.

(2) The State has the discretion to allow a public water system, on a case-by-case basis, to forgo fecal coliform or *E. coli* testing on a total coliform-positive sample if that system assumes that the total coliform-positive sample is fecal coliform-positive or *E. coli*-positive. Accordingly, the system must notify the State as specified in paragraph (e)(1) of this section and the provisions of § 141.63(b) apply.

(f) *Analytical methodology.* (1) The standard sample volume required for total coliform analysis, regardless of analytical method used, is 100 ml.

(2) Public water systems need only determine the presence or absence of total coliforms; a determination of total coliform density is not required.

(3) Public water systems must conduct total coliform analyses in accordance with one of the analytical methods in the following table. These methods are contained in the 18th edition of Standard Methods for the Examination of Water and Wastewater, 1992, American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005. A description of the Colisure Test may be obtained from the Millipore Corporation, Technical Services Department, 80 Ashby Road, Bedford, MA 01730. The toll-free phone number is (800) 645–5476.

Organism	Methodology	Citation
Total Coliforms [1].	Total Coliform Fermentation Technique [2,3,4].	9221A, B.
	Total Coliform Membrane Filter Technique.	9222A, B, C.
	Presence-Absence (P–A) Coliform Test [4,5].	9221D.
	ONPG–MUG Test [6]	9223.
	Colisure Test [7].	

[1] The time from sample collection to initiation of analysis may not exceed 30 hours. Systems are encouraged but not required to hold samples below 10°C during transit.

[2] Lactose broth, as commercially available, may be used in lieu of laurel tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliforms, using lactose broth, is less than 10 percent.

[3] If inverted tubes are used to detect gas production, the media should cover these tubes at least one-half to two-thirds after the sample is added.

[4] No requirement exists to run the completed phase on 10 percent of all total coliform-positive confirmed tubes.

[5] Six-times formulation strength may be used if the medium is filter-sterilized rather than autoclaved.

[6] The ONPG–MUG Test is also known as the Autoanalysis Colilert System.

[7] The Colisure Test must be incubated for 28 hours before examining the results. If an examination of the results at 28 hours is not convenient, then results may be examined at any time between 28 hours and 48 hours.

(4) [Reserved]

(5) Public water systems must conduct fecal coliform analysis in accordance with the following procedure. When the MTF Technique or Presence-Absence (PA) Coliform Test is used to test for total coliforms, shake the lactose-positive presumptive tube or P–A vigorously and transfer the growth with a sterile 3-mm loop or sterile applicator stick into brilliant green lactose bile broth and EC medium to determine the presence of total and fecal coliforms, respectively. For EPA-approved analytical methods which use a membrane filter, transfer the total coliform-positive culture by one of the following methods: remove the membrane containing the total coliform colonies from the substrate with a sterile forceps and carefully curl

and insert the membrane into a tube of EC medium (the laboratory may first remove a small portion of selected colonies for verification), swab the entire membrane filter surface with a sterile cotton swab and transfer the inoculum to EC medium (do not leave the cotton swab in the EC medium), or inoculate individual total coliform-positive colonies into EC Medium. Gently shake the inoculated tubes of EC medium to insure adequate mixing and incubate in a waterbath at 44.5 ± 0.2 °C for 24 ± 2 hours. Gas production of any amount in the inner fermentation tube of the EC medium indicates a positive fecal coliform test. The preparation of EC medium is described in the 18th edition of *Standard Methods for the Examination of Water and Wastewater,* 1992, Method 9221E—p. 9–52, paragraph 1a. Public water systems need only determine the presence or absence of fecal coliforms; a determination of fecal coliform density is not required.

(6) Public water systems must conduct analysis of *Escherichia coli* in accordance with one of the following analytical methods:

(i) EC medium supplemented with 50 μg/ml of 4-methylumbelliferyl-beta-D-glucuronide (MUG) (final concentration). EC medium is described in the 18th edition of *Standard Methods for the Examination of Water and Wastewater,* 1992, Method 9221E—p. 9–52, paragraph 1a. MUG may be added to EC medium before autoclaving. EC medium supplemented with 50 μg/ml of MUG is commercially available. At least 10 ml of EC medium supplemented with MUG must be used. The inner inverted fermentation tube may be omitted. The procedure for transferring a total coliform-positive culture to EC medium supplemented with MUG shall be as specified in paragraph (f)(5) of this section for transferring a total coliform-positive culture to EC medium. Observe fluorescence with an ultraviolet light (366 nm) in the dark after incubating tube at 44.5 ± 0.2 °C for 24 ± 2 hours; or

(ii) Nutrient agar supplemented with 100 μg/ml 4-methylumbelliferyl-beta-D-glucuronide (MUG) (final concentration). Nutrient Agar is described in the 18th edition of *Standard Methods for the Examination of Water and Wastewater,* 1992, p. 9–47 to 9–48. This test is used to determine if a total coliform-positive sample, as determined by the Membrane Filter Technique or any other method in which a membrane filter is used, contains *E. coli.* Transfer the membrane filter containing a total coliform colony(ies) to nutrient agar supplemented with 100 μg/ml (final concentration) of MUG. After incubating the agar plate at 35 °C for 4 hours, observe the colony(ies) under ultraviolet light (366 nm) in the dark for fluorescence. If fluorescence is visible, *E. coli* are present.

(iii) Minimal Medium ONPG–MUG (MMO–MUG) Test, as set forth in the article ''National Field Evaluation of a Defined Substrate Method for the Simultaneous Detection of Total Coliforms and *Escherichia coli* from Drinking Water: Comparison with Presence-Absence Techniques'' (Edberg et al.), Applied and Environmental Microbiology, Volume 55, pp. 1003–1008, April 1989. (Note: The Autoanalysis Colilert System is an MMO–MUG test). If the MMO–MUG test is total coliform-positive after a 24-hour incubation, test the medium for fluorescence with a 366-nm ultraviolet light (preferably with a 6-watt lamp) in the dark. If fluorescence is observed, the sample is *E. coli*-positive. If fluorescence is questionable (cannot be definitively read) after 24 hours incubation, incubate the culture for an additional four hours (but not to exceed 28 hours total), and again test the medium for fluorescence. The MMO–MUG Test with hepes buffer in lieu of phosphate buffer is the only approved formulation for the detection of *E. coli.*

(iv) The Colisure Test. A description of the Colisure Test may be obtained from the Millipore Corporation, Technical Services Department, 80 Ashby Road, Bedford, MA 01730.

(7) As an option to paragraph (f)(6)(iii) of this section, a system with a total coliform-positive, MUG-negative, MMO–MUG test may further analyze the culture for the presence of *E. coli* by transferring a 0.1 ml, 28-hour MMO–MUG culture to EC Medium + MUG with a pipet. The formulation and incubation conditions of EC Medium + MUG, and observation of the results are described in paragraph (f)(6)(i) of this section.

(8) The following materials are incorporated by reference in this section with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the analytical methods cited in *Standard Methods for the Examination of Water and Wastewater* may be obtained from the American Public Health Association *et al.*; 1015 Fifteenth Street, NW.; Washington, DC 20005. Copies of the methods set forth in *Microbiological Methods for Monitoring the Environment, Water and Wastes* may be obtained from ORD Publications, U.S. EPA, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268. Copies of the MMO–MUG Test as set forth in the article ''National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and *Escherichia coli* from Drinking Water: Comparison with the Standard Multiple Tube Fermentation Method'' (Edberg *et al.*) may be obtained from the American Water Works Association Research Foundation, 6666 West Quincy Avenue, Denver, CO 80235. A description of the Colisure Test may be

obtained from the Millipore Corp., Technical Services Department, 80 Ashby Road, Bedford, MA 01730. Copies may be inspected at EPA's Drinking Water Docket; 401 M Street, SW.; Washington, DC 20460, or at the Office of the Federal Register; 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *Response to violation.* (1) A public water system which has exceeded the MCL for total coliforms in § 141.63 must report the violation to the State no later than the end of the next business day after it learns of the violation, and notify the public in accordance with § 141.32.

(2) A public water system which has failed to comply with a coliform monitoring requirement, including the sanitary survey requirement, must report the monitoring violation to the State within ten days after the system discovers the violation, and notify the public in accordance with § 141.32.

[54 FR 27562, June 29, 1989, as amended at 54 FR 30001, July 17, 1989; 55 FR 25064, June 19, 1990; 56 FR 642, Jan. 8, 1991; 57 FR 1852, Jan. 15, 1992; 57 FR 24747, June 10, 1992; 59 FR 62466, Dec. 5, 1994; 60 FR 34085, June 29, 1995]

§ 141.22 Turbidity sampling and analytical requirements.

The requirements in this section apply to unfiltered systems until December 30, 1991, unless the State has determined prior to that date, in writing pursuant to section 1412(b)(7)(iii), that filtration is required. The requirements in this section apply to filtered systems until June 29, 1993. The requirements in this section apply to unfiltered systems that the State has determined, in writing pursuant to section 1412(b)(7)(C)(iii), must install filtration, until June 29, 1993, or until filtration is installed, whichever is later.

(a) Samples shall be taken by suppliers of water for both community and non-community water systems at a representative entry point(s) to the water distribution system at least once per day, for the purposes of making turbidity measurements to determine compliance with § 141.13. If the State determines that a reduced sampling frequency in a non-community will not pose a risk to public health, it can reduce the required sampling frequency. The option of reducing the turbidity frequency shall be permitted only in those public water systems that practice disinfection and which maintain an active residual disinfectant in the distribution system, and in those cases where the State has indicated in writing that no unreasonable risk to health existed under the circumstances of this option. Turbidity measurements shall be made as directed in § 141.74(a)(1).

(b) If the result of a turbidity analysis indicates that the maximum allowable limit has been exceeded, the sampling and measurement shall be confirmed by resampling as soon as practicable and preferably within one hour. If the repeat sample confirms that the maximum allowable limit has been exceeded, the supplier of water shall report to the State within 48 hours. The repeat sample shall be the sample used for the purpose of calculating the monthly average. If the monthly average of the daily samples exceeds the maximum allowable limit, or if the average of two samples taken on consecutive days exceeds 5 TU, the supplier of water shall report to the State and notify the public as directed in §§ 141.31 and 141.32.

(c) Sampling for non-community water systems shall begin within two years after the effective date of this part.

(d) The requirements of this § 141.22 shall apply only to public water systems which use water obtained in whole or in part from surface sources.

(e) The State has the authority to determine compliance or initiate enforcement action based upon analytical results or other information compiled by their sanctioned representatives and agencies.

[40 FR 59570, Dec. 24, 1975, as amended at 45 FR 57344, Aug. 27, 1980; 47 FR 8998, Mar. 3, 1982; 47 FR 10998, Mar. 12, 1982; 54 FR 27527, June 29, 1989; 59 FR 62466, Dec. 5, 1994]

§ 141.23 Inorganic chemical sampling and analytical requirements.

Community water systems shall conduct monitoring to determine compliance with the maximum contaminant levels specified in § 141.62 in accordance with this section. Non-transient, non-community water systems shall conduct monitoring to determine compliance with the maximum contaminant levels specified in § 141.62 in accordance with this section. Transient, non-community water systems shall conduct monitoring to determine compliance with the nitrate and nitrite maximum contaminant levels in §§ 141.11 and 141.62 (as appropriate) in accordance with this section.

(a) Monitoring shall be conducted as follows:

(1) Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point) beginning in the initial compliance period. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(2) Surface water systems shall take a minimum of one sample at every entry point to the distribution system after any application of treatment or in

the distribution system at a point which is representative of each source after treatment (hereafter called a sampling point) beginning in the initial compliance period. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

NOTE: For purposes of this paragraph, surface water systems include systems with a combination of surface and ground sources.

(3) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

(4) The State may reduce the total number of samples which must be analyzed by allowing the use of compositing. Composite samples from a maximum of five samples are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory.

(i) If the concentration in the composite sample is greater than or equal to one-fifth of the MCL of any inorganic chemical, then a follow-up sample must be taken within 14 days at each sampling point included in the composite. These samples must be analyzed for the contaminants which exceeded one-fifth of the MCL in the composite sample. Detection limits for each analytical method and MCLs for each inorganic contaminant are the following:

DETECTION LIMITS FOR INORGANIC CONTAMINANTS

Contaminant	MCL (mg/l)	Methodology	Detection limit (mg/l)
Antimony	0.006	Atomic Absorption; Furnace	0.003
		Atomic Absorption; Platform	0.0008[5]
		ICP-Mass Spectrometry	0.0004
		Hydride-Atomic Absorption	0.001
Asbestos	7 MFL[1]	Transmission Electron Microscopy	0.01 MFL
Barium	2	Atomic Absorption; furnace technique	0.002
		Atomic Absorption; direct aspiration	0.1
		Inductively Coupled Plasma	0.002 (0.001)
Beryllium	0.004	Atomic Absorption; Furnace	0.0002
		Atomic Absorption; Platform	0.00002[5]
		Inductively Coupled Plasma[2]	0.0003
		ICP-Mass Spectrometry	0.0003
Cadmium	0.005	Atomic Absorption; furnace technique	0.0001
		Inductively Coupled Plasma	0.001
Chromium	0.1	Atomic Absorption; furnace technique	0.001
		Inductively Coupled Plasma	0.007 (0.001)
Cyanide	0.2	Distillation, Spectrophotometric[3]	0.02
		Distillation, Automated, Spectrophotometric[3]	0.005
		Distillation, Selective Electrode[3]	0.05
		Distillation, Amenable, Spectrophotometric[4]	0.02
Mercury	0.002	Manual Cold Vapor Technique	0.0002
		Automated Cold Vapor Technique	0.0002
Nickel	xl	Atomic Absorption; Furnace	0.001
		Atomic Absorption; Platform	0.0006[5]
		Inductively Coupled Plasma[2]	0.005
		ICP-Mass Spectrometry	0.0005
Nitrate	10 (as N)	Manual Cadmium Reduction	0.01
		Automated Hydrazine Reduction	0.01
		Automated Cadmium Reduction	0.05
		Ion Selective Electrode	1
		Ion Chromatography	0.01
Nitrite	1 (as N)	Spectrophotometric	0.01
		Automated Cadmium Reduction	0.05
		Manual Cadmium Reduction	0.01
		Ion Chromatography	0.004
Selenium	0.05	Atomic Absorption; furnace	0.002
		Atomic Absorption; gaseous hydride	0.002
Thallium	0.002	Atomic Absorption; Furnace	0.001
		Atomic Absorption; Platform	0.0007[5]
		ICP-Mass Spectrometry	0.0003

[1] MFL = million fibers per liter >10 μm.
[2] Using a 2X preconcentration step as noted in Method 200.7. Lower MDLs may be achieved when using a 4X preconcentration.
[3] Screening method for total cyanides.
[4] Measures "free" cyanides.
[5] Lower MDLs are reported using stabilized temperature graphite furnace atomic absorption.

(ii) If the population served by the system is >3,300 persons, then compositing may only be permitted by the State at sampling points within a single system. In systems serving ≤3,300 persons, the State may permit compositing among different systems provided the 5-sample limit is maintained.

(iii) If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these instead of resampling. The duplicates must be analyzed and the results reported to the State within 14 days of collection.

(5) The frequency of monitoring for asbestos shall be in accordance with paragraph (b) of this section: the frequency of monitoring for antimony, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium and thallium shall be in accordance with paragraph (c) of this section; the frequency of monitoring for nitrate shall be in accordance with paragraph (d) of this section; and the frequency of monitoring for nitrite shall be in accordance with paragraph (e) of this section.

(b) The frequency of monitoring conducted to determine compliance with the maximum contaminant level for asbestos specified in § 141.62(b) shall be conducted as follows:

(1) Each community and non-transient, non-community water system is required to monitor for asbestos during the first three-year compliance period of each nine-year compliance cycle beginning in the compliance period starting January 1, 1993.

(2) If the system believes it is not vulnerable to either asbestos contamination in its source water or due to corrosion of asbestos-cement pipe, or both, it may apply to the State for a waiver of the monitoring requirement in paragraph (b)(1) of this section. If the State grants the waiver, the system is not required to monitor.

(3) The State may grant a waiver based on a consideration of the following factors:

(i) Potential asbestos contamination of the water source, and

(ii) The use of asbestos-cement pipe for finished water distribution and the corrosive nature of the water.

(4) A waiver remains in effect until the completion of the three-year compliance period. Systems not receiving a waiver must monitor in accordance with the provisions of paragraph (b)(1) of this section.

(5) A system vulnerable to asbestos contamination due solely to corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(6) A system vulnerable to asbestos contamination due solely to source water shall monitor in accordance with the provision of paragraph (a) of this section.

(7) A system vulnerable to asbestos contamination due both to its source water supply and corrosion of asbestos-cement pipe shall take one sample at a tap served by asbestos-cement pipe and under conditions where asbestos contamination is most likely to occur.

(8) A system which exceeds the maximum contaminant levels as determined in § 141.23(i) of this section shall monitor quarterly beginning in the next quarter after the violation occurred.

(9) The State may decrease the quarterly monitoring requirement to the frequency specified in paragraph (b)(1) of this section provided the State has determined that the system is reliably and consistently below the maximum contaminant level. In no case can a State make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface (or combined surface/ground) water system takes a minimum of four quarterly samples.

(10) If monitoring data collected after January 1, 1990 are generally consistent with the requirements of § 141.23(b), then the State may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

(c) The frequency of monitoring conducted to determine compliance with the maximum contaminant levels in § 141.62 for antimony, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium and thallium shall be as follows:

(1) Groundwater systems shall take one sample at each sampling point during each compliance period. Surface water systems (or combined surface/ground) shall take one sample annually at each sampling point.

(2) The system may apply to the State for a waiver from the monitoring frequencies specified in paragraph (c)(1) of this section. States may grant a public water system a waiver for monitoring of cyanide, provided that the State determines that the system is not vulnerable due to lack of any industrial source of cyanide.

(3) A condition of the waiver shall require that a system shall take a minimum of one sample while the waiver is effective. The term during which the waiver is effective shall not exceed one compliance cycle (i.e., nine years).

(4) The State may grant a waiver provided surface water systems have monitored annually for at least three years and groundwater systems have conducted a minimum of three rounds of monitoring. (At least one sample shall have been taken since January 1, 1990). Both surface and groundwater systems shall demonstrate that all previous analytical results were less than the maximum

contaminant level. Systems that use a new water source are not eligible for a waiver until three rounds of monitoring from the new source have been completed.

(5) In determining the appropriate reduced monitoring frequency, the State shall consider:

(i) Reported concentrations from all previous monitoring;

(ii) The degree of variation in reported concentrations; and

(iii) Other factors which may affect contaminant concentrations such as changes in groundwater pumping rates, changes in the system's configuration, changes in the system's operating procedures, or changes in stream flows or characteristics.

(6) A decision by the State to grant a waiver shall be made in writing and shall set forth the basis for the determination. The determination may be initiated by the State or upon an application by the public water system. The public water system shall specify the basis for its request. The State shall review and, where appropriate, revise its determination of the appropriate monitoring frequency when the system submits new monitoring data or when other data relevant to the system's appropriate monitoring frequency become available.

(7) Systems which exceed the maximum contaminant levels as calculated in § 141.23(i) of this section shall monitor quarterly beginning in the next quarter after the violation occurred.

(8) The State may decrease the quarterly monitoring requirement to the frequencies specified in paragraphs (c)(1) and (c)(2) of this section provided it has determined that the system is reliably and consistently below the maximum contaminant level. In no case can a State make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples.

(d) All public water systems (community; non-transient, non-community; and transient, non-community systems) shall monitor to determine compliance with the maximum contaminant level for nitrate in § 141.62.

(1) Community and non-transient, non-community water systems served by groundwater systems shall monitor annually beginning January 1, 1993; systems served by surface water shall monitor quarterly beginning January 1, 1993.

(2) For community and non-transient, non-community water systems, the repeat monitoring frequency for groundwater systems shall be quarterly for at least one year following any one sample in which the concentration is ≥50 percent of the MCL. The State may allow a groundwater system to reduce the sampling frequency to annually after four consecutive quarterly samples are reliably and consistently less than the MCL.

(3) For community and non-transient, non-community water systems, the State may allow a surface water system to reduce the sampling frequency to annually if all analytical results from four consecutive quarters are <50 percent of the MCL. A surface water system shall return to quarterly monitoring if any one sample is ≥50 percent of the MCL.

(4) Each transient non-community water system shall monitor annually beginning January 1, 1993.

(5) After the initial round of quarterly sampling is completed, each community and non-transient non-community system which is monitoring annually shall take subsequent samples during the quarter(s) which previously resulted in the highest analytical result.

(e) All public water systems (community; non-transient, non-community; and transient, non-community systems) shall monitor to determine compliance with the maximum contaminant level for nitrite in § 141.62(b).

(1) All public water systems shall take one sample at each sampling point in the compliance period beginning January 1, 1993 and ending December 31, 1995.

(2) After the initial sample, systems where an analytical result for nitrite is <50 percent of the MCL shall monitor at the frequency specified by the State.

(3) For community, non-transient, non-community, and transient non-community water systems, the repeat monitoring frequency for any water system shall be quarterly for at least one year following any one sample in which the concentration is ≥50 percent of the MCL. The State may allow a system to reduce the sampling frequency to annually after determining the system is reliably and consistently less than the MCL.

(4) Systems which are monitoring annually shall take each subsequent sample during the quarter(s) which previously resulted in the highest analytical result.

(f) Confirmation samples:

(1) Where the results of sampling for asbestos, antimony, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium indicate an exceedance of the maximum contaminant level, the State may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point.

(2) Where nitrate or nitrite sampling results indicate an exceedance of the maximum contaminant level, the system shall take a confirmation sample within 24 hours of the system's receipt of notification of the analytical results of the first sample.

Systems unable to comply with the 24-hour sampling requirement must immediately notify the consumers served by the area served by the public water system in accordance with § 141.32. Systems exercising this option must take and analyze a confirmation sample within two weeks of notification of the analytical results of the first sample.

(3) If a State-required confirmation sample is taken for any contaminant, then the results of the initial and confirmation sample shall be averaged. The resulting average shall be used to determine the system's compliance in accordance with paragraph (i) of this section. States have the discretion to delete results of obvious sampling errors.

(g) The State may require more frequent monitoring than specified in paragraphs (b), (c), (d) and (e) of this section or may require confirmation samples for positive and negative results at its discretion.

(h) Systems may apply to the State to conduct more frequent monitoring than the minimum monitoring frequencies specified in this section.

(i) Compliance with §§ 141.11 or 141.62(b) (as appropriate) shall be determined based on the analytical result(s) obtained at each sampling point.

(1) For systems which are conducting monitoring at a frequency greater than annual, compliance with the maximum contaminant levels for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium is determined by a running annual average at any sampling point. If the average at any sampling point is greater than the MCL, then the system is out of compliance. If any one sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any sample below the method detection limit shall be calculated at zero for the purpose of determining the annual average.

(2) For systems which are monitoring annually, or less frequently, the system is out of compliance with the maximum contaminant levels for asbestos, antimony, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium or thallium if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the State, the determination of compliance will be based on the average of the two samples.

(3) Compliance with the maximum contaminant levels for nitrate and nitrate is determined based on one sample if the levels of these contaminants are below the MCLs. If the levels of nitrate and/or nitrite exceed the MCLs in the initial sample, a confirmation sample is required in accordance with paragraph (f)(2) of this section, and compliance shall be determined based on the average of the initial and confirmation samples.

(4) If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the State may allow the system to give public notice to only the area served by that portion of the system which is out of compliance.

(j) Each public water system shall monitor at the time designated by the State during each compliance period.

(k) Inorganic analysis:

(1) Analysis for the following contaminants shall be conducted in accordance with the methods in the following table, or their equivalent as determined by EPA. Criteria for analyzing arsenic, barium, beryllium, cadmium, calcium, chromium, copper, lead, nickel, selenium, sodium, and thallium with digestion or directly without digestion, and other analytical test procedures are contained in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994. This document also contains approved analytical test methods which remain available for compliance monitoring until July 1, 1996. These methods will not be available for use after July 1, 1996. This document is available from the National Technical Information Service, NTIS PB95–104766, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800–553–6847.

Contaminant	Methodology	EPA	ASTM [3]	SM [4]	Other
Antimony	ICP-Mass Spectrometry	[2] 200.8			
	Hydride-Atomic Absorption	.....	D–3697–92		
	Atomic Absorption; Platform	[2] 200.9			
	Atomic Absorption; Furnace	.....		3113B.	
Arsenic	Inductively Coupled Plasma	[2] 200.7		3120B.	
	ICP-Mass Spectrometry	[2] 200.8			
	Atomic Absorption; Platform	[2] 200.9			
	Atomic Absorption; Furnace	.....	D–2972–93C	3113B.	
	Hydride Atomic Absorption	.....	D–2972–93B	3114B.	
Asbestos	Transmission Electron Microscopy	[9] 100.1			
	Transmission Electron Microscopy	[10] 100.2			
Barium	Inductively Coupled Plasma	[2] 200.7		3120B.	
	ICP-Mass Spectrometry	[2] 200.8			
	Atomic Absorption; Direct	.....		3111D.	
	Atomic Absorption; Furnace	.....		3113B.	
Beryllium	Inductively Coupled Plasma	[2] 200.7		3120B.	
	ICP-Mass Spectrometry	[2] 200.8			
	Atomic Absorption; Platform	[2] 200.9			
	Atomic Absorption; Furnace	.....	D–3645–93B	3113B.	
Cadmium	Inductively Coupled Plasma	[2] 200.7			
	ICP-Mass Spectrometry	[2] 200.8			
	Atomic Absorption; Platform	[2] 200.9			
	Atomic Absorption; Furnace	.....		3113B.	
Chromium	Inductively Coupled Plasma	[2] 200.7		3120B.	
	ICP-Mass Spectrometry	[2] 200.8			
	Atomic Absorption; Platform	[2] 200.9			
	Atomic Absorption; Furnace	.....		3113B.	
Cyanide	Manual Distillation followed by	.....		4500–CN–C.	
	Spectrophotometric, Amenable	.....	D2036–91B	4500CN–G.	
	Spectrophotometric Manual	.....	D2036–91A	4500–CN–E	[5] I–3300–85
	Semi-automated	[6] 335.4			
	Selective Electrode	.....		4500CN–F.	
Fluoride	Ion Chromatography	[6] 300.0	D4327–91	4110B.	
	Manual Distill.; Color. SPADNS	.....		4500F–B,D.	
	Manual Electrode	.....	D1179–93B	4500F–C.	
	Automated Electrode	.....		.....	[11] 380–75WE
	Automated Alizarin	.....		4500F–E	[11] 129–71W
Mercury	Manual, Cold Vapor	[2] 245.1	D3223–91	3112B.	
	Automated, Cold Vapor	[1] 245.2			
	ICP-Mass Spectrometry	[2] 200.8			
Nickel	Inductively Coupled Plasma	[2] 200.7		3120B.	
	ICP-Mass Spectrometry	[2] 200.8			
	Atomic Absorption; Platform	[2] 200.9			
	Atomic Absorption; Direct	.....		3111B.	
	Atomic Absorption; Furnace	.....		3113B.	
Nitrate	Ion Chromatography	[6] 300.0	D4327–91	4110B	[8] B–1011
	Automated Cadmium Reduction	[6] 353.2	D3867–90A	4500–NO_3–F.	
	Ion Selective Electrode	.....		4500–NO_3–D	[7] 601

	Manual Cadmium Reduction	.....	D3867–90B	4500–NO_3–E.	
Nitrite	Ion Chromatography	[6]300.0	D4327–91	4110B	[8]B–1011
	Automated Cadmium Reduction	[6]353.2	D3867–90A	4500–NO_3–F.	
	Manual Cadmium Reduction	.....	D3867–90B	4500–NO_3–E.	
	Spectrophotometric	.....		4500–NO_2–B.	
Selenium	Hydride-Atomic Absorption	.....	D3859–93A	3114B.	
	ICP-Mass Spectrometry	[2]200.8			
	Atomic Absorption; Platform	[2]200.9			
	Atomic Absorption; Furnace	.....	D3859–93B	3113B.	
Thallium	ICP-Mass Spectrometry	[2]200.8			
	Atomic Absorption; Platform	[2]200.9			
Lead	Atomic absorption; furnace	.....	D3559–90D	3113B.	
	ICP-Mass spectrometry	[2]200.8			
	Atomic absorption; platform	[2]200.9			
Copper	Atomic absorption; furnace	.....	D1688–90C	3113B.	
	Atomic absorption; direct aspiration	.....	D1688–90A	3111B.	
	ICP	[2]200.7		3120B.	
	ICP-Mass spectrometry	[2]200.8			
	Atomic absorption; platform	[2]200.9			
pH	Electrometric	[1]150.1	D1293–84	4500–H^+–B.	
		[1]150.2			
Conductivity	Conductance	.....	D1125–91A	2510B.	
Calcium	EDTA titrimetric	.....	D511–93A	3500–Ca–D.	
	Atomic absorption; direct aspiration	.....	D511–93B	3111B.	
	Inductively-coupled plasma	[2]200.7		3120B.	
Alkalinity	Titrimetric	.....	D1067–92B	2320B.	
	Electrometric titration	.....		.....	[5]I–1030–85
Orthophosphate[12]	Colorimetric, automated, ascorbic acid	[6]365.1		4500–P–F.	
	Colorimetric, ascorbic acid, single reagent	.....	D515–88A	4500–P–E.	
	Colorimetric, phosphomolybdate;	.....		.....	[5]I–1601–85
	automated-segmented flow;	.....		.....	[5]I–2601–90
	automated discrete	.....		.....	[5]I–2598–85
	Ion Chromatography	[6]300.0	D4327–91	4110.	
Silica	Colorimetric, molybdate blue;	.....		.....	[5]I–1700–85
	automated-segmented flow	.....		.....	[5]I–2700–85
	Colorimetric	.....	D859–88		
	Molybdosilicate	.....		4500–Si–D.	
	Heteropoly blue	.....		4500–Si–E.	
	Automated method for molybdate-reactive silica	.....		4500–Si–F.	
	Inductively-coupled plasma	[2]200.7		3120B.	
Temperature	Thermometric	.....		2550.	
Sodium	Inductively-coupled plasma	[2]200.7			
	Atomic Absorption; direct aspiration	.....		3111B.	

FOOTNOTES:

[1] Methods 150.1, 150.2 and 245.2 are available from US EPA, EMSL, Cincinnati, OH 45268. The identical methods were formerly in ''Methods for Chemical Analysis of Water and Wastes'', EPA–600/4–79–020, March 1983, which is available at NTIS, PB84–128677.

[2] ''Methods for the Determination of Metals in Environmental Samples—Supplement I'', EPA–600/R–94–111, May 1994. Available at NTIS, PB 94–184942.

[3] The procedures shall be done in accordance with the *Annual Book of ASTM Standards*, 1994, Vols. 11.01 and 11.02, American Society for Testing and Materials. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[4] The procedures shall be done in accordance with the 18th edition of *Standard Methods for the Examination of Water and Wastewater,* 1992, American Public Health Association. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[5] Available from Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225–0425.

[6] ''Methods for the Determination of Inorganic Substances in Environmental Samples'', EPA–600/R–93–100, August 1993. Available at NTIS, PB94–121811.

[7] The procedure shall be done in accordance with the Technical Bulletin 601 ''Standard Method of Test for Nitrate in Drinking Water'', July 1994, PN 221890–001, Analytical Technology, Inc. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from ATI Orion, 529 Main Street, Boston, MA 02129. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[8] Method B–1011, ''Waters Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography'', Millipore Corporation, Waters Chromatography Division, 34 Maple Street, Milford, MA 01757.

[9] Method 100.1, ''Analytical Method For Determination of Asbestos Fibers in Water'', EPA–600/4–83–043, EPA, September 1983. Available at NTIS, PB83–260471.

[10] Method 100.2, ''Determination Of Asbestos Structure Over 10-µm In Length In Drinking Water'', EPA–600/R–94–134, June 1994. Available at NTIS, PB94–201902.

[11] The procedures shall be done in accordance with the Industrial Method No. 129–71W, ''Fluoride in Water and Wastewater'', December 1972, and Method No. 380–75WE, ''Fluoride in Water and Wastewater'', February 1976, Technicon Industrial Systems. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the Technicon Industrial Systems, Tarrytown, NY 10591. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of Federal Register, 800 Capitol Street, NW., Suite 700, Washington, DC.

[12] Unfiltered, no digestion or hydrolysis.

(2) Sample collection for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium, and thallium under this section shall be conducted using the sample preservation, container, and maximum holding time procedures specified in the table below:

Contaminant	Preservative [1]	Container [2]	Time [3]
Antimony	Conc HNO_3 to pH <2	P or G	6 months.
Asbestos	Cool, 4°C	P or G	
Barium	Conc HNO_3 to pH <2	P or G	6 months.
Beryllium	Conc HNO_3 to pH <2	P or G	6 months.
Cadmium	Conc HNO_3 to pH <2	P or G	6 months.
Chromium	Conc HNO_3 to pH <2	P or G	6 months.
Cyanide	Cool, 4°C, NaOH to pH>12 [3]	P or G	14 days
Fluoride	None	P or G	1 month.
Mercury	Conc HNO_3 to pH <2	P or G	28 days.
Nickel	Conc HNO_3 to pH <2	P or G	6 months.
Nitrate			
Chlorinated	Cool, 4°C	P or G	28 days.
Non-chlorinated	Conc H_2SO_4 to pH <2	P or G	14 days.
Nitrite	Cool, 4°C	P or G	48 hours.
Selenium	Conc HNO_3 to pH <2	P or G	6 months.
Thallium	Conc HNO_3 to pH <2	P or G	6 months.

[1] P=plastic, hard or soft; G=glass, hard or soft.
[2] In all cases, samples should be analyzed as soon after collection as possible.
[3] See method(s) for the information for preservation.

(3) Analysis under this section shall only be conducted by laboratories that have been certified by EPA or the State. Laboratories may conduct sample analysis under provisional certification until January 1, 1996. To receive certification to conduct analyses for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite and selenium and thallium, the laboratory must:

(i) Analyze Performance Evaluation samples which include those substances provided by EPA Environmental Monitoring Systems Laboratory or equivalent samples provided by the State.

(ii) Achieve quantitative results on the analyses that are within the following acceptance limits:

Contaminant	Acceptance limit
Antimony	±30 at ≥0.006 mg/1
Asbestos	2 standard deviations based on study statistics.
Barium	±15% at ≥0.15 mg/1
Beryllium	±15% at ≥0.001 mg/1
Cadmium	±20% at ≥0.002 mg/1
Chromium	±15% at ≥0.01 mg/1
Cyanide	±25% at ≥0.1 mg/1
Fluoride	±10% at ≥1 to 10 mg/1
Mercury	±30% at ≥0.0005 mg/1
Nickel	±15% at ≥0.01 mg/1
Nitrate	±10% at ≥0.4 mg/1
Nitrite	±15% at ≥0.4 mg/1
Selenium	±20% at ≥0.01 mg/1
Thallium	±30% at ≥0.002 mg/1

(l) Analyses for the purpose of determining compliance with § 141.11 shall be conducted using the requirements specified in paragraphs (l) through (q) of this section.

(1) Analyses for all community water systems utilizing surface water sources shall be completed by June 24, 1978. These analyses shall be repeated at yearly intervals.

(2) Analyses for all community water systems utilizing only ground water sources shall be completed by June 24, 1979. These analyses shall be repeated at three-year intervals.

(3) For non-community water systems, whether supplied by surface or ground sources, analyses for nitrate shall be completed by December 24, 1980. These analyses shall be repeated at intervals determined by the State.

(4) The State has the authority to determine compliance or initiate enforcement action based upon analytical results and other information compiled by their sanctioned representatives and agencies.

(m) If the result of an analysis made under paragraph (l) of this section indicates that the level of any contaminant listed in § 141.11 exceeds the maximum contaminant level, the supplier of the water shall report to the State within 7 days and initiate three additional analyses at the same sampling point within one month.

(n) When the average of four analyses made pursuant to paragraph (m) of this section, rounded to the same number of significant figures as the maximum contaminant level for the substance in question, exceeds the maximum contaminant level, the supplier of water shall notify the State pursuant to § 141.31 and give notice to the public pursuant to § 141.32. Monitoring after public notification shall be at a frequency designated by the State and shall continue until the maximum contaminant level has not been exceeded in two successive samples or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

(o) The provisions of paragraphs (m) and (n) of this section notwithstanding, compliance with the maximum contaminant level for nitrate shall be determined on the basis of the mean of two analyses. When a level exceeding the maximum contaminant level for nitrate is found, a second analysis shall be initiated within 24 hours, and if the mean of the two analyses exceeds the maximum contaminant level, the supplier of water shall report his findings to the State pursuant to § 141.31 and shall notify the public pursuant to § 141.32.

(p) For the initial analyses required by paragraph (l) (1), (2) or (3) of this section, data for surface waters acquired within one year prior to the effective date and data for ground waters acquired within 3 years prior to the effective date of this part may be substituted at the discretion of the State.

(q) [Reserved]

[56 FR 3579, Jan. 30, 1991, as amended at 56 FR 30274, July 1, 1991; 57 FR 31838, July 17, 1992; 59 FR 34322, July 1, 1994; 59 FR 62466, Dec. 5, 1994; 60 FR 33932, 34085, June 29, 1995]

§ 141.24 Organic chemicals other than total trihalomethanes, sampling and analytical requirements.

(a)–(d) [Reserved]

(e) Analyses for the contaminants in this section shall be conducted using the following EPA methods or their equivalent as approved by EPA. Methods 502.2, 505, 507, 508, 508A, 515.1 and 531.1 are in *Methods for the Determination of Organic Compounds in Drinking Water*, EPA–600/4–88–039, December 1988, Revised, July 1991. Methods 506, 547, 550, 550.1 and 551 are in *Methods for the Determination of Organic Compounds in Drinking Water—Supplement I*, EPA–600–4–90–020, July 1990. Methods 515.2, 524.2, 548.1, 549.1, 552.1 and 555 are in *Methods for the Determination of Organic Compounds in Drinking Water—Supplement II*, EPA–600/R–92–129, August 1992. Method 1613 is titled ''Tetra-through Octa-Chlorinated Dioxins and Furans by Isotope-Dilution HRGC/HRMS'', EPA–821–B–94–005,

October 1994. These documents are available from the National Technical Information Service, NTIS PB91–231480, PB91–146027, PB92–207703 and PB95–104774, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800–553–6847. Method 6651 shall be followed in accordance with the 18th edition of *Standard Methods for the Examination of Water and Wastewater,* 1992, American Public Health Association. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Method 6610 shall be followed in accordance with the *Supplement to the 18th edition of Standard Methods for the Examination of Water and Wastewater,* 1994, American Public Health Association. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Other analytical test procedures are contained in *Technical Notes on Drinking Water Methods,* EPA–600/R–94–173, October 1994, NTIS PB95–104766. This document also contains approved analytical methods which remain available for compliance monitoring until July 1, 1996. These methods will not be available for use after July 1, 1996. EPA Methods 504.1, 508.1 and 525.2 are available from US EPA EMSL, Cincinnati, OH 45268. The phone number is 513–569–7586.

Contaminant	Method
Benzene	502.2, 524.2.
Carbon tetrachloride	502.2, 524.2, 551.
Chlorobenzene	502.2, 524.2.
1,2-Dichlorobenzene	502.2, 524.2.
1,4-Dichlorobenzene	502.2, 524.2.
1,2-Dichloroethane	502.2, 524.2.
cis-Dichloroethylene	502.2, 524.2.
trans-Dichloroethylene	502.2, 524.2.
Dichloromethane	502.2, 524.2.
1,2-Dichloropropane	502.2, 524.2.
Ethylbenzene	502.2, 524.2.
Styrene	502.2, 524.2.
Tetrachloroethylene	502.2, 524.2, 551.
1,1,1-Trichloroethane	502.2, 524.2, 551.
Trichloroethylene	502.2, 524.2, 551.
Toluene	502.2, 524.2.
1,2,4-Trichlorobenzene	502.2, 524.2.
1,1-Dichloroethylene	502.2, 524.2.
1,1,2-Trichloroethane	502.2, 524.2.
Vinyl chloride	502.2, 524.2.
Xylenes (total)	502.2, 524.2.
2,3,7,8-TCDD (dioxin)	1613.
2,4-D	515.2, 555, 515.1.
2,4,5-TP (Silvex)	515.2, 555, 515.1.
Alachlor	505 [1], 507, 525.2, 508.1.
Atrazine	505 [1], 507, 525.2, 508.1.
Benzo(a)pyrene	525.2, 550, 550.1.
Carbofuran	531.1, 6610.
Chlordane	505, 508, 525.2, 508.1.
Dalapon	552.1, 515.1.
Di(2-ethylhexyl) adipate	506, 525.2.
Di(2-ethylhexyl) phthalate	506, 525.2.
Dibromochloropropane (DBCP).	504.1, 551.
Dinoseb	515.2, 555, 515.1.
Diquat	549.1.
Endothall	548.1.
Endrin	505, 508, 525.2, 508.1.
Ethylene dibromide (EDB)	504.1, 551.
Glyphosate	547, 6651.
Heptachlor	505, 508, 525.2, 508.1.
Heptachlor Epoxide	505, 508, 525.2, 508.1.
Hexachlorobenzene	505, 508, 525.2, 508.1.
Hexachlorocyclopentadiene	505, 525.2, 508, 508.1.
Lindane	505, 508, 525.2, 508.1.
Methoxychlor	505, 508, 525.2, 508.1.
Oxamyl	531.1, 6610.
PCBs [2] (as decachlorobiphenyl).	508A.
(as Aroclors)	505, 508.
Pentachlorophenol	515.2, 525.2, 555, 515.1.
Picloram	515.2, 555, 515.1.
Simazine	505 [1], 507, 525.2, 508.1.
Toxaphene	505, 508, 525.2.
Total Trihalomethanes	502.2, 524.2, 551.

[1] A nitrogen-phosphorous detector should be substituted for the electron capture detector in Method 505 (or another approved method should be used) to determine alachlor, atrazine and simazine, if lower detection limits are required.

[2] PCBs are qualitatively identified as Aroclors and measured for compliance purposes as decachlorobiphenyl.

(f) Beginning with the initial compliance period, analysis of the contaminants listed in § 141.61(a)(1) through (21) for the purpose of determining compliance with the maximum contaminant level shall be conducted as follows:

(1) Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source, treatment plant, or within the distribution system.

(2) Surface water systems (or combined surface/ground) shall take a minimum of one sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source, treatment plant, or within the distribution system.

(3) If the system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used).

(4) Each community and non-transient non-community water system shall take four consecutive quarterly samples for each contaminant listed in § 141.61(a) (2) through (21) during each compliance period, beginning in the initial compliance period.

(5) If the initial monitoring for contaminants listed in § 141.61(a) (1) through (8) and the monitoring for the contaminants listed in § 141.61(a) (9) through (21) as allowed in paragraph (f)(18) has been completed by December 31, 1992, and the system did not detect any contaminant listed in § 141.61(a) (1) through (21), then each ground and surface water system shall take one sample annually beginning with the initial compliance period.

(6) After a minimum of three years of annual sampling, the State may allow groundwater systems with no previous detection of any contaiminant listed in § 141.61(a) to take one sample during each compliance period.

(7) Each community and non-transient non–community ground water system which does not detect a contaminant listed in § 141.61(a) (1) through (21) may apply to the State for a waiver from the requirements of paragraphs (f)(5) and (f)(6) of this section after completing the initial monitoring. (For purposes of this section, detection is defined as ≥0.0005 mg/l.) A waiver shall be effective for no more than six years (two compliance periods). States may also issue waivers to small systems for the initial round of monitoring for 1,2,4-trichlorobenzene.

(8) A State may grant a waiver after evaluating the following factor(s):

(i) Knowledge of previous use (including transport, storage, or disposal) of the contaminant within the watershed or zone of influence of the system. If a determination by the State reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted.

(ii) If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver is granted.

(A) Previous analytical results.

(B) The proximity of the system to a potential point or non-point source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities.

(C) The environmental persistence and transport of the contaminants.

(D) The number of persons served by the public water system and the proximity of a smaller system to a larger system.

(E) How well the water source is protected against contamination, such as whether it is a surface or groundwater system. Groundwater systems must consider factors such as depth of the well, the type of soil, and wellhead protection. Surface water systems must consider watershed protection.

(9) As a condition of the waiver a groundwater system must take one sample at each sampling point during the time the waiver is effective (i.e., one sample during two compliance periods or six years) and update its vulnerability assessment considering the factors listed in paragraph (f)(8) of this section. Based on this vulnerability assessment the State must reconfirm that the system is non-vulnerable. If the State does not make this reconfirmation within three years of the initial determination, then the waiver is invalidated and the system is required to sample annually as specified in paragraph (5) of this section.

(10) Each community and non-transient non–community surface water system which does not detect a contaminant listed in § 141.61(a) (1) through (21) may apply to the State for a waiver from the requirements of (f)(5) of this section after completing the initial monitoring. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Systems meeting this criterion must be determined by the State to be non-vulnerable based on a vulnerability assessment during each compliance period. Each system receiving a waiver shall sample at the frequency specified by the State (if any).

(11) If a contaminant listed in § 141.61(a) (2) through (21) is detected at a level exceeding 0.0005 mg/l in any sample, then:

(i) The system must monitor quarterly at each sampling point which resulted in a detection.

(ii) The State may decrease the quarterly monitoring requirement speci fied in paragraph (f)(11)(i) of this section provided it has determined that the system is reliably and consistently below the maximum contaminant level. In no case shall the State make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples.

(iii) If the State determines that the system is reliably and consistently below the MCL, the State may allow the system to monitor annually. Systems which monitor annually must monitor during the quarter(s) which previously yielded the highest analytical result.

(iv) Systems which have three consecutive annual samples with no detection of a contaminant may apply to the State for a waiver as specified in paragraph (f)(7) of this section.

(v) Groundwater systems which have detected one or more of the following two-carbon organic compounds: trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, or 1,1-dichloroethylene shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each sampling point at which one or more of the two-carbon organic compounds was detected. If the results of the first analysis do not detect vinyl chloride, the State may reduce the quarterly monitoring frequency of vinyl chloride monitoring to one sample during each compliance period. Surface water systems are required to monitor for vinyl chloride as specified by the State.

(12) Systems which violate the requirements of § 141.61(a) (1) through (21), as determined by paragraph (f)(15) of this section, must monitor quarterly. After a minimum of four consecutive quarterly samples which show the system is in compliance as specified in paragraph (f)(15) of this section the system and the State determines that the system is reliably and consistently below the maximum contaminant level, the system may monitor at the frequency and times specified in paragraph (f)(11)(iii) of this section.

(13) The State may require a confirmation sample for positive or negative results. If a confirmation sample is required by the State, the result must be averaged with the first sampling result and the average is used for the compliance determination as specified by paragraph (f)(15). States have discretion to delete results of obvious sampling errors from this calculation.

(14) The State may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collection.

(i) If the concentration in the composite sample is greater than or equal to 0.0005 mg/l for any contaminant listed in § 141.61(a), then a follow-up sample must be taken within 14 days at each sampling point included in the composite, and be analyzed for that contaminant.

(ii) If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these instead of resampling. The duplicate must be analyzed and the results reported to the State within 14 days of collection.

(iii) If the population served by the system is > 3,300 persons, then compositing may only be permitted by the State at sampling points within a single system. In systems serving ≤ 3,300 persons, the State may permit compositing among different systems provided the 5-sample limit is maintained.

(iv) Compositing samples prior to GC analysis.

(A) Add 5 ml or equal larger amounts of each sample (up to 5 samples are allowed) to a 25 ml glass syringe. Special precautions must be made to maintain zero headspace in the syringe.

(B) The samples must be cooled at 4°C during this step to minimize volatilization losses.

(C) Mix well and draw out a 5-ml aliquot for analysis.

(D) Follow sample introduction, purging, and desorption steps described in the method.

(E) If less than five samples are used for compositing, a proportionately small syringe may be used.

(v) Compositing samples prior to GC/MS analysis.

(A) Inject 5-ml or equal larger amounts of each aqueous sample (up to 5 samples are allowed) into a 25-ml purging device using the sample introduction technique described in the method.

(B) The total volume of the sample in the purging device must be 25 ml.

(C) Purge and desorb as described in the method.

(15) Compliance with § 141.61(a) (1) through (21) shall be determined based on the analytical results obtained at each sampling point.

(i) For systems which are conducting monitoring at a frequency greater than annual, compliance is determined by a running annual average of all samples taken at each sampling point. If the annual average of any sampling point is greater than the MCL, then the system is out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system is out of compliance immediately.

(ii) If monitoring is conducted annually, or less frequently, the system is out of compliance if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the State, the determination of compliance will be based on the average of two samples.

(iii) If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the State may allow the system to give public notice to only that area served by that portion of the system which is out of compliance.

(16) [Reserved]

(17) Analysis under this section shall only be conducted by laboratories that are certified by EPA or the State according to the following conditions (laboratories may conduct sample analysis

under provisional certification until January 1, 1996):

(i) To receive certification to conduct analyses for the contaminants in § 141.61(a) (2) through (21) the laboratory must:

(A) Analyze Performance Evaluation samples which include these substances provided by EPA Environmental Monitoring Systems Laboratory or equivalent samples provided by the State.

(B) Achieve the quantitative acceptance limits under paragraphs (f)(17)(i) (C) and (D) of this section for at least 80 percent of the regulated organic chemicals listed in § 141.61(a) (2) through (21).

(C) Achieve quantitative results on the analyses performed under paragraph (f)(17)(i)(A) of this section that are within ±20% of the actual amount of the substances in the Performance Evaluation sample when the actual amount is greater than or equal to 0.010 mg/l.

(D) Achieve quantitative results on the analyses performed under paragraph (f)(17)(i)(A) of this section that are within ±40 percent of the actual amount of the substances in the Performance Evaluation sample when the actual amount is less than 0.010 mg/l.

(E) Achieve a method detection limit of 0.0005 mg/l, according to the procedures in appendix B of part 136.

(ii) To receive certification for vinyl chloride, the laboratory must:

(A) Analyze Performance Evaluation samples provided by EPA Environmental Monitoring Systems Laboratory or equivalent samples provided by the State.

(B) Achieve quantitative results on the analyses performed under paragraph (f)(17)(ii)(A) of this section that are within ±40 percent of the actual amount of vinyl chloride in the Performance Evaluation sample.

(C) Achieve a method detection limit of 0.0005 mg/l, according to the procedures in appendix B of part 136.

(D) Obtain certification for the contaminants listed in § 141.61(a)(2) through (21).

(18) States may allow the use of monitoring data collected after January 1, 1988, required under section 1445 of the Act for purposes of initial monitoring compliance. If the data are generally consistent with the other requirements of this section, the State may use these data (i.e., a single sample rather than four quarterly samples) to satisfy the initial monitoring requirement of paragraph (f)(4) of this section. Systems which use grandfathered samples and did not detect any contaminant listed § 141.61(a)(2) through (21) shall begin monitoring annually in accordance with paragraph (f)(5) of this section beginning with the initial compliance period.

(19) States may increase required monitoring where necessary to detect variations within the system.

(20) Each certified laboratory must determine the method detection limit (MDL), as defined in appendix B to part 136, at which it is capable of detecting VOCs. The acceptable MDL is 0.0005 mg/l. This concentration is the detection concentration for purposes of this section.

(21) Each public water system shall monitor at the time designated by the State within each compliance period.

(g) [Reserved]

(h) Analysis of the contaminants listed in § 141.61(c) for the purposes of determining compliance with the maximum contaminant level shall be conducted as follows: [7]

(1) Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(2) Surface water systems shall take a minimum of one sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

NOTE: For purposes of this paragraph, surface water systems include systems with a combination of surface and ground sources.

(3) If the system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used).

(4) Monitoring frequency:

(i) Each community and non-transient non-community water system shall take four consecutive quarterly samples for each contaminant listed in § 141.61(c) during each compliance period beginning with the initial compliance period.

(ii) Systems serving more than 3,300 persons which do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of two quarterly samples in one year during each repeat compliance period.

[7] Monitoring for the contaminants aldicarb, aldicarb sulfoxide, and aldicarb sulfone shall be conducted in accordance with § 141.40.

(iii) Systems serving less than or equal to 3,300 persons which do not detect a contaminant in the initial compliance period may reduce the sampling frequency to a minimum of one sample during each repeat compliance period.

(5) Each community and non-transient water system may apply to the State for a waiver from the requirement of paragraph (h)(4) of this section. A system must reapply for a waiver for each compliance period.

(6) A State may grant a waiver after evaluating the following factor(s): Knowledge of previous use (including transport, storage, or disposal) of the contaminant within the watershed or zone of influence of the system. If a determination by the State reveals no previous use of the contaminant within the watershed or zone of influence, a waiver may be granted. If previous use of the contaminant is unknown or it has been used previously, then the following factors shall be used to determine whether a waiver is granted.

(i) Previous analytical results.

(ii) The proximity of the system to a potential point or non-point source of contamination. Point sources include spills and leaks of chemicals at or near a water treatment facility or at manufacturing, distribution, or storage facilities, or from hazardous and municipal waste landfills and other waste handling or treatment facilities. Non-point sources include the use of pesticides to control insect and weed pests on agricultural areas, forest lands, home and gardens, and other land application uses.

(iii) The environmental persistence and transport of the pesticide or PCBs.

(iv) How well the water source is protected against contamination due to such factors as depth of the well and the type of soil and the integrity of the well casing.

(v) Elevated nitrate levels at the water supply source.

(vi) Use of PCBs in equipment used in the production, storage, or distribution of water (i.e., PCBs used in pumps, transformers, etc.).

(7) If an organic contaminant listed in § 141.61(c) is detected (as defined by paragraph (h)(18) of this section) in any sample, then:

(i) Each system must monitor quarterly at each sampling point which resulted in a detection.

(ii) The State may decrease the quarterly monitoring requirement specified in paragraph (h)(7)(i) of this section provided it has determined that the system is reliably and consistently below the maximum contaminant level. In no case shall the State make this determination unless a groundwater system takes a minimum of two quarterly samples and a surface water system takes a minimum of four quarterly samples.

(iii) After the State determines the system is reliably and consistently below the maximum contaminant level the State may allow the system to monitor annually. Systems which monitor annually must monitor during the quarter that previously yielded the highest analytical result.

(iv) Systems which have 3 consecutive annual samples with no detection of a contaminant may apply to the State for a waiver as specified in paragraph (h)(6) of this section.

(v) If monitoring results in detection of one or more of certain related contaminants (aldicarb, aldicarb sulfone, aldicarb sulfoxide and heptachlor, heptachlor epoxide), then subsequent monitoring shall analyze for all related contaminants.

(8) Systems which violate the requirements of § 141.61(c) as determined by paragraph (h)(11) of this section must monitor quarterly. After a minimum of four quarterly samples show the system is in compliance and the State determines the system is reliably and consistently below the MCL, as specified in paragraph (h)(11) of this section, the system shall monitor at the frequency specified in paragraph (h)(7)(iii) of this section.

(9) The State may require a confirmation sample for positive or negative results. If a confirmation sample is required by the State, the result must be averaged with the first sampling result and the average used for the compliance determination as specified by paragraph (h)(11) of this section. States have discretion to delete results of obvious sampling errors from this calculation.

(10) The State may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five sampling points are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory and analyzed within 14 days of sample collection.

(i) If the concentration in the composite sample detects one or more contaminants listed in § 141.61(c), then a follow-up sample must be taken within 14 days at each sampling point included in the composite, and be analyzed for that contaminant.

(ii) If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these duplicates instead of resampling. The duplicate must be analyzed and the results reported to the State within 14 days of collection.

(iii) If the population served by the system is >3,300 persons, then compositing may only be permitted by the State at sampling points within a single system. In systems serving ≤ 3,300 persons, the State may permit compositing among different systems provided the 5-sample limit is maintained.

(11) Compliance with § 141.61(c) shall be determined based on the analytical results obtained at each sampling point.

(i) For systems which are conducting monitoring at a frequency greater than annual, compliance is determined by a running annual average of all samples taken at each sampling point. If the annual average of any sampling point is greater than the MCL, then the system is out of compliance. If the initial sample or a subsequent sample would cause the annual average to be exceeded, then the system is out of compliance immediately. Any samples below the detection limit shall be calculated as zero for purposes of determining the annual average.

(ii) If monitoring is conducted annually, or less frequently, the system is out of compliance if the level of a contaminant at any sampling point is greater than the MCL. If a confirmation sample is required by the State, the determination of compliance will be based on the average of two samples.

(iii) If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the State may allow the system to give public notice to only that portion of the system which is out of compliance.

(12) [Reserved]

(13) Analysis for PCBs shall be conducted as follows using the methods in paragraph (e) of this section:

(i) Each system which monitors for PCBs shall analyze each sample using either Method 505 or Method 508.

(ii) If PCBs (as one of seven Aroclors) are detected (as designated in this paragraph) in any sample analyzed using Method 505 or 508, the system shall reanalyze the sample using Method 508A to quantitate PCBs (as decachlorobiphenyl).

Aroclor	Detection limit (mg/l)
1016	0.00008
1221	0.02
1232	0.0005
1242	0.0003
1248	0.0001
1254	0.0001
1260	0.0002

(iii) Compliance with the PCB MCL shall be determined based upon the quantitative results of analyses using Method 508A.

(14) If monitoring data collected after January 1, 1990, are generally consistent with the requirements of § 141.24(h), then the State may allow systems to use that data to satisfy the monitoring requirement for the initial compliance period beginning January 1, 1993.

(15) The State may increase the required monitoring frequency, where necessary, to detect variations within the system (e.g., fluctuations in concentration due to seasonal use, changes in water source).

(16) The State has the authority to determine compliance or initiate enforcement action based upon analytical results and other information compiled by their sanctioned representatives and agencies.

(17) Each public water system shall monitor at the time designated by the State within each compliance period.

(18) Detection as used in this paragraph shall be defined as greater than or equal to the following concentrations for each contaminant.

Contaminant	Detection limit (mg/l)
Alachlor	.0002
Aldicarb	.0005
Aldicarb sulfoxide	.0005
Aldicarb sulfone	.0008
Atrazine	.0001
Benzo[a]pyrene	.00002
Carbofuran	.0009
Chlordane	.0002
Dalapon	.001
1,2–Dibromo–3–chloropropane (DBCP)	.00002
Di (2-ethylhexyl) adipate	.0006
Di (2-ethylhexyl) phthalate	.0006
Dinoseb	.0002
Diquat	.0004
2,4-D	.0001
Endothall	.009
Endrin	.00001
Ethylene dibromide (EDB)	.00001
Glyphosate	.006
Heptachlor	.00004
Heptachlor epoxide	.00002
Hexachlorobenzene	.0001
Hexachlorocyclopentadiene	.0001
Lindane	.00002
Methoxychlor	.0001
Oxamyl	.002
Picloram	.0001
Polychlorinated biphenyls (PCBs) (as decachlorobiphenyl)	.0001
Pentachlorophenol	.00004
Simazine	.00007
Toxaphene	.001
2,3,7,8-TCDD (Dioxin)	.000000005
2,4,5-TP (Silvex)	.0002

(19) Anaylsis under this section shall only be conducted by laboratories that have received certification by EPA or the State and have met the following conditions:

(i) To receive certification to conduct analyses for the contaminants in § 141.61(c) the laboratory must:

(A) Analyze Performance Evaluation samples which include those substances provided by EPA Environmental Monitoring and Support Laboratory or equivalent samples provided by the State.

(B) Achieve quantitative results on the analyses that are within the following acceptance limits:

Contaminant	Acceptance limits (percent)
DBCP	±40
EDB	±40.
Alachlor	±45.
Atrazine	±45.
Benzo[a]pyrene	2 standard deviations.
Carbofuran	±45.
Chlordane	±45.
Dalapon	2 standard deviations.
Di(2-ethylhexyl)adipate	2 standard deviations.
Di(2-ethylhexyl)phthalate	2 standard deviations.
Dinoseb	2 standard deviations.
Diquat	2 standard deviations.
Endothall	2 standard deviations.
Endrin	±30.
Glyphosate	2 standard deviations.
Heptachlor	±45.
Heptachlor epoxide	±45.
Hexachlorobenzene	2 standard deviations.
Hexachloro- cyclopentadiene	2 standard deviations.
Lindane	±45.
Methoxychlor	±45.
Oxamyl	2 standard deviations.
PCBs (as Decachlorobiphenyl)	0–200.
Picloram	2 standard deviations.
Simazine	2 standard deviations.
Toxaphene	±45.
Aldicarb	2 standard deviations.
Aldicarb sulfoxide	2 standard deviations.
Aldicarb sulfone	2 standard deviations.
Pentachlorophenol	±50.
2,3,7,8-TCDD (Dioxin)	2 standard deviations.
2,4-D	±50.
2,4,5-TP (Silvex)	±50.

(ii) [Reserved]

(Approved by the Office of Management and Budget under control number 2040–0090)

[40 FR 59570, Dec. 24, 1975, as amended at 44 FR 68641, Nov. 29, 1979; 45 FR 57345, Aug. 27, 1980; 47 FR 10998, Mar. 12, 1982; 52 FR 25712, July 8, 1987; 53 FR 5147, Feb. 19, 1988; 53 FR 25110, July 1, 1988; 56 FR 3583, Jan. 30, 1991; 56 FR 30277, July 1, 1991; 57 FR 22178, May 27, 1992; 57 FR 31841, July 17, 1992; 59 FR 34323, July 1, 1994; 59 FR 62468, Dec. 5, 1994; 60 FR 34085, June 29, 1995]

§ 141.25 Analytical methods for radioactivity.

(a) Analysis for the following contaminants shall be conducted to determine compliance with §§ 141.15 and 141.16 (radioactivity) in accordance with the methods in the following Table, or their equivalent determined by EPA in accordance with § 141.27.

Contaminant	Methodology	Reference (method or page number)								
		EPA[1]	EPA[2]	EPA[3]	EPA[4]	SM[5]	ASTM[6]	USGS[7]	DOE[8]	Other
Naturally occurring:										
Gross alpha[11] and beta	Evaporation	900.0	p 1	00–01	p 1	302, 7110 B		R–1120–76		
Gross alpha[11]	Co-precipitation	.....		00–02		7110 C				
Radium 226	Radon emanation,	903.1	p 16	Ra-04	p 19	7500-Ra C	D 3454–91	R–1141–76	Ra-05	N.Y.[9]
	Radio chemical	903.0	p 13	Ra-03		304, 305, ...	D 2460-90	R-1140-76		
						7500-Ra B				
Radium 228	Radio chemical	904.0	p 24	Ra-05	p 19	304, 7500-Ra D		R–1142–76		N.Y.[9]
										N.J.[10]
Uranium[12]	Radio chemical	908.0				7500-U B				
	Fluorometric	908.1				7500-U C (17th Ed.) ...	D2907-91	R-1180-76	U-04	
								R-1181-76		
	Alpha spectro metry.	.....		00–07	p33	7500-U C (18th or 19th Ed.).	D 3972–90	R-1182-76	U-02	
	Laser Phospho rimetry.	.....				.....	D 5174–91			
Man-made:										
Radioactive cesium	Radio chemical	901.0	p 4			7500-Cs B	D 2459–72	R-1111-76		
	Gamma ray spec-trometry.	901.1			p 92	7120 (19th Ed.)	D 3649–91	R-1110-76	4.5.2.3	
Radioactive iodine	Radio chemical	902.0	p 6			7500-I B	D3649-91			
			p 9			7500-I C				
						7500-I D				
	Gamma ray spec-trometry.	901.1			p 92	7120 (19th Ed.)	D 4785–88		4.5.2.3	
Radioactive Strontium 89, 90.	Radio chemical	905.0	p 29	Sr-04	p. 65	303, 7500-Sr B		R-1160-76	Sr-01	
									Sr-02	
Tritium	Liquid scintillation	906.0	p 34	H–02	p. 87	306, 7500–3H B	D 4107–91	R-1171-76		
Gamma emitters	Gamma ray	901.1			p92	7120 (19th Ed.)	D 3649–91	R-1110-76	4.5.2.3	
	Spectrometry	902.0				7500-Cs B	D 4785–88			
	.....	901.0				7500-I B				

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of documents 1 through 10 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at 800–426–4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460 (Telephone: 202–260–3027); or at the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[1] "Prescribed Procedures for Measurement of Radioactivity in Drinking Water", EPA 600/4–80–032 , August 1980. Available at U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161 (Telephone 800–553–6847), PB 80–224744.

[2] "Interim Radiochemical Methodology for Drinking Water", EPA 600/4–75–008(revised), March 1976. Available at NTIS, ibid. PB 253258.

[3] "Radiochemistry Procedures Manual", EPA 520/5–84–006, December 1987. Available at NTIS, ibid. PB 84–215581.

[4] "Radiochemical Analytical Procedures for Analysis of Environmental Samples", March 1979. Available at NTIS, ibid. EMSL LV 053917.

[5] "Standard Methods for the Examination of Water and Wastewater", 13th, 17th, 18th, 19th Editions, 1971, 1989, 1992, 1995. Available at American Public Health Association, 1015 Fifteenth Street N.W., Washington, D.C. 20005. All methods are in the 17th, 18th and 19th editions except 7500-U C Fluorometric Uranium was discontinued after the 17th Edition, 7120 Gamma Emitters is only in the 19th Edition, and 302, 303, 304, 305 and 306 are only in the 13th Edition.

[6] *Annual Book of ASTM Standards,* Vol. 11.02, 1994. Available at American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[7] "Methods for Determination of Radioactive Substances in Water and Fluvial Sediments", Chapter A5 in Book 5 of *Techniques of Water-Resources Investigations of the United States Geological Survey,* 1977. Available at U.S. Geological Survey (USGS) Information Services, Box 25286, Federal Center, Denver, CO 80225–0425.

[8] "EML Procedures Manual", 27th Edition, Volume 1, 1990. Available at the Environmental Measurements Laboratory, U.S. Department of Energy (DOE), 376 Hudson Street, New York, NY 10014–3621.

[9] "Determination of Ra-226 and Ra-228 (Ra-02)", January 1980, Revised June 1982. Available at Radiological Sciences Institute Center for Laboratories and Research, New York State Department of Health, Empire State Plaza, Albany, NY 12201.

[10] "Determination of Radium 228 in Drinking Water", August 1980. Available at State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, Bureau of Radiation and Inorganic Analytical Services, 9 Ewing Street, Trenton, NJ 08625.

[11] Natural uranium and thorium-230 are approved as gross alpha calibration standards for gross alpha with co-precipitation and evaporation methods; americium-241 is approved with co-precipitation methods.

[12] If uranium (U) is determined by mass, a 0.67 pCi/µg of uranium conversion factor must be used. This conservative factor is based on the 1:1 activity ratio of U–234 to U–238 that is characteristic of naturally occurring uranium.

(b) When the identification and measurement of radionuclides other than those listed in paragraph (a) of this section is required, the following references are to be used, except in cases where alternative methods have been approved in accordance with § 141.27.

(1) *Procedures for Radiochemical Analysis of Nuclear Reactor Aqueous Solutions,* H. L. Krieger and S. Gold, EPA–R4–73–014. USEPA, Cincinnati, Ohio, May 1973.

(2) *HASL Procedure Manual,* Edited by John H. Harley. HASL 300, ERDA Health and Safety Laboratory, New York, NY., 1973.

(c) For the purpose of monitoring radioactivity concentrations in drinking water, the required sensitivity of the radioanalysis is defined in terms of a detection limit. The detection limit shall be that concentration which can be counted with a precision of plus or minus 100 percent at the 95 percent confidence level (1.96σ where σ is the standard deviation of the net counting rate of the sample).

(1) To determine compliance with § 141.15(a) the detection limit shall not exceed 1 pCi/1. To determine compliance with § 141.15(b) the detection limit shall not exceed 3 pCi/1.

(2) To determine compliance with § 141.16 the detection limits shall not exceed the concentrations listed in Table B.

TABLE B—DETECTION LIMITS FOR MAN-MADE BETA PARTICLE AND PHOTON EMITTERS

Radionuclide	Detection limit
Tritium	1,000 pCi/1.
Strontium–89	10 pCi/1.
Strontium–90	2 pCi/1.
Iodine–131	1 pCi/1.
Cesium–134	10 pCi/1.
Gross beta	4 pCi/1.
Other radionuclides	1/10 of the applicable limit.

(d) To judge compliance with the maximum contaminant levels listed in §§ 141.15 and 141.16, averages of data shall be used and shall be rounded to the same number of significant figures as the maximum contaminant level for the substance in question.

(e) The State has the authority to determine compliance or initiate enforcement action based upon analytical results or other information compiled by their sanctioned representatives and agencies.

[41 FR 28404, July 9, 1976, as amended at 45 FR 57345, Aug. 27, 1980; 62 FR 10173, Mar. 5, 1997]

§ 141.26 Monitoring frequency for radioactivity in community water systems.

(a) Monitoring requirements for gross alpha particle activity, radium–226 and radium–228.

(1) Initial sampling to determine compliance with § 141.15 shall begin within two years of the effective date of these regulations and the analysis shall be completed within three years of the effective date of these regulations. Compliance shall be based on the analysis of an annual composite of four consecutive quarterly samples or the average of the analyses of four samples obtained at quarterly intervals.

(i) A gross alpha particle activity measurement may be substituted for the required radium–226 and radium–228 analysis *Provided,* That the measured gross alpha particle activity does not exceed 5 pCi/1 at a confidence level of 95 percent (1.65σ where σ is the standard deviation of the net counting rate of the sample). In localities where radium–228 may be present in drinking water, it is recommended that the State require radium–226 and/or radium–228 analyses when the gross alpha particle activity exceeds 2 pCi/1.

(ii) When the gross alpha particle activity exceeds 5 pCi/1, the same or an equivalent sample shall be analyzed for radium–226. If the concentration of radium–226 exceeds 3 pCi/1 the same or an equivalent sample shall be analyzed for radium–228.

(2) For the initial analysis required by paragraph (a)(1) of this section, data acquired within one year prior to the effective date of this part may be substituted at the discretion of the State.

(3) Suppliers of water shall monitor at least once every four years following the procedure required by paragraph (a)(1) of this section. At the discretion of the State, when an annual record taken in conformance with paragraph (a)(1) of this section has established that the average annual concentration is less than half the maximum contaminant levels established by § 141.15, analysis of a single sample may be substituted for the quarterly sampling procedure required by paragraph (a)(1) of this section.

(i) More frequent monitoring shall be conducted when ordered by the State in the vicinity of mining or other operations which may contribute alpha particle radioactivity to either surface or ground water sources of drinking water.

(ii) A supplier of water shall monitor in conformance with paragraph (a)(1) of this section within one year of the introduction of a new water source for a community water system. More frequent monitoring shall be conducted when ordered by the State in the event of possible contamination or when changes in the distribution system or treatment processing occur which may increase the concentration of radioactivity in finished water.

(iii) A community water system using two or more sources having different concentrations of radioactivity shall monitor source water, in addition

to water from a free-flowing tap, when ordered by the State.

(iv) Monitoring for compliance with § 141.15 after the initial period need not include radium–228 *except when* required by the State, *Provided,* That the average annual concentration of radium–228 has been assayed at least once using the quarterly sampling procedure required by paragraph (a)(1) of this section.

(v) Suppliers of water shall conduct annual monitoring of any community water system in which the radium–226 concentration exceeds 3 pCi/1, when ordered by the State.

(4) If the average annual maximum contaminant level for gross alpha particle activity or total radium as set forth in § 141.15 is exceeded, the supplier of a community water system shall give notice to the State pursuant to § 141.31 and notify the public as required by § 141.32. Monitoring at quarterly intervals shall be continued until the annual average concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

(b) Monitoring requirements for manmade radioactivity in community water systems.

(1) Within two years of the effective date of this part, systems using surface water sources and serving more than 100,000 persons and such other community water systems as are designated by the State shall be monitored for compliance with § 141.16 by analysis of a composite of four consecutive quarterly samples or analysis of four quarterly samples. Compliance with § 141.16 may be assumed without further analysis if the average annual concentration of gross beta particle activity is less than 50 pCi/1 and if the average annual concentrations of tritium and strontium–90 are less than those listed in table A, *Provided,* That if both radionuclides are present the sum of their annual dose equivalents to bone marrow shall not exceed 4 millirem/year.

(i) If the gross beta particle activity exceeds 50 pCi/1, an analysis of the sample must be performed to identify the major radioactive constituents present and the appropriate organ and total body doses shall be calculated to determine compliance with § 141.16.

(ii) Suppliers of water shall conduct additional monitoring, as ordered by the State, to determine the concentration of man-made radioactivity in principal watersheds designated by the State.

(iii) At the discretion of the State, suppliers of water utilizing only ground waters may be required to monitor for man-made radioactivity.

(2) For the initial analysis required by paragraph (b)(1) of this section data acquired within one year prior to the effective date of this part may be substituted at the discretion of the State.

(3) After the initial analysis required by paragraph (b)(1) of this section suppliers of water shall monitor at least every four years following the procedure given in paragraph (b)(1) of this section.

(4) Within two years of the effective date of these regulations the supplier of any community water system designated by the State as utilizing waters contaminated by effluents from nuclear facilities shall initiate quarterly monitoring for gross beta particle and iodine–131 radioactivity and annual monitoring for strontium–90 and tritium.

(i) Quarterly monitoring for gross beta particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three monthly samples. The former is recommended. If the gross beta particle activity in a sample exceeds 15 pCi/1, the same or an equivalent sample shall be analyzed for strontium–89 and cesium–134. If the gross beta particle activity exceeds 50 pCi/1, an analysis of the sample must be performed to identify the major radioactive constituents present and the appropriate organ and total body doses shall be calculated to determine compliance with § 141.16.

(ii) For iodine–131, a composite of five consecutive daily samples shall be analyzed once each quarter. As ordered by the State, more frequent monitoring shall be conducted when iodine–131 is identified in the finished water.

(iii) Annual monitoring for strontium–90 and tritium shall be conducted by means of the analysis of a composite of four consecutive quarterly samples or analysis of four quarterly samples. The latter procedure is recommended.

(iv) The State may allow the substitution of environmental surveillance data taken in conjunction with a nuclear facility for direct monitoring of manmade radioactivity by the supplier of water where the State determines such data is applicable to a particular community water system.

(5) If the average annual maximum contaminant level for man-made radioactivity set forth in § 141.16 is exceeded, the operator of a community water system shall give notice to the State pursuant to § 141.31 and to the public as required by § 141.32. Monitoring at monthly intervals shall be continued until the concentration no longer exceeds the maximum contaminant level or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

[41 FR 28404, July 9, 1976]

§ 141.27 Alternate analytical techniques.

(a) With the written permission of the State, concurred in by the Administrator of the U.S. EPA, an alternate analytical technique may be employed. An alternate technique shall be accepted

only if it is substantially equivalent to the prescribed test in both precision and accuracy as it relates to the determination of compliance with any MCL. The use of the alternate analytical technique shall not decrease the frequency of monitoring required by this part.

[45 FR 57345, Aug. 27, 1980]

§ 141.28 Certified laboratories.

(a) For the purpose of determining compliance with §§ 141.21 through 141.27, 141.41 and 141.42, samples may be considered only if they have been analyzed by a laboratory certified by the State except that measurements for turbidity, free chlorine residual, temperature and pH may be performed by any person acceptable to the State.

(b) Nothing in this part shall be construed to preclude the State or any duly designated representative of the State from taking samples or from using the results from such samples to determine compliance by a supplier of water with the applicable requirements of this part.

[45 FR 57345, Aug. 27, 1980; 47 FR 10999, Mar. 12, 1982, as amended at 59 FR 34323, July 1, 1994]

§ 141.29 Monitoring of consecutive public water systems.

When a public water system supplies water to one or more other public water systems, the State may modify the monitoring requirements imposed by this part to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes. Any modified monitoring shall be conducted pursuant to a schedule specified by the State and concurred in by the Administrator of the U.S. Environmental Protection Agency.

§ 141.30 Total trihalomethanes sampling, analytical and other requirements.

(a) Community water system which serve a population of 10,000 or more individuals and which add a disinfectant (oxidant) to the water in any part of the drinking water treatment process shall analyze for total trihalomethanes in accordance with this section. For systems serving 75,000 or more individuals, sampling and analyses shall begin not later than 1 year after the date of promulgation of this regulation. For systems serving 10,000 to 74,999 individuals, sampling and analyses shall begin not later than 3 years after the date of promulgation of this regulation. For the purpose of this section, the minimum number of samples required to be taken by the system shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer may, with the State approval, be considered one treatment plant for determining the minimum number of samples. All samples taken within an established frequency shall be collected within a 24-hour period.

(b)(1) For all community water systems utilizing surface water sources in whole or in part, and for all community water systems utilizing only ground water sources that have not been determined by the State to qualify for the monitoring requirements of paragraph (c) of this section, analyses for total trihalomethanes shall be performed at quarterly intervals on at least four water samples for each treatment plant used by the system. At least 25 percent of the samples shall be taken at locations within the distribution system reflecting the maximum residence time of the water in the system. The remaining 75 percent shall be taken at representative locations in the distribution system, taking into account number of persons served, different sources of water and different treatment methods employed. The results of all analyses per quarter shall be arithmetically averaged and reported to the State within 30 days of the system's receipt of such results. Results shall also be reported to EPA until such monitoring requirements have been adopted by the State. All samples collected shall be used in the computation of the average, unless the analytical results are invalidated for technical reasons. Sampling and analyses shall be conducted in accordance with the methods listed in paragraph (e) of this section.

(2) Upon the written request of a community water system, the monitoring frequency required by paragraph (b)(1) of this section may be reduced by the State to a minimum of one sample analyzed for TTHMs per quarter taken at a point in the distribution system reflecting the maximum residence time of the water in the system, upon a written determination by the State that the data from at least 1 year of monitoring in accordance with paragraph (b)(1) of this section and local conditions demonstrate that total trihalomethane concentrations will be consistently below the maximum contaminant level.

(3) If at any time during which the reduced monitoring frequency prescribed under this paragraph applies, the results from any analysis exceed 0.10 mg/l of TTHMs and such results are confirmed by at least one check sample taken promptly after such results are received, or if the system makes any significant change to its source of water or treatment program, the system shall immediately begin monitoring in accordance with the requirements of paragraph (b)(1) of this section, which monitoring shall continue for at least 1 year before the frequency may be reduced again. At the option of the State, a system's monitoring frequency may and should be increased above the minimum in those cases where it is necessary to

detect variations of TTHM levels within the distribution system.

(c)(1) Upon written request to the State, a community water system utilizing only ground water sources may seek to have the monitoring frequency required by paragraph (b)(1) of this section reduced to a minimum of one sample for maximum TTHM potential per year for each treatment plant used by the system taken at a point in the distribution system reflecting maximum residence time of the water in the system. The system shall submit the results of at least one sample for maximum TTHM potential using the procedure specified in paragraph (g) of this section. A sample must be analyzed from each treatment plant used by the system and be taken at a point in the distribution system reflecting the maximum residence time of the water in the system. The system's monitoring frequency may only be reduced upon a written determination by the State that, based upon the data submitted by the system, the system has a maximum TTHM potential of less than 0.10 mg/l and that, based upon an assessment of the local conditions of the system, the system is not likely to approach or exceed the maximum contaminant level for total TTHMs. The results of all analyses shall be reported to the State within 30 days of the system's receipt of such results. Results shall also be reported to EPA until such monitoring requirements have been adopted by the State. All samples collected shall be used for determining whether the system must comply with the monitoring requirements of paragraph (b) of this section, unless the analytical results are invalidated for technical reasons. Sampling and analyses shall be conducted in accordance with the methods listed in paragraph (e) of this section.

(2) If at any time during which the reduced monitoring frequency prescribed under paragraph (c)(1) of this section applies, the results from any analysis taken by the system for maximum TTHM potential are equal to or greater than 0.10 mg/l, and such results are confirmed by at least one check sample taken promptly after such results are received, the system shall immediately begin monitoring in accordance with the requirements of paragraph (b) of this section and such monitoring shall continue for at least one year before the frequency may be reduced again. In the event of any significant change to the system's raw water or treatment program, the system shall immediately analyze an additional sample for maximum TTHM potential taken at a point in the distribution system reflecting maximum residence time of the water in the system for the purpose of determining whether the system must comply with the monitoring requirements of paragraph (b) of this section. At the option of the State, monitoring frequencies may and should be increased above the minimum in those cases where this is necessary to detect variation of TTHM levels within the distribution system.

(d) Compliance with § 141.12(c) shall be determined based on a running annual average of quarterly samples collected by the system as prescribed in paragraph (b) (1) or (2) of this section. If the average of samples covering any 12 month period exceeds the Maximum Contaminant Level, the supplier of water shall report to the State pursuant to § 141.31 and notify the public pursuant to § 141.32. Monitoring after public notification shall be at a frequency designated by the State and shall continue until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

(e) Sampling and analyses made pursuant to this section shall be conducted by one of the total trihalomethane methods as directed in § 141.24(e), and the *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994, which is available from NTIS, PB–104766. Samples for TTHM shall be dechlorinated upon collection to prevent further production of trihalomethanes, according to the procedures described in the methods, except acidification is not required if only THMs or TTHMs are to be determined. Samples for maximum TTHM potential should not be dechlorinated or acidified, and should be held for seven days at 25°C (or above) prior to analysis.

(f) Before a community water system makes any significant modifications to its existing treatment process for the purposes of achieving compliance with § 141.12(c), such system must submit and obtain State approval of a detailed plan setting forth its proposed modification and those safeguards that it will implement to ensure that the bacteriological quality of the drinking water served by such system will not be adversely affected by such modification. Each system shall comply with the provisions set forth in the State-approved plan. At a minimum, a State approved plan shall require the system modifying its disinfection practice to:

(1) Evaluate the water system for sanitary defects and evaluate the source water for biological quality;

(2) Evaluate its existing treatment practices and consider improvements that will minimize disinfectant demand and optimize finished water quality throughout the distribution system;

(3) Provide baseline water quality survey data of the distribution system. Such data should include the results from monitoring for coliform and fecal coliform bacteria, fecal streptococci, standard plate counts at 35° C and 20° C, phosphate, ammonia nitrogen and total organic carbon. Virus studies should be required where source waters are heavily contaminated with sewage effluent;

(4) Conduct additional monitoring to assure continued maintenance of optimal biological quality in finished water, for example, when chloramines are introduced as disinfectants or when pre-chlorination is being discontinued. Additional monitoring should also be required by the State for chlorate, chlorite and chlorine dioxide when chlorine dioxide is used. Standard plate count analyses should also be required by the State as appropriate before and after any modifications;

(5) Consider inclusion in the plan of provisions to maintain an active disinfectant residual throughout the distribution system at all times during and after the modification.

(g) The water sample for determination of maximum total trihalomethane potential is taken from a point in the distribution system that reflects maximum residence time. Procedures for sample collection and handling are given in the methods. No reducing agent is added to ''quench'' the chemical reaction producing THMs at the time of sample collection. The intent is to permit the level of THM precursors to be depleted and the concentration of THMs to be maximized for the supply being tested. Four experimental parameters affecting maximum THM production are pH, temperature, reaction time and the presence of a disinfectant residual. These parameters are dealt with as follows: Measure the disinfectant residual at the selected sampling point. Proceed only if a measurable disinfectant residual is present. Collect triplicate 40 ml water samples at the pH prevailing at the time of sampling, and prepare a method blank according to the methods. Seal and store these samples together for seven days at 25°C or above. After this time period, open one of the sample containers and check for disinfectant residual. Absence of a disinfectant residual invalidates the sample for further analysis. Once a disinfectant residual has been demonstrated, open another of the sealed samples and determine total THM concentration using an approved analytical method.

[44 FR 68641, Nov. 29, 1979, as amended at 45 FR 15545, 15547, Mar. 11, 1980; 58 FR 41345, Aug. 3, 1993; 59 FR 62469, Dec. 5, 1994; 60 FR 34085, June 29, 1995]

Subpart D—Reporting, Public Notification and Recordkeeping

§ 141.31 Reporting requirements.

(a) Except where a shorter period is specified in this part, the supplier of water shall report to the State the results of any test measurement or analysis required by this part within (1) The first ten days following the month in which the result is received, or (2) the first ten days following the end of the required monitoring period as stipulated by the State, whichever of these is shortest.

(b) Except where a different reporting period is specified in this part, the supplier of water must report to the State within 48 hours the failure to comply with any national primary drinking water regulation (including failure to comply with monitoring requirements) set forth in this part.

(c) The supplier of water is not required to report analytical results to the State in cases where a State laboratory performs the analysis and reports the results to the State office which would normally receive such notification from the supplier.

(d) The water supply system, within ten days of completion of each public notification required pursuant to § 141.32, shall submit to the State a representative copy of each type of notice distributed, published, posted, and/or made available to the persons served by the system and/or to the media.

(e) The water supply system shall submit to the State within the time stated in the request copies of any records required to be maintained under § 141.33 hereof or copies of any documents then in existence which the State or the Administrator is entitled to inspect pursuant to the authority of section 1445 of the Safe Drinking Water Act or the equivalent provisions of State law.

[40 FR 59570, Dec. 24, 1975, as amended at 45 FR 57345, Aug. 27, 1980]

§ 141.32 Public notification.

The requirements in this section are effective April 28, 1989. The requirements of § 141.36 apply until April 28, 1989.

(a) *Maximum contaminant level (MCL), treatment technique, and variance and exemption schedule violations.* The owner or operator of a public water system which fails to comply with an applicable MCL or treatment technique established by this part or which fails to comply with the requirements of any schedule prescribed pursuant to a variance or exemption, shall notify persons served by the system as follows:

(1) Except as provided in paragraph (a)(3) of this section, the owner or operator of a public water system must give notice:

(i) By publication in a daily newspaper of general circulation in the area served by the system as soon as possible, but in no case later than 14 days after the violation or failure. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area; and

(ii) By mail delivery (by direct mail or with the water bill), or by hand delivery, not later than 45

days after the violation or failure. The State may waive mail or hand delivery if it determines that the owner or operator of the public water system in violation has corrected the violation or failure within the 45-day period. The State must make the waiver in writing and within the 45-day period; and

(iii) For violations of the MCLs of contaminants that may pose an acute risk to human health, by furnishing a copy of the notice to the radio and television stations serving the area served by the public water system as soon as possible but in no case later than 72 hours after the violation. The following violations are acute violations:

(A) Any violations specified by the State as posing an acute risk to human health.

(B) Violation of the MCL for nitrate or nitrite as defined in § 141.62 and determined according to § 141.23(i)(3).

(C) Violation of the MCL for total coliforms, when fecal coliforms or *E. coli* are present in the water distribution system, as specified in § 141.63(b).

(D) Occurrence of a waterborne disease outbreak, as defined in § 141.2, in an unfiltered system subject to the requirements of subpart H of this part, after December 30, 1991 (see § 141.71(b)(4)).

(2) Except as provided in paragraph (a)(3) of this section, following the initial notice given under paragraph (a)(1) of this section, the owner or operator of the public water system must give notice at least once every three months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation or failure exists.

(3)(i) In lieu of the requirements of paragraphs (a) (1) and (2) of this section, the owner or operator of a community water system in an area that is not served by a daily or weekly newspaper of general circulation must give notice by hand delivery or by continuous posting in conspicuous places within the area served by the system. Notice by hand delivery or posting must begin as soon as possible, but no later than 72 hours after the violation or failure for acute violations (as defined in paragraph (a)(1)(iii) of this section), or 14 days after the violation or failure (for any other violation). Posting must continue for as long as the violation or failure exists. Notice by hand delivery must be repeated at least every three months for as long as the violation or failure exists.

(ii) In lieu of the requirements of paragraphs (a) (1) and (2) of this section, the owner or operator of a non-community water system may give notice by hand delivery or by continuous posting in conspicuous places within the area served by the system. Notice by hand delivery or posting must begin as soon as possible, but no later than 72 hours after the violation or failure for acute violations (as defined in paragraph (a)(1)(iii) of this section), or 14 days after the violation or failure (for any other violation). Posting must continue for as long as the violation or failure exists. Notice by hand delivery must be repeated at least every three months for as long as the violation or failure exists.

(b) *Other violations, variances, exemptions.* The owner or operator of a public water system which fails to perform monitoring required by section 1445(a) of the Act (including monitoring required by the National Primary Drinking Water Regulations (NPDWRs) of this part), fails to comply with a testing procedure established by this part, is subject to a variance granted under section 1415(a)(1)(A) or 1415(a)(2) of the Act, or is subject to an exemption under section 1416 of the Act, shall notify persons served by the system as follows:

(1) Except as provided in paragraph (b)(3) or (b)(4) of this section, the owner or operator of a public water system must give notice within three months of the violation or granting of a variance or exemption by publication in a daily newspaper of general circulation in the area served by the system. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area.

(2) Except as provided in paragraph (b)(3) or (b)(4) of this section, following the initial notice given under paragraph (b)(1) of this section, the owner or operator of the public water system must give notice at least once every three months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation exists. Repeat notice of the existence of a variance or exemption must be given every three months for as long as the variance or exemption remains in effect.

(3)(i) In lieu of the requirements of paragraphs (b)(1) and (b)(2) of this section, the owner or operator of a community water system in an area that is not served by a daily or weekly newspaper of general circulation must give notice, within three months of the violation or granting of the variance or exemption, by hand delivery or by continuous posting in conspicuous places with the area served by the system. Posting must continue for as long as the violation exists or a variance or exemption remains in effect. Notice by hand delivery must be repeated at least every three months for as long as the violation exists or a variance or exemption remains in effect.

(ii) In lieu of the requirements of paragraphs (b)(1) and (b)(2) of this section, the owner or operator of a non-community water system may give

notice, within three months of the violation or the granting of the variance or exemption, by hand delivery or by continuous posting in conspicuous places within the area served by the system. Posting must continue for as long as the violation exists, or a variance or exemption remains in effect. Notice by hand delivery must be repeated at least every three months for as long as the violation exists or a variance or exemption remains in effect.

(4) In lieu of the requirements of paragraphs (b)(1), (b)(2), and (b)(3) of this section, the owner or operator of a public water system, at the discretion of the State, may provide less frequent notice for minor monitoring violations as defined by the State, if EPA has approved the State's application for a program revision under § 142.16. Notice of such violations must be given no less frequently than annually.

(c) *Notice to new billing units.* The owner or operator of a community water system must give a copy of the most recent public notice for any outstanding violation of any maximum contaminant level, or any treatment technique requirement, or any variance or exemption schedule to all new billing units or new hookups prior to or at the time service begins.

(d) *General content of public notice.* Each notice required by this section must provide a clear and readily understandable explanation of the violation, any potential adverse health effects, the population at risk, the steps that the public water system is taking to correct such violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the consumer should take until the violation is corrected. Each notice shall be conspicuous and shall not contain unduly technical language, unduly small print, or similar problems that frustrate the purpose of the notice. Each notice shall include the telephone number of the owner, operator, or designee of the public water system as a source of additional information concerning the notice. Where appropriate, the notice shall be multi-lingual.

(e) *Mandatory health effects language.* When providing the information on potential adverse health effects required by paragraph (d) of this section in notices of violations of maximum contaminant levels or treatment technique requirements, or notices of the granting or the continued existence of exemptions or variances, or notices of failure to comply with a variance or exemption schedule, the owner or operator of a public water system shall include the language specified below for each contaminant. (If language for a particular contaminant is not specified below at the time notice is required, this paragraph does not apply.)

(1) *Trichloroethylene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that trichloroethylene is a health concern at certain levels of exposure. This chemical is a common metal cleaning and dry cleaning fluid. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set forth the enforceable drinking water standard for trichloroethylene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(2) *Carbon tetrachloride.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that carbon tetrachloride is a health concern at certain levels of exposure. This chemical was once a popular household cleaning fluid. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of of time. EPA has set the enforceable drinking water standard for carbon tetrachloride at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(3) *1,2-Dichloroethane.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2-dichloroethane is a health concern at certain levels of exposure. This chemical is used as a cleaning fluid for fats, oils, waxes, and resins. It generally gets into drinking water from improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,2-dichloroethane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard

is associated with little to none of this risk and should be considered safe.

(4) *Vinyl chloride.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that vinyl chloride is a health concern at certain levels of exposure. This chemical is used in industry and is found in drinking water as a result of the breakdown of related solvents. The solvents are used as cleaners and degreasers of metals and generally get into drinking water by improper waste disposal. This chemical has been associated with significantly increased risks of cancer among certain industrial workers who were exposed to relatively large amounts of this chemical during their working careers. This chemical has also been shown to cause cancer in laboratory animals when the animals are exposed at high levels over their lifetimes. Chemicals that cause increased risk of cancer among exposed industrial workers and in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for vinyl chloride at 0.002 part per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(5) *Benzene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that benzene is a health concern at certain levels of exposure. This chemical is used as a solvent and degreaser of metals. It is also a major component of gasoline. Drinking water contamination generally results from leaking undergound gasoline and petroleum tanks or improper waste disposal. This chemical has been associated with significantly increased risks of leukemia among certain industrial workers who were exposed to relatively large amounts of this chemical during their working careers. This chemical has also been shown to cause cancer in laboratory animals when the animals are exposed at high levels over their lifetimes. Chemicals that cause increased risk of cancer among exposed industrial workers and in laboratory animals also may increase the risk of cancer in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for benzene at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(6) *1,1-Dichloroethylene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,1-dichloroethylene is a health concern at certain levels of exposure. This chemical is used in industry and is found in drinking water as a result of the breakdown of related solvents. The solvents are used as cleaners and degreasers of metals and generally get into drinking water by improper waste disposal. This chemical has been shown to cause liver and kidney damage in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals which cause adverse effects in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,1-dichloroethylene at 0.007 parts per million (ppm) to reduce the risk of these adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(7) *Para-dichlorobenzene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that para-dichlorobenzene is a health concern at certain levels of exposure. This chemical is a component of deodorizers, moth balls, and pesticides. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause liver and kidney damage in laboratory animals such as rats and mice when the animals are exposed to high levels over their lifetimes. Chemicals which cause adverse effects in laboratory animals also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for para-dichlorobenzene at 0.075 parts per million (ppm) to reduce the risk of these adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(8) *1,1,1-Trichloroethane.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the 1,1,1-trichloroethane is a health concern at certain levels of exposure. This chemical is used as a cleaner and degreaser of metals. It generally gets into drinking water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and circulatory system of laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during their working careers also suffered damage to the liver, nervous system, and circulatory system. Chemicals which cause adverse effects among exposed industrial workers and in laboratory animals

also may cause adverse health effects in humans who are exposed at lower levels over long periods of time. EPA has set the enforceable drinking water standard for 1,1,1-trichloroethane at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects which have been observed in humans and laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe.

(9) *Fluoride.*

[NOTE: EPA is not specifying language that must be included in a public notice for a violation of the fluoride maximum contaminant level in this section because § 143.5 of this part includes the necessary information. See paragraph (f) of this section.]

(10) *Microbiological contaminants* (for use when there is a violation of the treatment technique requirements for filtration and disinfection in subpart H of this part). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of microbiological contaminants are a health concern at certain levels of exposure. If water is inadequately treated, microbiological contaminants in that water may cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set enforceable requirements for treating drinking water to reduce the risk of these adverse health effects. Treatment such as filtering and disinfecting the water removes or destroys microbiological contaminants. Drinking water which is treated to meet EPA requirements is associated with little to none of this risk and should be considered safe.

(11) *Total coliforms* (To be used when there is a violation of § 141.63(a), and not a violation of § 141.63(b)). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of total coliforms is a possible health concern. Total coliforms are common in the environment and are generally not harmful themselves. The presence of these bacteria in drinking water, however, generally is a result of a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable drinking water standard for total coliforms to reduce the risk of these adverse health effects. Under this standard, no more than 5.0 percent of the samples collected during a month can contain these bacteria, except that systems collecting fewer than 40 samples/month that have one total coliform-positive sample per month are not violating the standard. Drinking water which meets this standard is usually not associated with a health risk from disease-causing bacteria and should be considered safe.

(12) *Fecal Coliforms/E. coli* (To be used when there is a violation of § 141.63(b) or both § 141.63 (a) and (b)). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of fecal coliforms or *E. coli* is a serious health concern. Fecal coliforms and *E. coli* are generally not harmful themselves, but their presence in drinking water is serious because they usually are associated with sewage or animal wastes. The presence of these bacteria in drinking water is generally a result of a problem with water treatment or the pipes which distribute the water, and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set an enforceable drinking water standard for fecal coliforms and *E. coli* to reduce the risk of these adverse health effects. Under this standard all drinking water samples must be free of these bacteria. Drinking water which meets this standard is associated with little or none of this risk and should be considered safe. State and local health authorities recommend that consumers take the following precautions: [To be inserted by the public water system, according to instructions from State or local authorities].

(13) *Lead.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lead is a health concern at certain exposure levels. Materials that contain lead have frequently been used in the construction of water supply distribution systems, and plumbing systems in private homes and other buildings. The most commonly found materials include service lines, pipes, brass and bronze fixtures, and solders and fluxes. Lead in these materials can contaminate drinking water as a result of the corrosion that takes place when water comes into contact with those materials. Lead can cause a variety of adverse health effects in humans. At relatively low levels of exposure, these effects may include interference with red blood cell

chemistry, delays in normal physical and mental development in babies and young children, slight deficits in the attention span, hearing, and learning abilities of children, and slight increases in the blood pressure of some adults. EPA's national primary drinking water regulation requires all public water systems to optimize corrosion control to minimize lead contamination resulting from the corrosion of plumbing materials. Public water systems serving 50,000 people or fewer that have lead concentrations below 15 parts per billion (ppb) in more than 90% of tap water samples (the EPA ''action level'') have optimized their corrosion control treatment. Any water system that exceeds the action level must also monitor their source water to determine whether treatment to remove lead in source water is needed. Any water system that continues to exceed the action level after installation of corrosion control and/or source water treatment must eventually replace all lead service lines contributing in excess of 15 (ppb) of lead to drinking water. Any water system that exceeds the action level must also undertake a public education program to inform consumers of ways they can reduce their exposure to potentially high levels of lead in drinking water.

(14) *Copper*. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that copper is a health concern at certain exposure levels. Copper, a reddish-brown metal, is often used to plumb residential and commercial structures that are connected to water distribution systems. Copper contaminating drinking water as a corrosion byproduct occurs as the result of the corrosion of copper pipes that remain in contact with water for a prolonged period of time. Copper is an essential nutrient, but at high doses it has been shown to cause stomach and intestinal distress, liver and kidney damage, and anemia. Persons with Wilson's disease may be at a higher risk of health effects due to copper than the general public. EPA's national primary drinking water regulation requires all public water systems to install optimal corrosion control to minimize copper contamination resulting from the corrosion of plumbing materials. Public water systems serving 50,000 people or fewer that have copper concentrations below 1.3 parts per million (ppm) in more than 90% of tap water samples (the EPA ''action level'') are not required to install or improve their treatment. Any water system that exceeds the action level must also monitor their source water to determine whether treatment to remove copper in source water is needed.

(15) *Asbestos.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that asbestos fibers greater than 10 micrometers in length are a health concern at certain levels of exposure. Asbestos is a naturally occurring mineral. Most asbestos fibers in drinking water are less than 10 micrometers in length and occur in drinking water from natural sources and from corroded asbestos-cement pipes in the distribution system. The major uses of asbestos were in the production of cements, floor tiles, paper products, paint, and caulking; in transportation-related applications; and in the production of textiles and plastics. Asbestos was once a popular insulating and fire retardent material. Inhalation studies have shown that various forms of asbestos have produced lung tumors in laboratory animals. The available information on the risk of developing gastrointestinal tract cancer associated with the ingestion of asbestos from drinking water is limited. Ingestion of intermediate-range chrysotile asbestos fibers greater than 10 micrometers in length is associated with causing benign tumors in male rats. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for asbestos at 7 million long fibers per liter to reduce the potential risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to asbestos.

(16) *Barium.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that barium is a health concern at certain levels of exposure. This inorganic chemical occurs naturally in some aquifers that serve as sources of ground water. It is also used in oil and gas drilling muds, automotive paints, bricks, tiles and jet fuels. It generally gets into drinking water after dissolving from naturally occurring minerals in the ground. This chemical may damage the heart and cardiovascular system, and is associated with high blood pressure in laboratory animals such as rats exposed to high levels during their lifetimes. In humans, EPA believes that effects from barium on blood pressure should not occur below 2 parts per million (ppm) in drinking water. EPA has set the drinking water standard for barium at 2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to barium.

(17) *Cadmium.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that cadmium is a health concern at certain levels of exposure. Food and the smoking of tobacco are common sources of general exposure. This inorganic metal is a contaminant in the metals used to galvanize

pipe. It generally gets into water by corrosion of galvanized pipes or by improper waste disposal. This chemical has been shown to damage the kidney in animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the kidney. EPA has set the drinking water standard for cadmium at 0.005 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to cadmium.

(18) *Chromium.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chromium is a health concern at certain levels of exposure. This inorganic metal occurs naturally in the ground and is often used in the electroplating of metals. It generally gets into water from runoff from old mining operations and improper waste disposal from plating operations. This chemical has been shown to damage the kidney, nervous system, and the circulatory system of laboratory animals such as rats and mice when the animals are exposed at high levels. Some humans who were exposed to high levels of this chemical suffered liver and kidney damage, dermatitis and respiratory problems. EPA has set the drinking water standard for chromium at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to chromium.

(19) *Mercury.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that mercury is a health concern at certain levels of exposure. This inorganic metal is used in electrical equipment and some water pumps. It usually gets into water as a result of improper waste disposal. This chemical has been shown to damage the kidney of laboratory animals such as rats when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for mercury at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to mercury.

(20) *Nitrate.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that nitrate poses an acute health concern at certain levels of exposure. Nitrate is used in fertilizer and is found in sewage and wastes from human and/or farm animals and generally gets into drinking water from those activities. Excessive levels of nitrate in drinking water have caused serious illness and sometimes death in infants under six months of age. The serious illness in infants is caused because nitrate is converted to nitrite in the body. Nitrite interferes with the oxygen carrying capacity of the child's blood. This is an acute disease in that symptoms can develop rapidly in infants. In most cases, health deteriorates over a period of days. Symptoms include shortness of breath and blueness of the skin. Clearly, expert medical advice should be sought immediately if these symptoms occur. The purpose of this notice is to encourage parents and other responsible parties to provide infants with an alternate source of drinking water. Local and State health authorities are the best source for information concerning alternate sources of drinking water for infants. EPA has set the drinking water standard at 10 parts per million (ppm) for nitrate to protect against the risk of these adverse effects. EPA has also set a drinking water standard for nitrite at 1 ppm. To allow for the fact that the toxicity of nitrate and nitrite are additive, EPA has also established a standard for the sum of nitrate and nitrite at 10 ppm. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to nitrate.

(21) *Nitrite.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that nitrite poses an acute health concern at certain levels of exposure. This inorganic chemical is used in fertilizers and is found in sewage and wastes from humans and/or farm animals and generally gets into drinking water as a result of those activities. While excessive levels of nitrite in drinking water have not been observed, other sources of nitrite have caused serious illness and sometimes death in infants under six months of age. The serious illness in infants is caused because nitrite interferes with the oxygen carrying capacity of the child's blood. This is an acute disease in that symptoms can develop rapidly. However, in most cases, health deteriorates over a period of days. Symptoms include shortness of breath and blueness of the skin. Clearly, expert medical advice should be sought immediately if these symptoms occur. The purpose of this notice is to encourage parents and other responsible parties to provide infants with an alternate source of drinking water. Local and State health authorities are the best source for information concerning alternate sources of drinking water for infants. EPA has set the drinking water standard at 1 part per million (ppm) for nitrite to protect against the risk of these adverse effects. EPA has also set a drinking water standard for nitrate (converted to nitrite in humans) at 10 ppm and for the sum of nitrate and nitrite at 10 ppm. Drinking

water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to nitrite.

(22) *Selenium.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that selenium is a health concern at certain high levels of exposure. Selenium is also an essential nutrient at low levels of exposure. This inorganic chemical is found naturally in food and soils and is used in electronics, photocopy operations, the manufacture of glass, chemicals, drugs, and as a fungicide and a feed additive. In humans, exposure to high levels of selenium over a long period of time has resulted in a number of adverse health effects, including a loss of feeling and control in the arms and legs. EPA has set the drinking water standard for selenium at 0.05 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to selenium.

(23) *Acrylamide.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that acrylamide is a health concern at certain levels of exposure. Polymers made from acrylamide are sometimes used to treat water supplies to remove particulate contaminants. Acrylamide has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. Sufficiently large doses of acrylamide are known to cause neurological injury. EPA has set the drinking water standard for acrylamide using a treatment technique to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. This treatment technique limits the amount of acrylamide in the polymer and the amount of the polymer which may be added to drinking water to remove particulates. Drinking water systems which comply with this treatment technique have little to no risk and are considered safe with respect to acrylamide.

(24) *Alachlor.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that alachlor is a health concern at certain levels of exposure. This organic chemical is a widely used pesticide. When soil and climatic conditions are favorable, alachlor may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for alachlor at 0.002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to alachlor.

(25) *Aldicarb.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Under certain soil and climatic conditions (e.g., sandy soil and high rainfall), aldicarb may leach into ground water after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb at 0.003 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb.

(26) *Aldicarb sulfoxide.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb sulfoxide is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Aldicarb sulfoxide in ground water is primarily a breakdown product of aldicarb. Under certain soil and climatic conditions (e.g., sandy soil and high rainfall), aldicarb sulfoxide may leach into ground water after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb sulfoxide at 0.004 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb sulfoxide.

(27) *Aldicarb sulfone.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that aldicarb sulfone is a health concern at certain levels of exposure. Aldicarb is a widely used pesticide. Aldicarb sulfone is formed from the breakdown of aldicarb and is considered for registration as a pesticide under the name aldoxycarb. Under certain soil and climatic conditions (e.g., sandy soil and high rainfall), aldicarb sulfone may leach into

ground water after normal agricultural applications to crops such as potatoes or peanuts or may enter drinking water supplies as a result of surface runoff. This chemical has been shown to damage the nervous system in laboratory animals such as rats and dogs exposed to high levels. EPA has set the drinking water standard for aldicarb sulfone at 0.002 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to aldicarb sulfone.

(28) *Atrazine.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that atrazine is a health concern at certain levels of exposure. This organic chemical is a herbicide. When soil and climatic conditions are favorable, atrazine may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to affect offspring of rats and the heart of dogs. EPA has set the drinking water standard for atrazine at 0.003 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to atrazine.

(29) *Carbofuran.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that carbofuran is a health concern at certain levels of exposure. This organic chemical is a pesticide. When soil and climatic conditions are favorable, carbofuran may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the nervous and reproductive systems of laboratory animals such as rats and mice exposed at high levels over their lifetimes. Some humans who were exposed to relatively large amounts of this chemical during their working careers also suffered damage to the nervous system. Effects on the nervous system are generally rapidly reversible. EPA has set the drinking water standard for carbofuran at 0.04 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to carbofuran.

(30) *Chlordane.* The United States Environmental Protection Agency (EPA sets drinking water standards and has determined that chlordane is a health concern at certain levels of exposure. This organic chemical is a pesticide used to control termites. Chlordane is not very mobile in soils. It usually gets into drinking water after application near water supply intakes or wells. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for chlordane at 0.002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to chlordane.

(31) *Dibromochloropropane (DBCP).* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that DBCP is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, dibromochloropropane may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for DBCP at 0.0002 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to DBCP.

(32) *o-Dichlorobenzene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that o-dichlorobenzene is a health concern at certain levels of exposure. This organic chemical is used as a solvent in the production of pesticides and dyes. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, kidney and the blood cells of laboratory animals such as rats and mice exposed to high levels during their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the liver, nervous system, and circulatory system. EPA has set the drinking water standard for o-dichlorobenzene at 0.6 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to o-dichlorobenzene.

(33) *cis-1,2-Dichloroethylene.* The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that cis-1,2-dichloroethylene is a health concern at certain levels of exposure. This organic chemical

is used as a solvent and intermediate in chemical production. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and circulatory system of laboratory animals such as rats and mice when exposed at high levels over their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for cis-1,2-dichloroethylene at 0.07 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to cis-1,2-dichloroethylene.

(34) *trans-1,2-Dichloroethylene.* The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that trans-1,2-dichloroethylene is a health concern at certain levels of exposure. This organic chemical is used as a solvent and intermediate in chemical production. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, nervous system, and the circulatory system of laboratory animals such as rats and mice when exposed at high levels over their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set drinking water standard for trans-1,2-dichloroethylene at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to trans-1,2-dichloroethylene.

(35) *1,2-Dichloropropane.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2-dichloropropane is a health concern at certain levels of exposure. This organic chemical is used as a solvent and pesticide. When soil and climatic conditions are favorable, 1,2-dichloropropane may get into drinking water by runoff into surface water or by leaching into ground water. It may also get into drinking water through improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for 1,2-dichloropropane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to 1,2-dichloropropane.

(36) *2,4–D.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 2,4–D is a health concern at certain levels of exposure. This organic chemical is used as a herbicide and to control algae in reservoirs. When soil and climatic conditions are favorable, 2,4–D may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the liver and kidney of laboratory animals such as rats exposed at high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for 2,4–D at 0.07 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to 2,4–D.

(37) *Epichlorohydrin.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that epichlorohydrin is a health concern at certain levels of exposure. Polymers made from epichlorohydrin are sometimes used in the treatment of water supplies as a flocculent to remove particulates. Epichlorohydrin generally gets into drinking water by improper use of these polymers. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for epichlorohydrin using a treatment technique to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. This treatment technique limits the amount of epichlorohydrin in the polymer and the amount of the polymer which may be added to drinking water as a flocculent to remove particulates. Drinking water systems which comply with this treatment technique have little to no risk and are considered safe with respect to epichlorohydrin.

(38) *Ethylbenzene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined ethylbenzene is a health concern at certain levels of exposure. This organic chemical is a major component of gasoline. It generally gets into water by improper waste disposal or leaking gasoline tanks. This chemical has been shown to damage the kidney, liver, and nervous system of laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard

for ethylbenzene at 0.7 part per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to ethylbenzene.

(39) *Ethylene dibromide (EDB).* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that EDB is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, EDB may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for EDB at 0.00005 part per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to EDB.

(40) *Heptachlor.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that heptachlor is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, heptachlor may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standards for heptachlor at 0.0004 part per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to heptachlor.

(41) *Heptachlor epoxide.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that heptachlor epoxide is a health concern at certain levels of exposure. This organic chemical was once a popular pesticide. When soil and climatic conditions are favorable, heptachlor expoxide may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standards for heptachlor epoxide at 0.0002 part per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to heptachlor epoxide.

(42) *Lindane.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that lindane is a health concern at certain levels of exposure. This organic chemical is used as a pesticide. When soil and climatic conditions are favorable, lindane may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the liver, kidney, nervous system, and immune system of laboratory animals such as rats, mice and dogs exposed at high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system and circulatory system. EPA has established the drinking water standard for lindane at 0.0002 part per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to lindane.

(43) *Methoxychlor.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that methoxychlor is a health concern at certain levels of exposure. This organic chemical is used as a pesticide. When soil and climatic conditions are favorable, methoxychlor may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the liver, kidney, nervous system, and reproductive system of laboratory animals such as rats exposed at high levels during their lifetimes. It has also been shown to produce growth retardation in rats. EPA has set the drinking water standard for methoxychlor at 0.04 part per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to methoxychlor.

(44) *Monochlorobenzene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that monochlorobenzene is a health concern at certain levels of exposure. This organic chemical is used

as a solvent. It generally gets into water by improper waste disposal. This chemical has been shown to damage the liver, kidney and nervous system of laboratory animals such as rats and mice exposed to high levels during their lifetimes. EPA has set the drinking water standard for monochlorobenzene at 0.1 part per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to monochlorobenzene.

(45) *Polychlorinated biphenyls (PCBs).* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that polychlorinated biphenyls (PCBs) are a health concern at certain levels of exposure. These organic chemicals were once widely used in electrical transformers and other industrial equipment. They generally get into drinking water by improper waste disposal or leaking electrical industrial equipment. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for PCBs at 0.0005 part per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to PCBs.

(46) *Pentachlorophenol.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that pentachlorophenol is a health concern at certain levels of exposure. This organic chemical is used as a wood preservative, herbicide, disinfectant, and defoliant. It generally gets into drinking water by runoff into surface water or leaching into ground water. This chemical has been shown to produce adverse reproductive effects and to damage the liver and kidneys of laboratory animals such as rats exposed to high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the liver and kidneys. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed to high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for pentachlorophenol at 0.001 parts per million (ppm) to protect against the risk of cancer or other adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to pentachlorophenol.

(47) *Styrene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that styrene is a health concern at certain levels of exposure. This organic chemical is commonly used to make plastics and is sometimes a component of resins used for drinking water treatment. Styrene may get into drinking water from improper waste disposal. This chemical has been shown to damage the liver and nervous system in laboratory animals when exposed at high levels during their lifetimes. EPA has set the drinking water standard for styrene at 0.1 part per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to styrene.

(48) *Tetrachloroethylene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that tetrachloroethylene is a health concern at certain levels of exposure. This organic chemical has been a popular solvent, particularly for dry cleaning. It generally gets into drinking water by improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for tetrachloroethylene at 0.005 part per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to tetrachloroethylene.

(49) *Toluene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that toluene is a health concern at certain levels of exposure. This organic chemical is used as a solvent and in the manufacture of gasoline for airplanes. It generally gets into water by improper waste disposal or leaking underground storage tanks. This chemical has been shown to damage the kidney, nervous system, and circulatory system of laboratory animals such as rats and mice exposed to high levels during their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the liver, kidney and nervous system. EPA has set the drinking water standard for toluene at 1 part per million (ppm) to protect against the risk of adverse health effects. Drinking water

that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to toluene.

(50) *Toxaphene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that toxaphene is a health concern at certain levels of exposure. This organic chemical was once a pesticide widely used on cotton, corn, soybeans, pineapples and other crops. When soil and climatic conditions are favorable, toxaphene may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for toxaphene at 0.003 part per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water that meets this standard is associated with little to none of this risk and is considered safe with respect to toxaphene.

(51) *2,4,5–TP.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 2,4,5–TP is a health concern at certain levels of exposure. This organic chemical is used as a herbicide. When soil and climatic conditions are favorable, 2,4,5–TP may get into drinking water by runoff into surface water or by leaching into ground water. This chemical has been shown to damage the liver and kidney of laboratory animals such as rats and dogs exposed to high levels during their lifetimes. Some industrial workers who were exposed to relatively large amounts of this chemical during working careers also suffered damage to the nervous system. EPA has set the drinking water standard for 2,4,5–TP at 0.05 part per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to 2,4,5–TP.

(52) *Xylenes.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that xylene is a health concern at certain levels of exposure. This organic chemical is used in the manufacture of gasoline for airplanes and as a solvent for pesticides, and as a cleaner and degreaser of metals. It usually gets into water by improper waste disposal. This chemical has been shown to damage the liver, kidney and nervous system of laboratory animals such as rats and dogs exposed to high levels during their lifetimes. Some humans who were exposed to relatively large amounts of this chemical also suffered damage to the nervous system. EPA has set the drinking water standard for xylene at 10 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water that meets the EPA standard is associated with little to none of this risk and is considered safe with respect to xylene.

(53) *Antimony*. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that antimony is a health concern at certain levels of exposure. This inorganic chemical occurs naturally in soils, ground water and surface waters and is often used in the flame retardant industry. It is also used in ceramics, glass, batteries, fireworks and explosives. It may get into drinking water through natural weathering of rock, industrial production, municipal waste disposal or manufacturing processes. This chemical has been shown to decrease longevity, and altered blood levels of cholesterol and glucose in laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for antimony at 0.006 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to antimony.

(54) *Beryllium.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that beryllium is a health concern at certain levels of exposure. This inorganic metal occurs naturally in soils, ground water and surface waters and is often used in electrical equipment and electrical components. It generally gets into water from runoff from mining operations, discharge from processing plants and improper waste disposal. Beryllium compounds have been associated with damage to the bones and lungs and induction of cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. There is limited evidence to suggest that beryllium may pose a cancer risk via drinking water exposure. Therefore, EPA based the health assessment on noncancer effects with an extra uncertainty factor to account for possible carcinogenicity. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for beryllium at 0.004 part per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to beryllium.

(55) *Cyanide.* The United States Environmental Protection Agency (EPA) sets drinking water

standards and has determined that cyanide is a health concern at certain levels of exposure. This inorganic chemical is used in electroplating, steel processing, plastics, synthetic fabrics and fertilizer products. It usually gets into water as a result of improper waste disposal. This chemical has been shown to damage the spleen, brain and liver of humans fatally poisoned with cyanide. EPA has set the drinking water standard for cyanide at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to cyanide.

(56) [Reserved]

(57) *Thallium.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that thallium is a health concern at certain high levels of exposure. This inorganic metal is found naturally in soils and is used in electronics, pharmaceuticals, and the manufacture of glass and alloys. This chemical has been shown to damage the kidney, liver, brain and intestines of laboratory animals when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for thallium at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to thallium.

(58) *Benzo[a]pyrene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that benzo[a]pyrene is a health concern at certain levels of exposure. Cigarette smoke and charbroiled meats are common source of general exposure. The major source of benzo[a]pyrene in drinking water is the leaching from coal tar lining and sealants in water storage tanks. This chemical has been shown to cause cancer in animals such as rats and mice when the animals are exposed at high levels. EPA has set the drinking water standard for benzo[a]pyrene at 0.0002 parts per million (ppm) to protect against the risk of cancer. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to benzo[a]pyrene.

(59) *Dalapon.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dalapon is a health concern at certain levels of exposure. This organic chemical is a widely used herbicide. It may get into drinking water after application to control grasses in crops, drainage ditches and along railroads. This chemical has been shown to cause damage to the kidney and liver in laboratory animals when the animals are exposed to high levels over their lifetimes. EPA has set the drinking water standard for dalapon at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to dalapon.

(60) *Dichloromethane.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dichloromethane (methylene chloride) is a health concern at certain levels of exposure. This organic chemical is a widely used solvent. It is used in the manufacture of paint remover, as a metal degreaser and as an aerosol propellant. It generally gets into drinking water after improper discharge of waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for dichloromethane at 0.005 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe with respect to dichloromethane.

(61) *Di (2-ethylhexyl)adipate.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that di(2-ethylhexyl)adipate is a health concern at certain levels of exposure. Di(2-ethylhexyl)adipate is a widely used plasticizer in a variety of products, including synthetic rubber, food packaging materials and cosmetics. It may get into drinking water after improper waste disposal. This chemical has been shown to damage liver and testes in laboratory animals such as rats and mice exposed to high levels. EPA has set the drinking water standard for di(2-ethylhexyl)adipate at 0.4 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water which meets the EPA standards is associated with little to none of this risk and should be considered safe with respect to di(2-ethylhexyl)adipate.

(62) *Di(2-ethylhexyl)phthalate.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that di(2-ethylhexyl)phthalate is a health concern at certain levels of exposure. Di(2-ethylhexyl)phthalate is a widely used plasticizer, which is primarily used in the production of polyvinyl chloride (PVC) resins. It may get into drinking water after improper waste disposal. This chemical has been shown to cause cancer in laboratory animals such as rats and mice exposed to high levels over their lifetimes. EPA has set the

drinking water standard for di(2-ethylhexyl)phthalate at 0.006 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to di(2-ethylhexyl)phthalate.

(63) *Dinoseb.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dinoseb is a health concern at certain levels of exposure. Dinoseb is a widely used pesticide and generally gets into drinking water after application on orchards, vineyards and other crops. This chemical has been shown to damage the thyroid and reproductive organs in laboratory animals such as rats exposed to high levels. EPA has set the drinking water standard for dinoseb at 0.007 parts per million (ppm) to protect against the risk of adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to dinoseb.

(64) *Diquat.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that diquat is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control terrestrial and aquatic weeds. It may get into drinking water by runoff into surface water. This chemical has been shown to damage the liver, kidney and gastrointestinal tract and causes cataract formation in laboratory animals such as dogs and rats exposed at high levels over their lifetimes. EPA has set the drinking water standard for diquat at 0.02 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to diquat.

(65) *Endothall.* The United States Environmental Protection Agency (EPA) has determined that endothall is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control terrestrial and aquatic weeds. It may get into water by runoff into surface water. This chemical has been shown to damage the liver, kidney, gastrointestinal tract and reproductive system of laboratory animals such as rats and mice exposed at high levels over their lifetimes. EPA has set the drinking water standard for endothall at 0.1 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to endothall.

(66) *Endrin.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that endrin is a health concern at certain levels of exposure. This organic chemical is a pesticide no longer registered for use in the United States. However, this chemical is persistent in treated soils and accumulates in sediments and aquatic and terrestrial biota. This chemical has been shown to cause damage to the liver, kidney and heart in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for endrin at 0.002 parts per million (ppm) to protect against the risk of these adverse health effects which have been observed in laboratory animals. Drinking water that meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to endrin.

(67) *Glyphosate.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that glyphosate is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control grasses and weeds. It may get into drinking water by runoff into surface water. This chemical has been shown to cause damage to the liver and kidneys in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for glyphosate at 0.7 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to glyphosate.

(68) *Hexachlorobenzene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that hexachlorobenzene is a health concern at certain levels of exposure. This organic chemical is produced as an impurity in the manufacture of certain solvents and pesticides. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed to high levels during their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for hexachlorobenzene at 0.001 parts per million (ppm) to protect against the risk of cancer and other adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to hexachlorobenzene.

(69) *Hexachlorocyclopentadiene.* The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that hexachlorocyclopentadiene is a health concern at certain levels of exposure. This organic chemical is used as an intermediate in the manufacture of pesticides and flame retardants. It may get into water by discharge from production facilities. This chemical has been shown to damage the kidney and the stomach of laboratory animals when exposed at high levels over their lifetimes. EPA has set the drinking water standard for hexachlorocyclopentadiene at 0.05 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to hexachlorocyclopentadiene.

(70) *Oxamyl.* The United States Environmental Protection Agency (EPA) establishes drinking water standards and has determined that oxamyl is a health concern at certain levels of exposure. This organic chemical is used as a pesticide for the control of insects and other pests. It may get into drinking water by runoff into surface water or leaching into ground water. This chemical has been shown to damage the kidneys of laboratory animals such as rats when exposed at high levels over their lifetimes. EPA has set the drinking water standard for oxamyl at 0.2 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to oxamyl.

(71) *Picloram.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that picloram is a health concern at certain levels of exposure. This organic chemical is used as a pesticide for broadleaf weed control. It may get into drinking water by runoff into surface water or leaching into ground water as a result of pesticide application and improper waste disposal. This chemical has been shown to cause damage to the kidneys and liver in laboratory animals such as rats when the animals are exposed at high levels over their lifetimes. EPA has set the drinking water standard for picloram at 0.5 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to picloram.

(72) *Simazine.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that simazine is a health concern at certain levels of exposure. This organic chemical is a herbicide used to control annual grasses and broadleaf weeds. It may leach into ground water or runs off into surface water after application. This chemical may cause cancer in laboratory animals such as rats and mice exposed at high levels during their lifetimes. Chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for simazine at 0.004 parts per million (ppm) to reduce the risk of cancer or other adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to simazine.

(73) *1,2,4-Trichlorobenzene.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that 1,2,4-trichlorobenzene is a health concern at certain levels of exposure. This organic chemical is used as a dye carrier and as a precursor in herbicide manufacture. It generally gets into drinking water by discharges from industrial activities. This chemical has been shown to cause damage to several organs, including the adrenal glands. EPA has set the drinking water standard for 1,2,4-trichlorobenzene at 0.07 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to 1,2,4-trichlorobenzene.

(74) *1,1,2-Trichloroethane.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined 1,1,2-trichloroethane is a health concern at certain levels of exposure. This organic chemical is an intermediate in the production of 1,1-dichloroethylene. It generally gets into water by industrial discharge of wastes. This chemical has been shown to damage the kidney and liver of laboratory animals such as rats exposed to high levels during their lifetimes. EPA has set the drinking water standard for 1,1,2-trichloroethane at 0.005 parts per million (ppm) to protect against the risk of these adverse health effects. Drinking water which meets the EPA standard is associated with little to none of this risk and should be considered safe with respect to 1,1,2-trichloroethane.

(75) *2,3,7,8–TCDD (Dioxin).* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that dioxin is a health concern at certain levels of exposure. This organic chemical is an impurity in the production of some pesticides. It may get into drinking water by industrial discharge of wastes. This chemical has been shown to cause cancer in laboratory animals such as rats and mice when the animals are exposed at high levels over their lifetimes. Chemicals that cause cancer in laboratory

animals also may increase the risk of cancer in humans who are exposed over long periods of time. EPA has set the drinking water standard for dioxin at 0.00000003 parts per million (ppm) to reduce the risk of cancer or other adverse health effects which have been observed in laboratory animals. Drinking water which meets this standard is associated with little to none of this risk and should be considered safe with respect to dioxin.

(f) *Public notices for fluoride.* Notice of violations of the maximum contaminant level for fluoride, notices of variances and exemptions from the maximum contaminant level for fluoride, and notices of failure to comply with variance and exemption schedules for the maximum contaminant level for fluoride shall consist of the public notice prescribed in § 143.5(b), plus a description of any steps which the system is taking to come into compliance.

(g) *Public notification by the State.* The State may give notice to the public required by this section on behalf of the owner or operator of the public water system if the State complies with the requirements of this section. However, the owner or operator of the public water system remains legally responsible for ensuring that the requirements of this section are met.

[52 FR 41546, Oct. 28, 1987, as amended at 54 FR 15188, Apr. 17, 1989; 54 FR 27527, 27566, June 29, 1989; 55 FR 25064, June 19, 1990; 56 FR 3587, Jan. 30, 1991; 56 FR 26548, June 7, 1991; 56 FR 30279, July 1, 1991; 57 FR 31843, July 17, 1992; 59 FR 34323, July 1, 1994; 60 FR 33932, June 29, 1995]

§ 141.33 Record maintenance.

Any owner or operator of a public water system subject to the provisions of this part shall retain on its premises or at a convenient location near its premises the following records:

(a) Records of bacteriological analyses made pursuant to this part shall be kept for not less than 5 years. Records of chemical analyses made pursuant to this part shall be kept for not less than 10 years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

(1) The date, place, and time of sampling, and the name of the person who collected the sample;

(2) Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or process water sample or other special purpose sample;

(3) Date of analysis;

(4) Laboratory and person responsible for performing analysis;

(5) The analytical technique/method used; and

(6) The results of the analysis.

(b) Records of action taken by the system to correct violations of primary drinking water regulations shall be kept for a period not less than 3 years after the last action taken with respect to the particular violation involved.

(c) Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, State or Federal agency, shall be kept for a period not less than 10 years after completion of the sanitary survey involved.

(d) Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than 5 years following the expiration of such variance or exemption.

§ 141.34 [Reserved]

§ 141.35 Reporting and public notification for certain unregulated contaminants.

(a) The requirements of this section only apply to the contaminants listed in § 141.40.

(b) The owner or operator of a community water system or non-transient, non-community water system who is required to monitor under § 141.40 shall send a copy of the results of such monitoring within 30 days of receipt and any public notice under paragraph (d) of this section to the State.

(c) The State, or the community water system or non-transient, non-community water system if the State has not adopted regulations equivalent to § 141.40, shall furnish the following information to the Administrator for each sample analyzed under § 141.40:

(1) Results of all analytical methods, including negatives;

(2) Name and address of the system that supplied the sample;

(3) Contaminant(s);

(4) Analytical method(s) used;

(5) Date of sample;

(6) Date of analysis.

(d) The owner or operator shall notify persons served by the system of the availability of the results of sampling conducted under § 141.40 by including a notice in the first set of water bills issued by the system after the receipt of the results or written notice within three months. The notice shall identify a person and supply the telephone number to contact for information on the monitoring results. For surface water systems, public notification is required only after the first quarter's monitoring and must include a statement that additional monitoring will be conducted for three more quarters with the results available upon request.

[52 FR 25714, July 8, 1987; 53 FR 25110, July 1, 1988]

Subpart E—Special Regulations, Including Monitoring Regulations and Prohibition on Lead Use

§ 141.40 Special monitoring for inorganic and organic contaminants.

(a) All community and non-transient, non-community water systems shall monitor for the contaminants listed in paragraph (e) in this section by date specified in table 1:

TABLE 1—MONITORING SCHEDULE BY SYSTEM SIZE

Number of persons served	Monitoring to begin no later than—
Over 10,000	Jan. 1, 1988.
3,300 to 10,000	Jan. 1, 1989.
Less than 3,300	Jan. 1, 1991.

(b) Surface water systems shall sample at points in the distribution system representative of each water source or at entry points to the distribution system after any application of treatment. The minimum number of samples is one year of quarterly samples per water source.

(c) Ground water systems shall sample at points of entry to the distribution system representative of each well after any application of treatment. The minimum number of samples is one sample per entry point to the distribution system.

(d) The State may require confirmation samples for positive or negative results.

(e) Community water systems and non-transient, non-community water systems shall monitor for the following contaminants except as provided in paragraph (f) of this section:

(1) Chloroform
(2) Bromodichloromethane
(3) Chlorodibromomethane
(4) Bromoform
(5) Dibromomethane
(6) m-Dichlorobenzene
(7) [Reserved]
(8) 1,1-Dichloropropene
(9) 1,1-Dichloroethane
(10) 1,1,2,2-Tetrachloroethane
(11) 1,3-Dichloropropane
(12) Chloromethane
(13) Bromomethane
(14) 1,2,3-Trichloropropane
(15) 1,1,1,2-Tetrachloroethane
(16) Chloroethane
(17) 2,2-Dichloropropane
(18) o-Chlorotoluene
(19) p-Chlorotoluene
(20) Bromobenzene
(21) 1,3-Dichloropropene

(f) [Reserved]

(g) Analysis for the unregulated contaminants listed under paragraphs (e) and (j) of this section shall be conducted using EPA Methods 502.2 or 524.2, or their equivalent as determined by EPA, except analysis for bromodichloromethane, bromoform, chlorodibromomethane and chloroform under paragraph (e) of this section also may be conducted by EPA Method 551, and analysis for 1,2,3-trichloropropane also may be conducted by EPA Method 504.1. A source for the EPA methods is referenced at § 141.24(e).

(h) Analysis under this section shall only be conducted by laboratories certified under § 141.24(f)(17).

(i) Public water systems may use monitoring data collected any time after January 1, 1983 to meet the requirements for unregulated monitoring, provided that the monitoring program was consistent with the requirements of this section. In addition, the results of EPA's Ground Water Supply Survey may be used in a similar manner for systems supplied by a single well.

(j) Monitoring for the following compounds is required at the discretion of the State:

(1) 1,2,4-Trimethylbenzene;
(2) 1,2,3-Trichlorobenzene;
(3) n-Propylbenzene;
(4) n-Butylbenzene;
(5) Naphthalene;
(6) Hexachlorobutadiene;
(7) 1,3,5-Trimethylbenzene;
(8) p-Isopropyltoluene;
(9) Isopropylbenzene;
(10) Tert-butylbenzene;
(11) Sec-butylbenzene;
(12) Fluorotrichloromethane;
(13) Dichlorodifluoromethane;
(14) Bromochloromethane.

(k) Instead of performing the monitoring required by this section, a community water system or non-transient non-community water system serving fewer than 150 service connections may send a letter to the State stating that the system is available for sampling. This letter must be sent to the State no later than January 1, 1991. The system shall not send such samples to the State, unless requested to do so by the State.

(l) All community and non-transient, non-community water systems shall repeat the monitoring required in § 141.40 no less frequently than every five years from the dates specified in § 141.40(a).

(m) States or public water systems may composite up to five samples when monitoring for substances in § 141.40 (e) and (j) of this section.

(n) Monitoring of the contaminants listed in § 141.40(n) (11) and (12) shall be conducted as follows:

(1) Each community and non-transient, non-community water system shall take four consecutive quarterly samples at each sampling point for each contaminant listed in paragraph (n)(11) of this section and report the results to the State. Monitoring must be completed by December 31, 1995.

(2) Each community and non-transient non-community water system shall take one sample at each sampling point for each contaminant listed in paragraph (n)(12) of this section and report the results to the States. Monitoring must be completed by December 31, 1995.

(3) Each community and non-transient non-community water system may apply to the State for a waiver from the requirements of paragraph (n) (1) and (2) of this section.

(4) The State may grant a waiver for the requirement of paragraph (n)(1) of this section based on the criteria specified in § 141.24(h)(6). The State may grant a waiver from the requirement of paragraph (n)(2) of this section if previous analytical results indicate contamination would not occur, provided this data was collected after January 1, 1990.

(5) Groundwater systems shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

(6) Surface water systems shall take a minimum of one sample at points in the distribution system that are representative of each source or at each entry point to the distribution system after treatment (hereafter called a sampling point). Each sample must be taken at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

NOTE: For purposes of this paragraph, surface water systems include systems with a combination of surface and ground sources.

(7) If the system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water representative of all sources is being used).

(8) The State may require a confirmation sample for positive or negative results.

(9) The State may reduce the total number of samples a system must analyze by allowing the use of compositing. Composite samples from a maximum of five sampling points are allowed. Compositing of samples must be done in the laboratory and the composite sample must be analyzed within 14 days of collection. If the population served by the system is >3,300 persons, then compositing may only be permitted by the State at sampling points within a single system. In systems serving ≤3,300 persons, the State may permit compositing among different systems provided the 5-sample limit is maintained.

(10) Instead of performing the monitoring required by this section, a community water system or non-transient non-community water system serving fewer than 150 service connections may send a letter to the State stating that the system is available for sampling. This letter must be sent to the State by January 1, 1994. The system shall not send such samples to the State, unless requested to do so by the State.

(11) Systems shall monitor for the unregulated organic contaminants listed below, using the method(s) identified below and using the analytical test procedures contained in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994, which is available at NTIS, PB95–104766. Method 6610 shall be followed in accordance with the *Standard Methods for the Examination of Water and Wastewater 18th Edition Supplement*, 1994, American Public Health Association. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A source for EPA methods 505, 507, 508, 508.1, 515.2, 525.2 and 531.1 is referenced at § 141.24(e).

Contaminants	Method
aldicarb	531.1, 6610.
aldicarb sulfone	531.1, 6610.
aldicarb sulfoxide	531.1, 6610.
aldrin	505, 508, 525.2, 508.1.
butachlor	507, 525.2.
carbaryl	531.1, 6610.
dicamba	515.2, 555, 515.1.
dieldrin	505, 508, 525.2, 508.1.
3-hydroxycarbofuran	531.1, 6610.
methomyl	531.1, 6610.
metolachlor	507, 525.2, 508.1.
metribuzin	507, 525.2, 508.1.
propachlor	508, 525.2, 508.1.

(12) Systems shall monitor for sulfate, an unregulated inorganic contaminant, by using the methods listed at § 143.4(b).

[52 FR 25715, July 8, 1987; 53 FR 25110, July 1, 1988, as amended at 56 FR 3592, Jan. 30, 1991; 57 FR 31845, July 17, 1992; 59 FR 34323, July 1, 1994; 59 FR 62469, Dec. 5, 1994]

§ 141.41 Special monitoring for sodium.

(a) Suppliers of water for community public water systems shall collect and analyze one sample per plant at the entry point of the distribution system for the determination of sodium concentration levels; samples must be collected and analyzed annually for systems utilizing surface water sources in whole or in part, and at least every three years for systems utilizing solely ground water sources. The minimum number of samples required to be taken by the system shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer may, with the State approval, be considered one treatment plant for determining the minimum number of samples. The supplier of water may be required by the State to collect and analyze water samples for sodium more frequently in locations where the sodium content is variable.

(b) The supplier of water shall report to EPA and/or the State the results of the analyses for sodium within the first 10 days of the month following the month in which the sample results were received or within the first 10 days following the end of the required monitoring period as stipulated by the State, whichever of these is first. If more than annual sampling is required the supplier shall report the average sodium concentration within 10 days of the month following the month in which the analytical results of the last sample used for the annual average was received. The supplier of water shall not be required to report the results to EPA where the State has adopted this regulation and results are reported to the State. The supplier shall report the results to EPA where the State has not adopted this regulation.

(c) The supplier of water shall notify appropriate local and State public health officials of the sodium levels by written notice by direct mail within three months. A copy of each notice required to be provided by this paragraph shall be sent to EPA and/or the State within 10 days of its issuance. The supplier of water is not required to notify appropriate local and State public health officials of the sodium levels where the State provides such notices in lieu of the supplier.

(d) Analyses for sodium shall be conducted as directed in § 141.23(k)(1).

[45 FR 57345, Aug. 27, 1980, as amended at 59 FR 62470, Dec. 5, 1994]

§ 141.42 Special monitoring for corrosivity characteristics.

(a)–(c) [Reserved]

(d) Community water supply systems shall identify whether the following construction materials are present in their distribution system and report to the State:

Lead from piping, solder, caulking, interior lining of distribution mains, alloys and home plumbing.
Copper from piping and alloys, service lines, and home plumbing.
Galvanized piping, service lines, and home plumbing.
Ferrous piping materials such as cast iron and steel.
Asbestos cement pipe.

In addition, States may require identification and reporting of other materials of construction present in distribution systems that may contribute contaminants to the drinking water, such as:

Vinyl lined asbestos cement pipe.
Coal tar lined pipes and tanks.

[45 FR 57346, Aug. 27, 1980; 47 FR 10999, Mar. 12, 1982, as amended at 59 FR 62470, Dec. 5, 1994]

§ 141.43 Prohibition on use of lead pipes, solder, and flux.

(a) *In general*—(1) *Prohibition.* Any pipe, solder, or flux, which is used after June 19, 1986, in the installation or repair of—

(i) Any public water system, or

(ii) Any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system shall be lead free as defined by paragraph (d) of this section. This paragraph (a)(1) shall not apply to leaded joints necessary for the repair of cast iron pipes.

(2) Each public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system,

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

Notice shall be provided notwithstanding the absence of a violation of any national drinking water standard. The manner and form of notice are specified in § 141.34 of this part.

(b) *State enforcement*—(1) *Enforcement of prohibition.* The requirements of paragraph (a)(1) of this section shall be enforced in all States effective June 19, 1988. States shall enforce such requirements through State or local plumbing codes, or such other means of enforcement as the State may determine to be appropriate.

(2) *Enforcement of public notice requirements.* The requirements of paragraph (a)(2) of this section, shall apply in all States effective June 19, 1988.

(c) *Penalties.* If the Administrator determines that a State is not enforcing the requirements of paragraph (a) of this section, as required pursuant to paragraph (b) of this section, the Administrator may withhold up to 5 percent of Federal funds

available to that State for State program grants under section 1443(a) of the Act.

(d) *Definition of lead free.* For purposes of this section, the term *lead free*

(1) When used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and

(2) When used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead.

[52 FR 20674, June 2, 1987]

Subpart F—Maximum Contaminant Level Goals

§ 141.50 Maximum contaminant level goals for organic contaminants.

(a) MCLGs are zero for the following contaminants:

(1) Benzene
(2) Vinyl chloride
(3) Carbon tetrachloride
(4) 1,2-dichloroethane
(5) Trichloroethylene
(6) Acrylamide
(7) Alachlor
(8) Chlordane
(9) Dibromochloropropane
(10) 1,2-Dichloropropane
(11) Epichlorohydrin
(12) Ethylene dibromide
(13) Heptachlor
(14) Heptachlor epoxide
(15) Pentachlorophenol
(16) Polychlorinated biphenyls (PCBs)
(17) Tetrachloroethylene
(18) Toxaphene
(19) Benzo[a]pyrene
(20) Dichloromethane (methylene chloride)
(21) Di(2-ethylhexyl)phthalate
(22) Hexachlorobenzene
(23) 2,3,7,8-TCDD (Dioxin)

(b) MCLGs for the following contaminants are as indicated:

Contaminant	MCLG in mg/l
(1) 1,1-Dichloroethylene	0.007
(2) 1,1,1-Trichloroethane	0.20
(3) para-Dichlorobenzene	0.075
(4) Aldicarb	0.001
(5) Aldicarb sulfoxide	0.001
(6) Aldicarb sulfone	0.001
(7) Atrazine	0.003
(8) Carbofuran	0.04
(9) o-Dichlorobenzene	0.6
(10) cis-1,2-Dichloroethylene	0.07
(11) trans-1,2-Dichloroethylene	0.1
(12) 2,4-D	0.07
(13) Ethylbenzene	0.7
(14) Lindane	0.0002
(15) Methoxychlor	0.04
(16) Monochlorobenzene	0.1
(17) Styrene	0.1
(18) Toluene	1
(19) 2,4,5-TP	0.05
(20) Xylenes (total)	10
(21) Dalapon	0.2
(22) Di(2-ethylhexyl)adipate	.4
(23) Dinoseb	.007
(24) Diquat	.02
(25) Endothall	.1
(26) Endrin	.002
(27) Glyphosate	.7
(28) Hexachlorocyclopentadiene	.05
(29) Oxamyl (Vydate)	.2
(30) Picloram	.5
(31) Simazine	.004
(32) 1,2,4-Trichlorobenzene	.07
(33) 1,1,2-Trichloroethane	.003

[50 FR 46901, Nov. 13, 1985, as amended at 52 FR 20674, June 2, 1987; 52 FR 25716, July 8, 1987; 56 FR 3592, Jan. 30, 1991; 56 FR 30280, July 1, 1991; 57 FR 31846, July 17, 1992]

§ 141.51 Maximum contaminant level goals for inorganic contaminants.

(a) [Reserved]

(b) MCLGs for the following contaminants are as indicated:

Contaminant	MCLG (mg/l)
Antimony	0.006
Asbestos	7 Million fibers/liter (longer than 10 μm).
Barium	2
Beryllium	.004
Cadmium	0.005
Chromium	0.1
Copper	1.3
Cyanide (as free Cyanide)	.2
Fluoride	4.0
Lead	zero
Mercury	0.002
Nitrate	10 (as Nitrogen).
Nitrite	1 (as Nitrogen).
Total Nitrate+Nitrite	10 (as Nitrogen).
Selenium	0.05
Thallium	.0005

[50 FR 47155, Nov. 14, 1985, as amended at 52 FR 20674, June 2, 1987; 56 FR 3593, Jan. 30, 1991; 56 FR 26548, June 7, 1991; 56 FR 30280, July 1, 1991; 57 FR 31846, July 17, 1992; 60 FR 33932, June 29, 1995]

§ 141.52 Maximum contaminant level goals for microbiological contaminants.

MCLGs for the following contaminants are as indicated:

Contaminant	MCLG
(1) *Giardia lamblia*	zero
(2) Viruses	zero
(3) *Legionella*	zero

Contaminant	MCLG
(4) Total coliforms (including fecal coliforms and *Escherichia coli*).	zero.

[54 FR 27527, 27566, June 29, 1989; 55 FR 25064, June 19, 1990]

Subpart G—National Revised Primary Drinking Water Regulations: Maximum Contaminant Levels

§ 141.60 Effective dates.

(a) The effective dates for § 141.61 are as follows:

(1) The effective date for paragraphs (a)(1) through (a)(8) of § 141.61 is January 9, 1989.

(2) The effective date for paragraphs (a)(9) through (a)(18) and (c)(1) through (c)(18) of § 141.61 is July 30, 1992.

(3) The effective date for paragraphs (a)(19) through (a)(21), (c)(19) through (c)(25), and (c)(27) through (c)(33) of § 141.61 is January 17, 1994. The effective date of § 141.61(c)(26) is August 17, 1992.

(b) The effective dates for § 141.62 are as follows:

(1) The effective date of paragraph (b)(1) of § 141.62 is October 2, 1987.

(2) The effective date for paragraphs (b)(2) and (b)(4) through (b)(10) of § 141.62 is July 30, 1992.

(3) The effective date for paragraphs (b)(11) through (b)(15) of § 141.62 is January 17, 1994.

[56 FR 3593, Jan. 30, 1991, as amended at 57 FR 31846, July 17, 1992; 59 FR 34324, July 1, 1994]

§ 141.61 Maximum contaminant levels for organic contaminants.

(a) The following maximum contaminant levels for organic contaminants apply to community and non-transient, non-community water systems.

CAS No.	Contaminant	MCL (mg/l)
(1) 75–01–4	Vinyl chloride	0.002
(2) 71–43–2	Benzene	0.005
(3) 56–23–5	Carbon tetrachloride	0.005
(4) 107–06–2	1,2-Dichloroethane	0.005
(5) 79–01–6	Trichloroethylene	0.005
(6) 106–46–7	para-Dichlorobenzene	0.075
(7) 75–35–4	1,1-Dichloroethylene	0.007
(8) 71–55–6	1,1,1-Trichloroethane	0.2
(9) 156–59–2	cis-1,2-Dichloroethylene	0.07
(10) 78–87–5	1,2-Dichloropropane	0.005
(11) 100–41–4	Ethylbenzene	0.7
(12) 108–90–7	Monochlorobenzene	0.1
(13) 95–50–1	o-Dichlorobenzene	0.6
(14) 100–42–5	Styrene	0.1
(15) 127–18–4	Tetrachloroethylene	0.005
(16) 108–88–3	Toluene	1
(17) 156–60–5	trans-1,2-Dichloroethylene	0.1
(18) 1330–20–7	Xylenes (total)	10
(19) 75–09–2	Dichloromethane	0.005
(20) 120–82–1	1,2,4-Trichloro- benzene	.07
(21) 79–00–5	1,1,2-Trichloro- ethane	.005

(b) The Administrator, pursuant to section 1412 of the Act, hereby identifies as indicated in the Table below granular activated carbon (GAC), packed tower aeration (PTA), or oxidation (OX) as the best technology treatment technique, or other means available for achieving compliance with the maximum contaminant level for organic contaminants identified in paragraphs (a) and (c) of this section:

BAT FOR ORGANIC CONTAMINANTS LISTED IN § 141.61 (a) AND (c)

CAS No.	Contaminant	GAC	PTA	OX
15972–60–8	Alachlor	X		
116–06–3	Aldicarb	X		
1646–88–4	Aldicarb sulfone	X		
1646–87–3	Aldicarb sulfoxide	X		
1912–24–9	Atrazine	X		
71–43–2	Benzene	X	X	
50–32–8	Benzo[a]pyrene	X		
1563–66–2	Carbofuran	X		
56–23–5	Carbon tetrachloride	X	X	
57–74–9	Chlordane	X		

BAT FOR ORGANIC CONTAMINANTS LISTED IN § 141.61 (a) AND (c)—Continued

CAS No.	Contaminant	GAC	PTA	OX
75–99–0	Dalapon	X		
94–75–7	2,4-D	X		
103–23–1	Di (2-ethylhexyl) adipate	X	X	
117–81–7	Di (2-ethylhexyl) phthalate	X		
96–12–8	Dibromochloropropane (DBCP)	X	X	
95–50–1	o-Dichlorobenzene	X	X	
106–46–7	para-Dichlorobenzene	X	X	
107–06–2	1,2-Dichloroethane	X	X	
75–35–4	1,1-Dichloroethylene	X	X	
156–59–2	cis-1,2-Dichloroethylene	X	X	
156–60–5	trans-1,2-Dichloroethylene	X	X	
75–09–2	Dichloromethane		X	
78–87–5	1,2-Dichloropropane	X	X	
88–85–7	Dinoseb	X		
85–00–7	Diquat	X		
145–73–3	Endothall	X		
72–20–8	Endrin	X		
100–41–4	Ethylbenzene	X	X	
106–93–4	Ethylene Dibromide (EDB)	X	X	
1071–83–6	Gylphosate			X
76–44–8	Heptachlor	X		
1024–57–3	Heptachlor epoxide	X		
118–74–1	Hexachlorobenzene	X		
77–47–3	Hexachlorocyclopentadiene	X	X	
58–89–9	Lindane	X		
72–43–5	Methoxychlor	X		
108–90–7	Monochlorobenzene	X	X	
23135–22–0	Oxamyl (Vydate)	X		
87–86–5	Pentachlorophenol	X		
1918–02–1	Picloram	X		
1336–36–3	Polychlorinated biphenyls (PCB)	X		
122–34–9	Simazine	X		
100–42–5	Styrene	X	X	
1746–01–6	2,3,7,8-TCDD (Dioxin)	X		
127–18–4	Tetrachloroethylene	X	X	
108–88–3	Toluene	X	X	
8001–35–2	Toxaphene	X		
93–72–1	2,4,5-TP (Silvex)	X		
120–82–1	1,2,4-Trichlorobenzene	X	X	
71–55–6	1,1,1-Trichloroethane	X	X	
79–00–5	1,1,2-Trichloroethane	X	X	
79–01–6	Trichloroethylene	X	X	
75–01–4	Vinyl chloride		X	
1330–20–7	Xylene	X	X	

(c) The following maximum contaminant levels for synthetic organic contaminants apply to community water systems and non-transient, non-community water systems:

CAS No.	Contaminant	MCL (mg/l)
(1) 15972–60–8	Alachlor	0.002
(2) 116–06–3	Aldicarb	0.003
(3) 1646–87–3	Aldicarb sulfoxide	0.004
(4) 1646–87–4	Aldicarb sulfone	0.002
(5) 1912–24–9	Atrazine	0.003
(6) 1563–66–2	Carbofuran	0.04
(7) 57–74–9	Chlordane	0.002
(8) 96–12–8	Dibromochloropropane	0.0002
(9) 94–75–7	2,4-D	0.07
(10) 106–93–4	Ethylene dibromide	0.00005
(11) 76–44–8	Heptachlor	0.0004
(12) 1024–57–3	Heptachlor epoxide	0.0002
(13) 58–89–9	Lindane	0.0002
(14) 72–43–5	Methoxychlor	0.04
(15) 1336–36–3	Polychlorinated biphenyls	0.0005
(16) 87–86–5	Pentachlorophenol	0.001
(17) 8001–35–2	Toxaphene	0.003
(18) 93–72–1	2,4,5-TP	0.05
(19) 50–32–8	Benzo[a]pyrene	0.0002

CAS No.	Contaminant	MCL (mg/l)
(20) 75–99–0	Dalapon	0.2
(21) 103–23–1	Di(2-ethylhexyl) adipate	0.4
(22) 117–81–7	Di(2-ethylhexyl) phthalate	0.006
(23) 88–85–7	Dinoseb	0.007
(24) 85–00–7	Diquat	0.02
(25) 145–73–3	Endothall	0.1
(26) 72–20–8	Endrin	0.002
(27) 1071–53–6	Glyphosate	0.7
(28) 118–74–1	Hexacholorbenzene	0.001
(29) 77–47–4	Hexachlorocyclopentadiene	0.05
(30) 23135–22–0	Oxamyl (Vydate)	0.2
(31) 1918–02–1	Picloram	0.5
(32) 122–34–9	Simazine	0.004
(33) 1746–01–6	2,3,7,8-TCDD (Dioxin)	3×10^{-8}

[56 FR 3593, Jan. 30, 1991, as amended at 56 FR 30280, July 1, 1991; 57 FR 31846, July 17, 1992; 59 FR 34324, July 1, 1994]

§ 141.62 Maximum contaminant levels for inorganic contaminants.

(a) [Reserved]

(b) The maximum contaminant levels for inorganic contaminants specified in paragraphs (b)(2)—(6), (b)(10), and (b) (11)—(15) of this section apply to community water systems and non-transient, non-community water systems. The maximum contaminant level specified in paragraph (b)(1) of this section only applies to community water systems. The maximum contaminant levels specified in (b)(7), (b)(8), and (b)(9) of this section apply to community water systems; non-transient, non-community water systems; and transient non-community water systems.

Contaminant	MCL (mg/l)
(1) Fluoride	4.0
(2) Asbestos	7 Million Fibers/liter (longer than 10 μm).
(3) Barium	2
(4) Cadmium	0.005
(5) Chromium	0.1
(6) Mercury	0.002
(7) Nitrate	10 (as Nitrogen)
(8) Nitrite	1 (as Nitrogen)
(9) Total Nitrate and Nitrite	10 (as Nitrogen)
(10) Selenium	0.05
(11) Antimony	0.006
(12) Beryllium	0.004
(13) Cyanide (as free Cyanide).	0.2
(14) [Reserved]	
(15) Thallium	0.002

(c) The Administrator, pursuant to section 1412 of the Act, hereby identifies the following as the best technology, treatment technique, or other means available for achieving compliance with the maximum contaminant levels for inorganic contaminants identified in paragraph (b) of this section, except fluoride:

BAT FOR INORGANIC COMPOUNDS LISTED IN SECTION 141.62(B)

Chemical Name	BAT(s)
Antimony	2,7
Asbestos	2,3,8
Barium	5,6,7,9
Beryllium	1,2,5,6,7
Cadmium	2,5,6,7
Chromium	2,5,6[2],7
Cyanide	5,7,10
Mercury	2[1],4,6[1],7[1]
Nickel	5,6,7
Nitrate	5,7,9
Nitrite	5,7
Selenium	1,2[3],6,7,9
Thallium	1,5

[1] BAT only if influent Hg concentrations ≤10μg/1.
[2] BAT for Chromium III only.
[3] BAT for Selenium IV only.

Key to BATS in Table

1=Activated Alumina
2=Coagulation/Filtration
3=Direct and Diatomite Filtration
4=Granular Activated Carbon
5=Ion Exchange
6=Lime Softening
7=Reverse Osmosis
8=Corrosion Control
9=Electrodialysis
10=Chlorine
11=Ultraviolet

[56 FR 3594, Jan. 30, 1991, as amended at 56 FR 30280, July 1, 1991; 57 FR 31847, July 17, 1992; 59 FR 34325, July 1, 1994; 60 FR 33932, June 29, 1995]

§ 141.63 Maximum contaminant levels (MCLs) for microbiological contaminants.

(a) The MCL is based on the presence or absence of total coliforms in a sample, rather than coliform density.

(1) For a system which collects at least 40 samples per month, if no more than 5.0 percent of the samples collected during a month are total coliform-positive, the system is in compliance with the MCL for total coliforms.

(2) For a system which collects fewer than 40 samples/month, if no more than one sample collected during a month is total coliform-positive, the system is in compliance with the MCL for total coliforms.

(b) Any fecal coliform-positive repeat sample or *E. coli*-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or *E. coli*-positive routine sample constitutes a violation of the MCL for total coliforms. For purposes of the public notification requirements in § 141.32, this is a violation that may pose an acute risk to health.

(c) A public water system must determine compliance with the MCL for total coliforms in paragraphs (a) and (b) of this section for each month in which it is required to monitor for total coliforms.

(d) The Administrator, pursuant to section 1412 of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant level for total coliforms in paragraphs (a) and (b) of this section:

(1) Protection of wells from contamination by coliforms by appropriate placement and construction;

(2) Maintenance of a disinfectant residual throughout the distribution system;

(3) Proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of positive water pressure in all parts of the distribution system;

(4) Filtration and/or disinfection of surface water, as described in subpart H, or disinfection of ground water using strong oxidants such as chlorine, chlorine dioxide, or ozone; and

(5) For systems using ground water, compliance with the requirements of an EPA-approved State Wellhead Protection Program developed and implemented under section 1428 of the SDWA.

[54 FR 27566, June 29, 1989; 55 FR 25064, June 19, 1990]

Subpart H—Filtration and Disinfection

SOURCE: 54 FR 27527, June 29, 1989, unless otherwise noted.

§ 141.70 General requirements.

(a) The requirements of this subpart H constitute national primary drinking water regulations. These regulations establish criteria under which filtration is required as a treatment technique for public water systems supplied by a surface water source and public water systems supplied by a ground water source under the direct influence of surface water. In addition, these regulations establish treatment technique requirements in lieu of maximum contaminant levels for the following contaminants: *Giardia lamblia*, viruses, heterotrophic plate count bacteria, *Legionella*, and turbidity. Each public water system with a surface water source or a ground water source under the direct influence of surface water must provide treatment of that source water that complies with these treatment technique requirements. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

(1) At least 99.9 percent (3-log) removal and/or inactivation of *Giardia lamblia* cysts between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer; and

(2) At least 99.99 percent (4-log) removal and/or inactivation of viruses between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer.

(b) A public water system using a surface water source or a ground water source under the direct influence of surface water is considered to be in compliance with the requirements of paragraph (a) of this section if:

(1) It meets the requirements for avoiding filtration in § 141.71 and the disinfection requirements in § 141.72(a); or

(2) It meets the filtration requirements in § 141.73 and the disinfection requirements in § 141.72(b).

(c) Each public water system using a surface water source or a ground water source under the direct influence of surface water must be operated by qualified personnel who meet the requirements specified by the State.

§ 141.71 Criteria for avoiding filtration.

A public water system that uses a surface water source must meet all of the conditions of paragraphs (a) and (b) of this section, and is subject to paragraph (c) of this section, beginning December 30, 1991, unless the State has determined, in writing pursuant to § 1412(b)(7)(C)(iii), that filtration is required. A public water system that uses a ground water source under the direct influence of surface water must meet all of the conditions of paragraphs (a) and (b) of this section and is subject to paragraph (c) of this section, beginning 18 months after the State determines that it is under the direct influence of surface water, or December 30, 1991, whichever is later, unless the

State has determined, in writing pursuant to § 1412(b)(7)(C)(iii), that filtration is required. If the State determines in writing pursuant to § 1412(b)(7)(C)(iii) before December 30, 1991, that filtration is required, the system must have installed filtration and meet the criteria for filtered systems specified in §§ 141.72(b) and 141.73 by June 29, 1993. Within 18 months of the failure of a system using surface water or a ground water source under the direct influence of surface water to meet any one of the requirements of paragraphs (a) and (b) of this section or after June 29, 1993, whichever is later, the system must have installed filtration and meet the criteria for filtered systems specified in §§ 141.72(b) and 141.73.

(a) *Source water quality conditions.* (1) The fecal coliform concentration must be equal to or less than 20/100 ml, or the total coliform concentration must be equal to or less than 100/100 ml (measured as specified in § 141.74 (a) (1) and (2) and (b)(1)), in representative samples of the source water immediately prior to the first or only point of disinfectant application in at least 90 percent of the measurements made for the 6 previous months that the system served water to the public on an ongoing basis. If a system measures both fecal and total coliforms, the fecal coliform criterion, but not the total coliform criterion, in this paragraph must be met.

(2) The turbidity level cannot exceed 5 NTU (measured as specified in § 141.74 (a)(4) and (b)(2)) in representative samples of the source water immediately prior to the first or only point of disinfectant application unless: (i) the State determines that any such event was caused by circumstances that were unusual and unpredictable; and (ii) as a result of any such event, there have not been more than two events in the past 12 months the system served water to the public, or more than five events in the past 120 months the system served water to the public, in which the turbidity level exceeded 5 NTU. An ''event'' is a series of consecutive days during which at least one turbidity measurement each day exceeds 5 NTU.

(b) *Site-specific conditions.* (1)(i) The public water system must meet the requirements of § 141.72(a)(1) at least 11 of the 12 previous months that the system served water to the public, on an ongoing basis, unless the system fails to meet the requirements during 2 of the 12 previous months that the system served water to the public, and the State determines that at least one of these failures was caused by circumstances that were unusual and unpredictable.

(ii) The public water system must meet the requirements of § 141.72(a)(2) at all times the system serves water to the public.

(iii) The public water system must meet the requirements of § 141.72(a)(3) at all times the system serves water to the public unless the State determines that any such failure was caused by circumstances that were unusual and unpredictable.

(iv) The public water system must meet the requirements of § 141.72(a)(4) on an ongoing basis unless the State determines that failure to meet these requirements was not caused by a deficiency in treatment of the source water.

(2) The public water system must maintain a watershed control program which minimizes the potential for contamination by *Giardia lamblia* cysts and viruses in the source water. The State must determine whether the watershed control program is adequate to meet this goal. The adequacy of a program to limit potential contamination by *Giardia lamblia* cysts and viruses must be based on: the comprehensiveness of the watershed review; the effectiveness of the system's program to monitor and control detrimental activities occurring in the watershed; and the extent to which the water system has maximized land ownership and/or controlled land use within the watershed. At a minimum, the watershed control program must:

(i) Characterize the watershed hydrology and land ownership;

(ii) Identify watershed characteristics and activities which may have an adverse effect on source water quality; and

(iii) Monitor the occurrence of activities which may have an adverse effect on source water quality.

The public water system must demonstrate through ownership and/or written agreements with landowners within the watershed that it can control all human activities which may have an adverse impact on the microbiological quality of the source water. The public water system must submit an annual report to the State that identifies any special concerns about the watershed and how they are being handled; describes activities in the watershed that affect water quality; and projects what adverse activities are expected to occur in the future and describes how the public water system expects to address them. For systems using a ground water source under the direct influence of surface water, an approved wellhead protection program developed under section 1428 of the Safe Drinking Water Act may be used, if the State deems it appropriate, to meet these requirements.

(3) The public water system must be subject to an annual on-site inspection to assess the watershed control program and disinfection treatment process. Either the State or a party approved by the State must conduct the on-site inspection. The inspection must be conducted by competent individuals such as sanitary and civil engineers, sanitarians, or technicians who have experience

and knowledge about the operation and maintenance of a public water system, and who have a sound understanding of public health principles and waterborne diseases. A report of the on-site inspection summarizing all findings must be prepared every year. The on-site inspection must indicate to the State's satisfaction that the watershed control program and disinfection treatment process are adequately designed and maintained. The on-site inspection must include:

(i) A review of the effectiveness of the watershed control program;

(ii) A review of the physical condition of the source intake and how well it is protected;

(iii) A review of the system's equipment maintenance program to ensure there is low probability for failure of the disinfection process;

(iv) An inspection of the disinfection equipment for physical deterioration;

(v) A review of operating procedures;

(vi) A review of data records to ensure that all required tests are being conducted and recorded and disinfection is effectively practiced; and

(vii) Identification of any improvements which are needed in the equipment, system maintenance and operation, or data collection.

(4) The public water system must not have been identified as a source of a waterborne disease outbreak, or if it has been so identified, the system must have been modified sufficiently to prevent another such occurrence, as determined by the State.

(5) The public water system must comply with the maximum contaminant level (MCL) for total coliforms in § 141.63 at least 11 months of the 12 previous months that the system served water to the public, on an ongoing basis, unless the State determines that failure to meet this requirement was not caused by a deficiency in treatment of the source water.

(6) The public water system must comply with the requirements for trihalomethanes in §§ 141.12 and 141.30.

(c) *Treatment technique violations.* (1) A system that (i) fails to meet any one of the criteria in paragraphs (a) and (b) of this section and/or which the State has determined that filtration is required, in writing pursuant to § 1412(b)(7)(C)(iii), and (ii) fails to install filtration by the date specified in the introductory paragraph of this section is in violation of a treatment technique requirement.

(2) A system that has not installed filtration is in violation of a treatment technique requirement if:

(i) The turbidity level (measured as specified in § 141.74(a)(4) and (b)(2)) in a representative sample of the source water immediately prior to the first or only point of disinfection application exceeds 5 NTU; or

(ii) The system is identified as a source of a waterborne disease outbreak.

§ 141.72 Disinfection.

A public water system that uses a surface water source and does not provide filtration treatment must provide the disinfection treatment specified in paragraph (a) of this section beginning December 30, 1991, unless the State determines that filtration is required in writing pursuant to § 1412 (b)(7)(C)(iii). A public water system that uses a ground water source under the direct influence of surface water and does not provide filtration treatment must provide disinfection treatment specified in paragraph (a) of this section beginning December 30, 1991, or 18 months after the State determines that the ground water source is under the influence of surface water, whichever is later, unless the State has determined that filtration is required in writing pursuant to § 1412(b)(7)(C)(iii). If the State has determined that filtration is required, the system must comply with any interim disinfection requirements the State deems necessary before filtration is installed. A system that uses a surface water source that provides filtration treatment must provide the disinfection treatment specified in paragraph (b) of this section beginnng June 29, 1993, or beginning when filtration is installed, whichever is later. A system that uses a ground water source under the direct influence of surface water and provides filtration treatment must provide disinfection treatment as specified in paragraph (b) of this section by June 29, 1993, or beginning when filtration is installed, whichever is later. Failure to meet any requirement of this section after the applicable date specified in this introductory paragraph is a treatment technique violation.

(a) *Disinfection requirements for public water systems that do not provide filtration.* Each public water system that does not provide filtration treatment must provide disinfection treatment as follows:

(1) The disinfection treatment must be sufficient to ensure at least 99.9 percent (3-log) inactivation of *Giardia lamblia* cysts and 99.99 percent (4-log) inactivation of viruses, every day the system serves water to the public, except any one day each month. Each day a system serves water to the public, the public water system must calculate the CT value(s) from the system's treatment parameters, using the procedure specified in § 141.74(b)(3), and determine whether this value(s) is sufficient to achieve the specified inactivation rates for *Giardia lamblia* cysts and viruses. If a system uses a disinfectant other than chlorine, the system may demonstrate to the State, through the use of a State-approved protocol for on-site disinfection challenge studies or other information

satisfactory to the State, that $CT_{99.9}$ values other than those specified in tables 2.1 and 3.1 in § 141.74(b)(3) or other operational parameters are adequate to demonstrate that the system is achieving minimum inactivation rates required by paragraph (a)(1) of this section.

(2) The disinfection system must have either (i) redundant components, including an auxiliary power supply with automatic start-up and alarm to ensure that disinfectant application is maintained continuously while water is being delivered to the distribution system, or (ii) automatic shut-off of delivery of water to the distribution system whenever there is less than 0.2 mg/l of residual disinfectant concentration in the water. If the State determines that automatic shut-off would cause unreasonable risk to health or interfere with fire protection, the system must comply with paragraph (a)(2)(i) of this section.

(3) The residual disinfectant concentration in the water entering the distribution system, measured as specified in § 141.74 (a)(5) and (b)(5), cannot be less than 0.2 mg/l for more than 4 hours.

(4)(i) The residual disinfectant concentration in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide, as specified in § 141.74 (a)(5) and (b)(6), cannot be undetectable in more than 5 percent of the samples each month, for any two consecutive months that the system serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500/ml, measured as heterotrophic plate count (HPC) as specified in § 141.74(a)(3), is deemed to have a detectable disinfectant residual for purposes of determining compliance with this requirement. Thus, the value ''V'' in the following formula cannot exceed 5 percent in one month, for any two consecutive months.

$$V = \frac{c+d+e}{a+b} \times 100$$

where:

a=number of instances where the residual disinfectant concentration is measured;

b=number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

c=number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

d=number of instances where the residual disinfectant concentration is measured but not detected and where the HPC is >500/ml; and

e=number of instances where the residual disinfectant concentration is not measured and HPC is >500/ml.

(ii) If the State determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified by § 141.74(a)(3) and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (a)(4)(i) of this section do not apply to that system.

(b) *Disinfection requirements for public water systems which provide filtration.* Each public water system that provides filtration treatment must provide disinfection treatment as follows.

(1) The disinfection treatment must be sufficient to ensure that the total treatment processes of that system achieve at least 99.9 percent (3-log) inactivation and/or removal of *Giardia lamblia* cysts and at least 99.99 percent (4-log) inactivation and/or removal of viruses, as determined by the State.

(2) The residual disinfectant concentration in the water entering the distribution system, measured as specified in § 141.74 (a)(5) and (c)(2), cannot be less than 0.2 mg/l for more than 4 hours.

(3)(i) The residual disinfectant concentration in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide, as specified in § 141.74 (a)(5) and (c)(3), cannot be undetectable in more than 5 percent of the samples each month, for any two consecutive months that the system serves water to the public. Water in the distribution system with a heterotrophic bacteria concentration less than or equal to 500/ml, measured as heterotrophic plate count (HPC) as specified in § 141.74(a)(3), is deemed to have a detectable disinfectant residual for purposes of determining compliance with this requirement. Thus, the value ''V'' in the following formula cannot exceed 5 percent in one month, for any two consecutive months.

$$V = \frac{c+d+e}{a+b} \times 100$$

where:

a=number of instances where the residual disinfectant concentration is measured;

b=number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

c=number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

d=number of instances where no residual disinfectant concentration is detected and where the HPC is >500/ml; and

e=number of instances where the residual disinfectant concentration is not measured and HPC is >500/ml.

(ii) If the State determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified in § 141.74(a)(3) and that the system is providing

adequate disinfection in the distribution system, the requirements of paragraph (b)(3)(i) of this section do not apply.

§ 141.73 Filtration.

A public water system that uses a surface water source or a ground water source under the direct influence of surface water, and does not meet all of the criteria in § 141.71 (a) and (b) for avoiding filtration, must provide treatment consisting of both disinfection, as specified in § 141.72(b), and filtration treatment which complies with the requirements of paragraph (a), (b), (c), (d), or (e) of this section by June 29, 1993, or within 18 months of the failure to meet any one of the criteria for avoiding filtration in § 141.71 (a) and (b), whichever is later. Failure to meet any requirement of this section after the date specified in this introductory paragraph is a treatment technique violation.

(a) *Conventional filtration treatment or direct filtration.* (1) For systems using conventional filtration or direct filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 0.5 NTU in at least 95 percent of the measurements taken each month, measured as specified in § 141.74 (a)(4) and (c)(1), except that if the State determines that the system is capable of achieving at least 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts at some turbidity level higher than 0.5 NTU in at least 95 percent of the measurements taken each month, the State may substitute this higher turbidity limit for that system. However, in no case may the State approve a turbidity limit that allows more than 1 NTU in more than 5 percent of the samples taken each month, measured as specified in § 141.74 (a)(4) and (c)(1).

(2) The turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU, measured as specified in § 141.74 (a)(4) and (c)(1).

(b) *Slow sand filtration.* (1) For systems using slow sand filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month, measured as specified in § 141.74 (a)(4) and (c)(1), except that if the State determines there is no significant interference with disinfection at a higher turbidity level, the State may substitute this higher turbidity limit for that system.

(2) The turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU, measured as specified in § 141.74 (a)(4) and (c)(1).

(c) *Diatomaceous earth filtration.* (1) For systems using diatomaceous earth filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month, measured as specified in § 141.74 (a)(4) and (c)(1).

(2) The turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU, measured as specified in § 141.74 (a)(4) and (c)(1).

(d) *Other filtration technologies.* A public water system may use a filtration technology not listed in paragraphs (a)–(c) of this section if it demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of § 141.72(b), consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses. For a system that makes this demonstration, the requirements of paragraph (b) of this section apply.

§ 141.74 Analytical and monitoring requirements.

(a) *Analytical requirements.* Only the analytical method(s) specified in this paragraph, or otherwise approved by EPA, may be used to demonstrate compliance with the requirements of §§ 141.71, 141.72, and 141.73. Measurements for pH, temperature, turbidity, and residual disinfectant concentrations must be conducted by a party approved by the State. Measurements for total coliforms, fecal coliforms, and HPC must be conducted by a laboratory certified by the State or EPA to do such analysis. Until laboratory certification criteria are developed for the analysis of HPC and fecal coliforms, any laboratory certified for total coliform analysis by EPA is deemed certified for HPC and fecal coliform analysis. The following procedures shall be performed in accordance with the publications listed in the following section. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the methods published in *Standard Methods for the Examination of Water and Wastewater* may be obtained from the American Public Health Association et al., 1015 Fifteenth Street, NW., Washington, DC 20005; copies of the Minimal Medium ONPG–MUG Method as set forth in the article ''National Field Evaluation of a Defined Substrate Method for the Simultaneous Enumeration of Total Coliforms and *Escherichia coli* from Drinking Water: Comparison with the Standard Multiple Tube Fermentation Method'' (Edberg et al.), Applied and Environmental Microbiology, Volume 54, pp. 1595–1601, June 1988 (as amended under Erratum, Applied and Environmental Microbiology, Volume 54, p. 3197, December, 1988), may

be obtained from the American Water Works Association Research Foundation, 6666 West Quincy Avenue, Denver, Colorado, 80235; and copies of the Indigo Method as set forth in the article ''Determination of Ozone in Water by the Indigo Method'' (Bader and Hoigne), may be obtained from Ozone Science & Engineering, Pergamon Press Ltd., Fairview Park, Elmsford, New York 10523. Copies may be inspected at the U.S. Environmental Protection Agency, Room EB15, 401 M Street, SW., Washington, DC 20460 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(1) Public water systems must conduct analysis of pH and temperature in accordance with one of the methods listed at § 141.23(k)(1). Public water systems must conduct analysis of total coliforms, fecal coliforms, heterotrophic bacteria, and turbidity in accordance with one of the following analytical methods and by using analytical test procedures contained in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994, which is available at NTIS PB95–104766.

Organism	Methodology	Citation [1]
Total Coliforms [2].	Total Coliform Fermentation Technique [3,4,5].	9221A, B, C
	Total Coliform Membrane Filter Technique.	9222A, B, C
	ONPG-Mug Test [6]	9223
Fecal Coliforms [2]	Fecal Coliform Procedure [7].	9221E
	Fecal Coliform Membrane Filter Procedure.	9222D
Heterotrophic bacteria [2].	Pour Plate method	9215B
Turbidity	Nephelometric Method.	2130B
	Nephelometric Method.	180.1 [8]
	Great Lakes Instruments.	Method 2 [9]

[1] Except where noted, all methods refer to the 18th edition of *Standard Methods for the Examination of Water and Wastewater,* 1992, American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005.

[2] The time from sample collection to initiation of analysis may not exceed 8 hours. Systems are encouraged but not required to hold samples below 10°C during transit.

[3] Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false positive rate and false negative rate for total coliforms, using lactose broth, is less than 10 percent.

[4] Media should cover inverted tubes at least one-half to two-thirds after the sample is added.

[5] No requirement exists to run the completed phase on 10 percent of all total coliform-positive confirmed tubes.

[6] The ONPG-MUG Test is also known as the Autoanalysis Colilert System.

[7] A–1 Broth may be held up to three months in a tightly closed screwcap tube at 4°C.

[8] ''Methods for the Determination of Inorganic Substances in Environmental Samples'', EPA–600/R–93–100, August 1993. Available at NTIS, PB94–121811.

[9] GLI Method 2, ''Turbidity'', November 2, 1992, Great Lakes Instruments, Inc., 8855 North 55th Street, Milwaukee, Wisconsin 53223.

(2) Public water systems must measure residual disinfectant concentrations with one of the analytical methods in the following table. The methods are contained in the 18th edition of *Standard Methods for the Examination of Water and Wastewater,* 1992. Other analytical test procedures are contained *in Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994, which is available at NTIS PB95–104766. If approved by the State, residual disinfectant concentrations for free chlorine and combined chlorine also may be measured by using DPD colorimetric test kits. Free and total chlorine residuals may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument provided the chemistry, accuracy, and precision remain same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every five days, or with a protocol approved by the State.

Residual	Methodology	Methods
Free Chlorine.	Amperometric Titration	4500–Cl D
	DPD Ferrous Titrimetric.	4500–Cl F
	DPD Colorimetric	4500–Cl G
	Syringaldazine (FACTS).	4500–Cl H
Total Chlorine.	Amperometric Titration	4500–Cl D
	Amperometric Titration (low level measurement).	4500–Cl E
	DPD Ferrous Titrimetric.	4500–Cl F
	DPD Colorimetric	4500–Cl G
	Iodometric Electrode	4500–Cl I
Chlorine Dioxide.	Amperometric Titration	4500–ClO_2 C
	DPD Method	4500–ClO_2 D
	Amperometric Titration	4500–ClO_2 E
Ozone	Indigo Method	4500–O_3 B

(b) *Monitoring requirements for systems that do not provide filtration.* A public water system that uses a surface water source and does not provide filtration treatment must begin monitoring, as specified in this paragraph (b), beginning December 31, 1990, unless the State has determined that filtration is required in writing pursuant to § 1412(b)(7)(C)(iii), in which case the State may specify alternative monitoring requirements, as appropriate, until filtration is in place. A public water system that uses a ground water source under the direct influence of surface water and does not provide filtration treatment must begin monitoring as specified in this paragraph (b) beginning December 31, 1990, or 6 months after the State determines that the ground water source is under the direct influence of surface water, whichever is later, unless the State has determined that filtration is required in writing pursuant to

§ 1412(b)(7)(C)(iii), in which case the State may specify alternative monitoring requirements, as appropriate, until filtration is in place.

(1) Fecal coliform or total coliform density measurements as required by § 141.71(a)(1) must be performed on representative source water samples immediately prior to the first or only point of disinfectant application. The system must sample for fecal or total coliforms at the following minimum frequency each week the system serves water to the public:

System size (persons served)	Samples/ week[1]
≤500	1
501 to 3,300	2
3,301 to 10,000	3
10,001 to 25,000	4
>25,000	5

[1] Must be taken on separate days.

Also, one fecal or total coliform density measurement must be made every day the system serves water to the public and the turbidity of the source water exceeds 1 NTU (these samples count towards the weekly coliform sampling requirement) unless the State determines that the system, for logistical reasons outside the system's control, cannot have the sample analyzed within 30 hours of collection.

(2) Turbidity measurements as required by § 141.71(a)(2) must be performed on representative grab samples of source water immediately prior to the first or only point of disinfectant application every four hours (or more frequently) that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the State.

(3) The total inactivation ratio for each day that the system is in operation must be determined based on the $CT_{99.9}$ values in tables 1.1–1.6, 2.1, and 3.1 of this section, as appropriate. The parameters necessary to determine the total inactivation ratio must be monitored as follows:

(i) The temperature of the disinfected water must be measured at least once per day at each residual disinfectant concentration sampling point.

(ii) If the system uses chlorine, the pH of the disinfected water must be measured at least once per day at each chlorine residual disinfectant concentration sampling point.

(iii) The disinfectant contact time(s) (''T'') must be determined for each day during peak hourly flow.

(iv) The residual disinfectant concentration(s) (''C'') of the water before or at the first customer must be measured each day during peak hourly flow.

(v) If a system uses a disinfectant other than chlorine, the system may demonstrate to the State, through the use of a State-approved protocol for on-site disinfection challenge studies or other information satisfactory to the State, that $CT_{99.9}$ values other than those specified in tables 2.1 and 3.1 in this section other operational parameters are adequate to demonstrate that the system is achieving the minimum inactivation rates required by § 141.72(a)(1).

TABLE 1.1—CT VALUES ($CT_{99.9}$) FOR 99.9 PERCENT INACTIVATION OF GIARDIA LAMBLIA CYSTS BY FREE CHLORINE AT 0.5 °C OR LOWER [1]

Residual (mg/l)	pH						
	≤6.0	6.5	7.0	7.5	8.0	8.5	≤9.0
≤0.4	137	163	195	237	277	329	390
0.6	141	168	200	239	286	342	407
0.8	145	172	205	246	295	354	422
1.0	148	176	210	253	304	365	437
1.2	152	180	215	259	313	376	451
1.4	155	184	221	266	321	387	464
1.6	157	189	226	273	329	397	477
1.8	162	193	231	279	338	407	489
2.0	165	197	236	286	346	417	500
2.2	169	201	242	297	353	426	511
2.4	172	205	247	298	361	435	522
2.6	175	209	252	304	368	444	533
2.8	178	213	257	310	375	452	543
3.0	181	217	261	316	382	460	552

[1] These CT values achieve greater than a 99.99 percent inactivation of viruses. CT values between the indicated pH values may be determined by linear interpolation. CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature and at the higher pH.

TABLE 1.2—CT VALUES ($CT_{99.9}$) for 99.9 PERCENT INACTIVATION OF GIARDIA LAMBLIA CYSTS BY FREE CHLORINE AT 5.0 °C[1]

Free residual (mg/l)	pH						
	≤6.0	6.5	7.0	7.5	8.0	8.5	≤9.0
≤0.4	97	117	139	166	198	236	279
0.6	100	120	143	171	204	244	291
0.8	103	122	146	175	210	252	301
1.0	105	125	149	179	216	260	312
1.2	107	127	152	183	221	267	320
1.4	109	130	155	187	227	274	329
1.6	111	132	158	192	232	281	337
1.8	114	135	162	196	238	287	345
2.0	116	138	165	200	243	294	353
2.2	118	140	169	204	248	300	361
2.4	120	143	172	209	253	306	368
2.6	122	146	175	213	258	312	375
2.8	124	148	178	217	263	318	382
3.0	126	151	182	221	268	324	389

[1] These CT values achieve greater than a 99.99 percent inactivation of viruses. CT values between the indicated pH values may be determined by linear interpolation. CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature, and at the higher pH.

TABLE 1.3—CT VALUES (CT $_{99.9}$) for 99.9 PERCENT INACTIVATION OF GIARDIA LAMBLIA CYSTS BY FREE CHLORINE AT 10.0 °C[1]

Free residual (mg/l)	pH						
	≤6.0	6.5	7.0	7.5	8.0	8.5	≤9.0
≤0.4	73	88	104	125	149	177	209
0.6	75	90	107	128	153	183	218
0.8	78	92	110	131	158	189	226
1.0	79	94	112	134	162	195	234
1.2	80	95	114	137	166	200	240
1.4	82	98	116	140	170	206	247
1.6	83	99	119	144	174	211	253
1.8	86	101	122	147	179	215	259
2.0	87	104	124	150	182	221	265
2.2	89	105	127	153	186	225	271
2.4	90	107	129	157	190	230	276
2.6	92	110	131	160	194	234	281
2.8	93	111	134	163	197	239	287
3.0	95	113	137	166	201	243	292

[1] These CT values achieve greater than a 99.99 percent inactivation of viruses. CT values between the indicated pH values may be determined by linear interpolation. CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature, and at the higher pH.

TABLE 1.4—CT VALUES (CT $_{99.9}$) for 99.9 PERCENT INACTIVATION OF GIARDIA LAMBLIA CYSTS BY FREE CHLORINE AT 15.0 °C[1]

Free residual (mg/l)	pH						
	≤6.0	6.5	7.0	7.5	8.0	8.5	≤9.0
≤0.4	49	59	70	83	99	118	140
0.6	50	60	72	86	102	122	146
0.8	52	61	73	88	105	126	151
1.0	53	63	75	90	108	130	156
1.2	54	64	76	92	111	134	160
1.4	55	65	78	94	114	137	165
1.6	56	66	79	96	116	141	169
1.8	57	68	81	98	119	144	173
2.0	58	69	83	100	122	147	177
2.2	59	70	85	102	124	150	181
2.4	60	72	86	105	127	153	184
2.6	61	73	88	107	129	156	188
2.8	62	74	89	109	132	159	191
3.0	63	76	91	111	134	162	195

[1] These CT values achieve greater than a 99.99 percent inactivation of viruses. CT values between the indicated pH values may be determined by linear interpolation. CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature, and at the higher pH.

TABLE 1.5—CT Values ($CT_{99.9}$) FOR 99.9 PERCENT INACTIVATION OF GIARDIA LAMBLIA CYSTS BY FREE CHLORINE AT 20 °C[1]

Free residual (mg/l)	pH						
	≤ 6.0	6.5	7.0	7.5	8.0	8.5	≤ 9.0
≤ 0.4 ...	36	44	52	62	74	89	105
0.6	38	45	54	64	77	92	109
0.8	39	46	55	66	79	95	113
1.0	39	47	56	67	81	98	117
1.2	40	48	57	69	83	100	120
1.4	41	49	58	70	85	103	123
1.6	42	50	59	72	87	105	126
1.8	43	51	61	74	89	108	129
2.0	44	52	62	75	91	110	132
2.2	44	53	63	77	93	113	135
2.4	45	54	65	78	95	115	138
2.6	46	55	66	80	97	117	141
2.8	47	56	67	81	99	119	143
3.0	47	57	68	83	101	122	146

[1] These CT values achieve greater than a 99.99 percent inactivation of viruses. CT values between the indicated pH values may be determined by linear interpolation. CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature, and at the higher pH.

TABLE 1.6—CT Values ($CT_{99.9}$) FOR 99.9 PERCENT INACTIVATION OF GIARDIA LAMBLIA CYSTS BY FREE CHLORINE AT 25 °C[1] AND HIGHER

Free residual (mg/l)	pH						
	≤ 6.0	6.5	7.0	7.5	8.0	8.5	≤ 9.0
≤ 0.4 ...	24	29	35	42	50	59	70
0.6	25	30	36	43	51	61	73
0.8	26	31	37	44	53	63	75
1.0	26	31	37	45	54	65	78
1.2	27	32	38	46	55	67	80
1.4	27	33	39	47	57	69	82
1.6	28	33	40	48	58	70	84
1.8	29	34	41	49	60	72	86
2.0	29	35	41	50	61	74	88
2.2	30	35	42	51	62	75	90
2.4	30	36	43	52	63	77	92
2.6	31	37	44	53	65	78	94
2.8	31	37	45	54	66	80	96
3.0	32	38	46	55	67	81	97

[1] These CT values achieve greater than a 99.99 percent inactivation of viruses. CT values between the indicated pH values may be determined by linear interpolation. CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature, and at the higher pH.

TABLE 2.1—CT VALUES ($CT_{99.9}$) FOR 99.9 PERCENT INACTIVATION OF GIARDIA LAMBLIA CYSTS BY CHLORINE DIOXIDE AND OZONE[1]

	Temperature					
	< 1 °C	5 °C	10 °C	15 °C	20 °C	≥ 25 °C
Chlorine dioxide	63	26	23	19	15	11
Ozone	2.9	1.9	1.4	0.95	0.72	0.48

[1] These CT values achieve greater than 99.99 percent inactivation of viruses. CT values between the indicated temperatures may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature for determining $CT_{99.9}$ values between indicated temperatures.

TABLE 3.1—CT VALUES (CT $_{99.9}$) FOR 99.9 PERCENT INACTIVATION OF GIARDIA LAMBLIA CYSTS BY CHLORAMINES[1]

Temperature					
< 1 °C	5 °C	10 °C	15 °C	20 °C	25 °C
3,800	2,200	1,850	1,500	1,100	750

[1] These values are for pH values of 6 to 9. These CT values may be assumed to achieve greater than 99.99 percent inactivation of viruses only if chlorine is added and mixed in the water prior to the addition of ammonia. If this condition is not met, the system must demonstrate, based on on-site studies or other information, as approved by the State, that the system is achieving at least 99.99 percent inactivation of viruses. CT values between the indicated temperatures may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature for determining $CT_{99.9}$ values between indicated temperatures.

(4) The total inactivation ratio must be calculated as follows:

(i) If the system uses only one point of disinfectant application, the system may determine the total inactivation ratio based on either of the following two methods:

(A) One inactivation ratio ($CTcalc/CT_{99.9}$) is determined before or at the first customer during peak hourly flow and if the $CTcalc/CT_{99.9} \geq 1.0$, the 99.9 percent *Giardia lamblia* inactivation requirement has been achieved; or

(B) Successive $CTcalc/CT_{99.9}$ values, representing sequential inactivation ratios, are determined between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, the following method must be used to calculate the total inactivation ratio:

EC02JY92.060

lamblia inactivation requirement has been achieved.

(ii) If the system uses more than one point of disinfectant application before or at the first customer, the system must determine the CT value of each disinfection sequence immediately prior to the next point of disinfectant application during peak hourly flow. The $CTcalc/CT_{99.9}$ value of each sequence and

$$\Sigma \frac{CTcalc}{CT_{99.9}}$$

must be calculated using the method in paragraph (b)(4)(i)(B) of this section to determine if the system is in compliance with § 142.72(a).

(iii) Although not required, the total percent inactivation for a system with one or more points of residual disinfectant concentration monitoring may be calculated by solving the following equation:

$$\text{Percent inactivation} = 100 \cdot \frac{100}{10^z}$$

$$\text{where } z = 3\times \Sigma \frac{CTcalc}{CT_{99.9}}$$

(5) The residual disinfectant concentration of the water entering the distribution system must be monitored continuously, and the lowest value must be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every 4 hours may be conducted in lieu of continuous monitoring, but for no more than 5 working days following the failure of the equipment, and systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies prescribed below:

System size by population	Samples/day[1]
<500	1
501 to 1,000	2
1,001 to 2,500	3
2,501 to 3,300	4

[1] The day's samples cannot be taken at the same time. The sampling intervals are subject to State review and approval.

If at any time the residual disinfectant concentration falls below 0.2 mg/l in a system using grab sampling in lieu of continuous monitoring, the system must take a grab sample every 4 hours until the residual concentration is equal to or greater than 0.2 mg/l.

(6)(i) The residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in § 141.21, except that the State may allow a public water system which uses both a surface water source or a ground water source under direct influence of surface water, and a ground water source, to take disinfectant residual samples at points other than the total coliform sampling points if the State determines that such points are more representative of treated (disinfected) water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC) as specified in paragraph (a)(3) of this section, may be measured in lieu of residual disinfectant concentration.

(ii) If the State determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified by paragraph (a)(3) of this section and that the system is providing adequate disinfection in the distribution

system, the requirements of paragraph (b)(6)(i) of this section do not apply to that system.

(c) *Monitoring requirements for systems using filtration treatment.* A public water system that uses a surface water source or a ground water source under the influence of surface water and provides filtration treatment must monitor in accordance with this paragraph (c) beginning June 29, 1993, or when filtration is installed, whichever is later.

(1) Turbidity measurements as required by § 141.73 must be performed on representative samples of the system's filtered water every four hours (or more frequently) that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the State. For any systems using slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth filtration, the State may reduce the sampling frequency to once per day if it determines that less frequent monitoring is sufficient to indicate effective filtration performance. For systems serving 500 or fewer persons, the State may reduce the turbidity sampling frequency to once per day, regardless of the type of filtration treatment used, if the State determines that less frequent monitoring is sufficient to indicate effective filtration performance.

(2) The residual disinfectant concentration of the water entering the distribution system must be monitored continuously, and the lowest value must be recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every 4 hours may be conducted in lieu of continuous monitoring, but for no more than 5 working days following the failure of the equipment, and systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies each day prescribed below:

System size by population	Samples/day [1]
±500	1
501 to 1,000	2
1,001 to 2,500	3
2,501 to 3,300	4

[1] The day's samples cannot be taken at the same time. The sampling intervals are subject to State review and approval.

If at any time the residual disinfectant concentration falls below 0.2 mg/l in a system using grab sampling in lieu of continuous monitoring, the system must take a grab sample every 4 hours until the residual disinfectant concentration is equal to or greater than 0.2 mg/l.

(3)(i) The residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in § 141.21, except that the State may allow a public water system which uses both a surface water source or a ground water source under direct influence of surface water, and a ground water source to take disinfectant residual samples at points other than the total coliform sampling points if the State determines that such points are more representative of treated (disinfected) water quality within the distribution system. Heterotrophic bacteria, measured as heterotrophic plate count (HPC) as specified in paragraph (a)(3) of this section, may be measured in lieu of residual disinfectant concentration.

(ii) If the State determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified by paragraph (a)(3) of this section and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (c)(3)(i) of this section do not apply to that system.

[54 FR 27527, June 29, 1989, as amended at 59 FR 62470, Dec. 5, 1994; 60 FR 34086, June 29, 1995]

§ 141.75 Reporting and recordkeeping requirements.

(a) A public water system that uses a surface water source and does not provide filtration treatment must report monthly to the State the information specified in this paragraph (a) beginning December 31, 1990, unless the State has determined that filtration is required in writing pursuant to section 1412(b)(7)(C)(iii), in which case the State may specify alternative reporting requirements, as appropriate, until filtration is in place. A public water system that uses a ground water source under the direct influence of surface water and does not provide filtration treatment must report monthly to the State the information specified in this paragraph (a) beginning December 31, 1990, or 6 months after the State determines that the ground water source is under the direct influence of surface water, whichever is later, unless the State has determined that filtration is required in writing pursuant to § 1412(b)(7)(C)(iii), in which case the State may specify alternative reporting requirements, as appropriate, until filtration is in place.

(1) Source water quality information must be reported to the State within 10 days after the end of each month the system serves water to the public. Information that must be reported includes:

(i) The cumulative number of months for which results are reported.

(ii) The number of fecal and/or total coliform samples, whichever are analyzed during the month

(if a system monitors for both, only fecal coliforms must be reported), the dates of sample collection, and the dates when the turbidity level exceeded 1 NTU.

(iii) The number of samples during the month that had equal to or less than 20/100 ml fecal coliforms and/or equal to or less than 100/100 ml total coliforms, whichever are analyzed.

(iv) The cumulative number of fecal or total coliform samples, whichever are analyzed, during the previous six months the system served water to the public.

(v) The cumulative number of samples that had equal to or less than 20/100 ml fecal coliforms or equal to or less than 100/100 ml total coliforms, whichever are analyzed, during the previous six months the system served water to the public.

(vi) The percentage of samples that had equal to or less than 20/100 ml fecal coliforms or equal to or less than 100/100 ml total coliforms, whichever are analyzed, during the previous six months the system served water to the public.

(vii) The maximum turbidity level measured during the month, the date(s) of occurrence for any measurement(s) which exceeded 5 NTU, and the date(s) the occurrence(s) was reported to the State.

(viii) For the first 12 months of recordkeeping, the dates and cumulative number of events during which the turbidity exceeded 5 NTU, and after one year of recordkeeping for turbidity measurements, the dates and cumulative number of events during which the turbidity exceeded 5 NTU in the previous 12 months the system served water to the public.

(ix) For the first 120 months of recordkeeping, the dates and cumulative number of events during which the turbidity exceeded 5 NTU, and after 10 years of recordkeeping for turbidity measurements, the dates and cumulative number of events during which the turbidity exceeded 5 NTU in the previous 120 months the system served water to the public.

(2) Disinfection information specified in § 141.74(b) must be reported to the State within 10 days after the end of each month the system serves water to the public. Information that must be reported includes:

(i) For each day, the lowest measurement of residual disinfectant concentration in mg/l in water entering the distribution system.

(ii) The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below 0.2 mg/l and when the State was notified of the occurrence.

(iii) The daily residual disinfectant concentration(s) (in mg/l) and disinfectant contact time(s) (in minutes) used for calculating the CT value(s).

(iv) If chlorine is used, the daily measurement(s) of pH of disinfected water following each point of chlorine disinfection.

(v) The daily measurement(s) of water temperature in °C following each point of disinfection.

(vi) The daily CTcalc and CTcalc/$CT_{99.9}$ values for each disinfectant measurement or sequence and the sum of all CTcalc/$CT_{99.9}$ values ((CTcalc/$CT_{99.9}$)) before or at the first customer.

(vii) The daily determination of whether disinfection achieves adequate *Giardia* cyst and virus inactivation, i.e., whether (CTcalc/$CT_{99.9}$) is at least 1.0 or, where disinfectants other than chlorine are used, other indicator conditions that the State determines are appropriate, are met.

(viii) The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to § 141.72:

(A) Number of instances where the residual disinfectant concentration is measured;

(B) Number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

(C) Number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

(D) Number of instances where the residual disinfectant concentration is detected and where HPC is >500/ml;

(E) Number of instances where the residual disinfectant concentration is not measured and HPC is >500/ml;

(F) For the current and previous month the system served water to the public, the value of ''V'' in the following formula:

$$V = \frac{c+d+e}{a+b} \times 100$$

where
a=the value in paragraph (a)(2)(viii)(A) of this section,
b=the value in paragraph (a)(2)(viii)(B) of this section,
c=the value in paragraph (a)(2)(viii)(C) of this section,
d=the value in paragraph (a)(2)(viii)(D) of this section, and
e=the value in paragraph (a)(2)(viii)(E) of this section.

(G) If the State determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified by § 141.74(a)(3) and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (a)(2)(viii) (A)–(F) of this section do not apply to that system.

(ix) A system need not report the data listed in paragraphs (a)(2) (i), and (iii)–(vi) of this section

if all data listed in paragraphs (a)(2) (i)–(viii) of this section remain on file at the system, and the State determines that:

(A) The system has submitted to the State all the information required by paragraphs (a)(2) (i)–(viii) of this section for at least 12 months; and

(B) The State has determined that the system is not required to provide filtration treatment.

(3) No later than ten days after the end of each Federal fiscal year (September 30), each system must provide to the State a report which summarizes its compliance with all watershed control program requirements specified in § 141.71(b)(2).

(4) No later than ten days after the end of each Federal fiscal year (September 30), each system must provide to the State a report on the on-site inspection conducted during that year pursuant to § 141.71(b)(3), unless the on-site inspection was conducted by the State. If the inspection was conducted by the State, the State must provide a copy of its report to the public water system.

(5)(i) Each system, upon discovering that a waterborne disease outbreak potentially attributable to that water system has occurred, must report that occurrence to the State as soon as possible, but no later than by the end of the next business day.

(ii) If at any time the turbidity exceeds 5 NTU, the system must inform the State as soon as possible, but no later than the end of the next business day.

(iii) If at any time the residual falls below 0.2 mg/l in the water entering the distribution system, the system must notify the State as soon as possible, but no later than by the end of the next business day. The system also must notify the State by the end of the next business day whether or not the residual was restored to at least 0.2 mg/l within 4 hours.

(b) A public water system that uses a surface water source or a ground water source under the direct influence of surface water and provides filtration treatment must report monthly to the State the information specified in this paragraph (b) beginning June 29, 1993, or when filtration is installed, whichever is later.

(1) Turbidity measurements as required by § 141.74(c)(1) must be reported within 10 days after the end of each month the system serves water to the public. Information that must be reported includes:

(i) The total number of filtered water turbidity measurements taken during the month.

(ii) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in § 141.73 for the filtration technology being used.

(iii) The date and value of any turbidity measurements taken during the month which exceed 5 NTU.

(2) Disinfection information specified in § 141.74(c) must be reported to the State within 10 days after the end of each month the system serves water to the public. Information that must be reported includes:

(i) For each day, the lowest measurement of residual disinfectant concentration in mg/l in water entering the distribution system.

(ii) The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below 0.2 mg/l and when the State was notified of the occurrence.

(iii) The following information on the samples taken in the distribution system in conjunction with total coliform monitoring pursuant to § 141.72:

(A) Number of instances where the residual disinfectant concentration is measured;

(B) Number of instances where the residual disinfectant concentration is not measured but heterotrophic bacteria plate count (HPC) is measured;

(C) Number of instances where the residual disinfectant concentration is measured but not detected and no HPC is measured;

(D) Number of instances where no residual disinfectant concentration is detected and where HPC is >500/ml;

(E) Number of instances where the residual disinfectant concentration is not measured and HPC is >500/ml;

(F) For the current and previous month the system serves water to the public, the value of ''V'' in the following formula:

$$V = \frac{c+d+e}{a+b} \times 100$$

where
a=the value in paragraph (b)(2)(iii)(A) of this section,
b=the value in paragraph (b)(2)(iii)(B) of this section,
c=the value in paragraph (b)(2)(iii)(C) of this section,
d=the value in paragraph (b)(2)(iii)(D) of this section, and
e=the value in paragraph (b)(2)(iii)(E) of this section.

(G) If the State determines, based on site-specific considerations, that a system has no means for having a sample transported and analyzed for HPC by a certified laboratory within the requisite time and temperature conditions specified by § 141.74(a)(3) and that the system is providing adequate disinfection in the distribution system, the requirements of paragraph (b)(2)(iii) (A)–(F) of this section do not apply.

(iv) A system need not report the data listed in paragraph (b)(2)(i) of this section if all data listed in paragraphs (b)(2) (i)–(iii) of this section remain

on file at the system and the State determines that the system has submitted all the information required by paragraphs (b)(2) (i)–(iii) of this section for at least 12 months.

(3)(i) Each system, upon discovering that a waterborne disease outbreak potentially attributable to that water system has occurred, must report that occurrence to the State as soon as possible, but no later than by the end of the next business day.

(ii) If at any time the turbidity exceeds 5 NTU, the system must inform the State as soon as possible, but no later than the end of the next business day.

(iii) If at any time the residual falls below 0.2 mg/l in the water entering the distribution system, the system must notify the State as soon as possible, but no later than by the end of the next business day. The system also must notify the State by the end of the next business day whether or not the residual was restored to at least 0.2 mg/l within 4 hours.

Subpart I—Control of Lead and Copper

SOURCE: 56 FR 26548, June 7, 1991, unless otherwise noted.

§ 141.80 General requirements.

(a) *Applicability and effective dates.* (1) The requirements of this subpart I constitute the national primary drinking water regulations for lead and copper. Unless otherwise indicated, each of the provisions of this subpart applies to community water systems and non-transient, non-community water systems (hereinafter referred to as ''water systems'' or ''systems'').

(2) The requirements set forth in §§ 141.86 to 141.91 shall take effect on July 7, 1991. The requirements set forth in §§ 141.80 to 141.85 shall take effect on December 7, 1992.

(b) *Scope.* These regulations establish a treatment technique that includes requirements for corrosion control treatment, source water treatment, lead service line replacement, and public education. These requirements are triggered, in some cases, by lead and copper action levels measured in samples collected at consumers' taps.

(c) *Lead and copper action levels.* (1) The lead action level is exceeded if the concentration of lead in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with § 141.86 is greater than 0.015 mg/L (i.e., if the ''90th percentile'' lead level is greater than 0.015 mg/L).

(2) The copper action level is exceeded if the concentration of copper in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with § 141.86 is greater than 1.3 mg/L (i.e., if the ''90th percentile'' copper level is greater than 1.3 mg/L).

(3) The 90th percentile lead and copper levels shall be computed as follows:

(i) The results of all lead or copper samples taken during a monitoring period shall be placed in ascending order from the sample with the lowest concentration to the sample with the highest concentration. Each sampling result shall be assigned a number, ascending by single integers beginning with the number 1 for the sample with the lowest contaminant level. The number assigned to the sample with the highest contaminant level shall be equal to the total number of samples taken.

(ii) The number of samples taken during the monitoring period shall be multiplied by 0.9.

(iii) The contaminant concentration in the numbered sample yielded by the calculation in paragraph (c)(3)(ii) is the 90th percentile contaminant level.

(iv) For water systems serving fewer than 100 people that collect 5 samples per monitoring period, the 90th percentile is computed by taking the average of the highest and second highest concentrations.

(d) *Corrosion control treatment requirements.* (1) All water systems shall install and operate optimal corrosion control treatment as defined in § 141.2.

(2) Any water system that complies with the applicable corrosion control treatment requirements specified by the State under §§ 141.81 and 141.82 shall be deemed in compliance with the treatment requirement contained in paragraph (d)(1) of this section.

(e) *Source water treatment requirements.* Any system exceeding the lead or copper action level shall implement all applicable source water treatment requirements specified by the State under § 141.83.

(f) *Lead service line replacement requirements.* Any system exceeding the lead action level after implementation of applicable corrosion control and source water treatment requirements shall complete the lead service line replacement requirements contained in § 141.84.

(g) *Public education requirements.* Any system exceeding the lead action level shall implement the public education requirements contained in § 141.85.

(h) *Monitoring and analytical requirements.* Tap water monitoring for lead and copper, monitoring for water quality parameters, source water monitoring for lead and copper, and analyses of the monitoring results under this subpart shall be completed in compliance with §§ 141.86, 141.87, 141.88, and 141.89.

(i) *Reporting requirements.* Systems shall report to the State any information required by the treatment provisions of this subpart and § 141.90.

(j) *Recordkeeping requirements.* Systems shall maintain records in accordance with § 141.91.

(k) *Violation of national primary drinking water regulations.* Failure to comply with the applicable requirements of §§ 141.80–141.91, including requirements established by the State pursuant to these provisions, shall constitute a violation of the national primary drinking water regulations for lead and/or copper.

[56 FR 26548, June 7, 1991; 57 FR 28788, June 29, 1992]

§ 141.81 Applicability of corrosion control treatment steps to small, medium-size and large water systems.

(a) Systems shall complete the applicable corrosion control treatment requirements described in § 141.82 by the deadlines established in this section.

(1) A large system (serving >50,000 persons) shall complete the corrosion control treatment steps specified in paragraph (d) of this section, unless it is deemed to have optimized corrosion control under paragraph (b)(2) or (b)(3) of this section.

(2) A small system (serving ≤3300 persons) and a medium-size system (serving >3,300 and ≤50,000 persons) shall complete the corrosion control treatment steps specified in paragraph (e) of this section, unless it is deemed to have optimized corrosion control under paragraph (b)(1), (b)(2), or (b)(3) of this section.

(b) A system is deemed to have optimized corrosion control and is not required to complete the applicable corrosion control treatment steps identified in this section if the system satisfies one of the following criteria:

(1) A small or medium-size water system is deemed to have optimized corrosion control if the system meets the lead and copper action levels during each of two consecutive six-month monitoring periods conducted in accordance with § 141.86.

(2) Any water system may be deemed by the State to have optimized corrosion control treatment if the system demonstrates to the satisfaction of the State that it has conducted activities equivalent to the corrosion control steps applicable to such system under this section. If the State makes this determination, it shall provide the system with written notice explaining the basis for its decision and shall specify the water quality control parameters representing optimal corrosion control in accordance with § 141.82(f). A system shall provide the State with the following information in order to support a determination under this paragraph:

(i) The results of all test samples collected for each of the water quality parameters in § 141.82(c)(3).

(ii) A report explaining the test methods used by the water system to evaluate the corrosion control treatments listed in § 141.82(c)(1), the results of all tests conducted, and the basis for the system's selection of optimal corrosion control treatment;

(iii) A report explaining how corrosion control has been installed and how it is being maintained to insure minimal lead and copper concentrations at consumers' taps; and

(iv) The results of tap water samples collected in accordance with § 141.86 at least once every six months for one year after corrosion control has been installed.

(3) Any water system is deemed to have optimized corrosion control if it submits results of tap water monitoring conducted in accordance with § 141.86 and source water monitoring conducted in accordance with § 141.88 that demonstrates for two consecutive six-month monitoring periods that the difference between the 90th percentile tap water lead level computed under § 141.80(c)(3), and the highest source water lead concentration, is less than the Practical Quantitation Level for lead specified in § 141.89(a)(1)(ii).

(c) Any small or medium-size water system that is required to complete the corrosion control steps due to its exceedance of the lead or copper action level may cease completing the treatment steps whenever the system meets both action levels during each of two consecutive monitoring periods conducted pursuant to § 141.86 and submits the results to the State. If any such water system thereafter exceeds the lead or copper action level during any monitoring period, the system (or the State, as the case may be) shall recommence completion of the applicable treatment steps, beginning with the first treatment step which was not previously completed in its entirety. The State may require a system to repeat treatment steps previously completed by the system where the State determines that this is necessary to implement properly the treatment requirements of this section. The State shall notify the system in writing of such a determination and explain the basis for its decision. The requirement for any small- or medium-size system to implement corrosion control treatment steps in accordance with paragraph (e) of this section (including systems deemed to have optimized corrosion control under paragraph (b)(1) of this section) is triggered whenever any small- or medium-size system exceeds the lead or copper action level.

(d) *Treatment steps and deadlines for large systems.* Except as provided in paragraph (b) (2) and (3) of this section, large systems shall complete

the following corrosion control treatment steps (described in the referenced portions of §§ 141.82, 141.86, and 141.87) by the indicated dates.

(1) *Step 1:* The system shall conduct initial monitoring (§ 141.86(d)(1) and § 141.87(b)) during two consecutive six-month monitoring periods by January 1, 1993.

(2) *Step 2:* The system shall complete corrosion control studies (§ 141.82(c)) by July 1, 1994.

(3) *Step 3:* The State shall designate optimal corrosion control treatment (§ 141.82(d)) by January 1, 1995.

(4) *Step 4:* The system shall install optimal corrosion control treatment (§ 141.82(e)) by January 1, 1997.

(5) *Step 5:* The system shall complete follow-up sampling (§ 141.86(d)(2) and § 141.87(c)) by January 1, l998.

(6) *Step 6:* The State shall review installation of treatment and designate optimal water quality control parameters (§ 141.82(f)) by July 1, 1998.

(7) *Step 7:* The system shall operate in compliance with the State-specified optimal water quality control parameters (§ 141.82(g)) and continue to conduct tap sampling (§ 141.86(d)(3) and § 141.87(d)).

(e) *Treatment Steps and deadlines for small and medium-size systems.* Except as provided in paragraph (b) of this section, small and medium-size systems shall complete the following corrosion control treatment steps (described in the referenced portions of §§ 141.82, 141.86 and 141.87) by the indicated time periods.

(1) *Step 1:* The system shall conduct initial tap sampling (§ 141.86(d)(1) and § 141.87(b)) until the system either exceeds the lead or copper action level or becomes eligible for reduced monitoring under § 141.86(d)(4). A system exceeding the lead or copper action level shall recommend optimal corrosion control treatment (§ 141.82(a)) within six months after it exceeds one of the action levels.

(2) *Step 2:* Within 12 months after a system exceeds the lead or copper action level, the State may require the system to perform corrosion control studies (§ 141.82(b)). If the State does not require the system to perform such studies, the State shall specify optimal corrosion control treatment (§ 141.82(d)) within the following timeframes:

(i) For medium-size systems, within 18 months after such system exceeds the lead or copper action level,

(ii) For small systems, within 24 months after such system exceeds the lead or copper action level.

(3) *Step 3:* If the State requires a system to perform corrosion control studies under step 2, the system shall complete the studies (§ 141.82(c)) within 18 months after the State requires that such studies be conducted.

(4) *Step 4:* If the system has performed corrosion control studies under step 2, the State shall designate optimal corrosion control treatment (§ 141.82(d)) within 6 months after completion of step 3.

(5) *Step 5:* The system shall install optimal corrosion control treatment (§ 141.82(e)) within 24 months after the State designates such treatment.

(6) *Step 6:* The system shall complete follow-up sampling (§ 141.86(d)(2) and § 141.87(c)) within 36 months after the State designates optimal corrosion control treatment.

(7) *Step 7:* The State shall review the system's installation of treatment and designate optimal water quality control parameters (§ 141.82(f)) within 6 months after completion of step 6.

(8) *Step 8:* The system shall operate in compliance with the State-designated optimal water quality control parameters (§ 141.82(g)) and continue to conduct tap sampling (§ 141.86(d)(3) and § 141.87(d)).

[56 FR 26548, June 7, 1991, as amended at 59 FR 33862, June 30, 1994]

§ 141.82 Description of corrosion control treatment requirements.

Each system shall complete the corrosion control treatment requirements described below which are applicable to such system under § 141.81.

(a) *System recommendation regarding corrosion control treatment.* Based upon the results of lead and copper tap monitoring and water quality parameter monitoring, small and medium-size water systems exceeding the lead or copper action level shall recommend installation of one or more of the corrosion control treatments listed in paragraph (c)(1) of this section which the system believes constitutes optimal corrosion control for that system. The State may require the system to conduct additional water quality parameter monitoring in accordance with § 141.87(b) to assist the State in reviewing the system's recommendation.

(b) *State decision to require studies of corrosion control treatment (applicable to small and medium-size systems).* The State may require any small or medium-size system that exceeds the lead or copper action level to perform corrosion control studies under paragraph (c) of this section to identify optimal corrosion control treatment for the system.

(c) *Performance of corrosion control studies.* (1) Any public water system performing corrosion control studies shall evaluate the effectiveness of each of the following treatments, and, if appropriate, combinations of the following treatments to identify the optimal corrosion control treatment for that system:

(i) Alkalinity and pH adjustment;

(ii) Calcium hardness adjustment; and

(iii) The addition of a phosphate or silicate based corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration in all test tap samples.

(2) The water system shall evaluate each of the corrosion control treatments using either pipe rig/loop tests, metal coupon tests, partial-system tests, or analyses based on documented analogous treatments with other systems of similar size, water chemistry and distribution system configuration.

(3) The water system shall measure the following water quality parameters in any tests conducted under this paragraph before and after evaluating the corrosion control treatments listed above:

(i) Lead;

(ii) Copper;

(iii) pH;

(iv) Alkalinity;

(v) Calcium;

(vi) Conductivity;

(vii) Orthophosphate (when an inhibitor containing a phosphate compound is used);

(viii) Silicate (when an inhibitor containing a silicate compound is used);

(ix) Water temperature.

(4) The water system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and document such constraints with at least one of the following:

(i) Data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics; and/or

(ii) Data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.

(5) The water system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes.

(6) On the basis of an analysis of the data generated during each evaluation, the water system shall recommend to the State in writing the treatment option that the corrosion control studies indicate constitutes optimal corrosion control treatment for that system. The water system shall provide a rationale for its recommendation along with all supporting documentation specified in paragraphs (c) (1) through (5) of this section.

(d) *State designation of optimal corrosion control treatment.* (1) Based upon consideration of available information including, where applicable, studies performed under paragraph (c) of this section and a system's recommended treatment alternative, the State shall either approve the corrosion control treatment option recommended by the system, or designate alternative corrosion control treatment(s) from among those listed in paragraph (c)(1) of this section. When designating optimal treatment the State shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes.

(2) The State shall notify the system of its decision on optimal corrosion control treatment in writing and explain the basis for this determination. If the State requests additional information to aid its review, the water system shall provide the information.

(e) *Installation of optimal corrosion control.* Each system shall properly install and operate throughout its distribution system the optimal corrosion control treatment designated by the State under paragraph (d) of this section.

(f) *State review of treatment and specification of optimal water quality control parameters.* The State shall evaluate the results of all lead and copper tap samples and water quality parameter samples submitted by the water system and determine whether the system has properly installed and operated the optimal corrosion control treatment designated by the State in paragraph (d) of this section. Upon reviewing the results of tap water and water quality parameter monitoring by the system, both before and after the system installs optimal corrosion control treatment, the State shall designate:

(1) A minimum value or a range of values for pH measured at each entry point to the distribution system;

(2) A minimum pH value, measured in all tap samples. Such value shall be equal to or greater than 7.0, unless the State determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the system to optimize corrosion control;

(3) If a corrosion inhibitor is used, a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the State determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system;

(4) If alkalinity is adjusted as part of optimal corrosion control treatment, a minimum concentration or a range of concentrations for alkalinity, measured at each entry point to the distribution system and in all tap samples;

(5) If calcium carbonate stabilization is used as part of corrosion control, a minimum concentration or a range of concentrations for calcium, measured in all tap samples.

The values for the applicable water quality control parameters listed above shall be those that the State determines to reflect optimal corrosion control treatment for the system. The State may designate values for additional water quality control parameters determined by the State to reflect optimal corrosion control for the system. The State shall notify the system in writing of these determinations and explain the basis for its decisions.

(g) *Continued operation and monitoring.* All systems shall maintain water quality parameter values at or above minimum values or within ranges designated by the State under paragraph (f) of this section in each sample collected under § 141.87(d). If the water quality parameter value of any sample is below the minimum value or outside the range designated by the State, then the system is out of compliance with this paragraph. As specified in § 141.87(d), the system may take a confirmation sample for any water quality parameter value no later than 3 days after the first sample. If a confirmation sample is taken, the result must be averaged with the first sampling result and the average must be used for any compliance determinations under this paragraph. States have discretion to delete results of obvious sampling errors from this calculation.

(h) *Modification of State treatment decisions.* Upon its own initiative or in response to a request by a water system or other interested party, a State may modify its determination of the optimal corrosion control treatment under paragraph (d) of this section or optimal water quality control parameters under paragraph (f) of this section. A request for modification by a system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The State may modify its determination where it concludes that such change is necessary to ensure that the system continues to optimize corrosion control treatment. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the State's decision, and provide an implementation schedule for completing the treatment modifications.

(i) *Treatment decisions by EPA in lieu of the State.* Pursuant to the procedures in § 142.19, the EPA Regional Administrator may review treatment determinations made by a State under paragraphs (d), (f), or (h) of this section and issue federal treatment determinations consistent with the requirements of those paragraphs where the Regional Administrator finds that:

(1) A State has failed to issue a treatment determination by the applicable deadlines contained in § 141.81,

(2) A State has abused its discretion in a substantial number of cases or in cases affecting a substantial population, or

(3) The technical aspects of a State's determination would be indefensible in an expected Federal enforcement action taken against a system.

§ 141.83 Source water treatment requirements.

Systems shall complete the applicable source water monitoring and treatment requirements (described in the referenced portions of paragraph (b) of this section, and in §§ 141.86, and 141.88) by the following deadlines.

(a) *Deadlines for completing source water treatment steps*—(1) *Step 1:* A system exceeding the lead or copper action level shall complete lead and copper source water monitoring (§ 141.88(b)) and make a treatment recommendation to the State (§ 141.83(b)(1)) within 6 months after exceeding the lead or copper action level.

(2) *Step 2:* The State shall make a determination regarding source water treatment (§ 141.83(b)(2)) within 6 months after submission of monitoring results under step 1.

(3) *Step 3:* If the State requires installation of source water treatment, the system shall install the treatment (§ 141.83(b)(3)) within 24 months after completion of step 2.

(4) *Step 4:* The system shall complete follow-up tap water monitoring (§ 141.86(d)(2) and source water monitoring (§ 141.88(c)) within 36 months after completion of step 2.

(5) *Step 5:* The State shall review the system's installation and operation of source water treatment and specify maximum permissible source water levels (§ 141.83(b)(4)) within 6 months after completion of step 4.

(6) *Step 6:* The system shall operate in compliance with the State-specified maximum permissible lead and copper source water levels (§ 141.83(b)(4)) and continue source water monitoring (§ 141.88(d)).

(b) *Description of source water treatment requirements*—(1) *System treatment recommendation.* Any system which exceeds the lead or copper action level shall recommend in writing to the State the installation and operation of one of the source water treatments listed in paragraph (b)(2) of this section. A system may recommend that no treatment be installed based upon a demonstration that source water treatment is not necessary to minimize lead and copper levels at users' taps.

(2) *State determination regarding source water treatment.* The State shall complete an evaluation of the results of all source water samples submitted by the water system to determine whether source water treatment is necessary to minimize lead or copper levels in water delivered to users'

taps. If the State determines that treatment is needed, the State shall either require installation and operation of the source water treatment recommended by the system (if any) or require the installation and operation of another source water treatment from among the following: Ion exchange, reverse osmosis, lime softening or coagulation/filtration. If the State requests additional information to aid in its review, the water system shall provide the information by the date specified by the State in its request. The State shall notify the system in writing of its determination and set forth the basis for its decision.

(3) *Installation of source water treatment.* Each system shall properly install and operate the source water treatment designated by the State under paragraph (b)(2) of this section.

(4) *State review of source water treatment and specification of maximum permissible source water levels.* The State shall review the source water samples taken by the water system both before and after the system installs source water treatment, and determine whether the system has properly installed and operated the source water treatment designated by the State. Based upon its review, the State shall designate the maximum permissible lead and copper concentrations for finished water entering the distribution system. Such levels shall reflect the contaminant removal capability of the treatment properly operated and maintained. The State shall notify the system in writing and explain the basis for its decision.

(5) *Continued operation and maintenance.* Each water system shall maintain lead and copper levels below the maximum permissible concentrations designated by the State at each sampling point monitored in accordance with § 141.88. The system is out of compliance with this paragraph if the level of lead or copper at any sampling point is greater than the maximum permissible concentration designated by the State.

(6) *Modification of State treatment decisions.* Upon its own initiative or in response to a request by a water system or other interested party, a State may modify its determination of the source water treatment under paragraph (b)(2) of this section, or maximum permissible lead and copper concentrations for finished water entering the distribution system under paragraph (b)(4) of this section. A request for modification by a system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The State may modify its determination where it concludes that such change is necessary to ensure that the system continues to minimize lead and copper concentrations in source water. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the State's decision, and provide an implementation schedule for completing the treatment modifications.

(7) *Treatment decisions by EPA in lieu of the State.* Pursuant to the procedures in § 142.19, the EPA Regional Administrator may review treatment determinations made by a State under paragraphs (b) (2), (4), or (6) of this section and issue Federal treatment determinations consistent with the requirements of those paragraphs where the Administrator finds that:

(i) A State has failed to issue a treatment determination by the applicable deadlines contained in § 141.83(a),

(ii) A state has abused its discretion in a substantial number of cases or in cases affecting a substantial population, or

(iii) The technical aspects of a State's determination would be indefensible in an expected Federal enforcement action taken against a system.

§ 141.84 Lead service line replacement requirements.

(a) Systems that fail to meet the lead action level in tap samples taken pursuant to § 141.86(d)(2), after installing corrosion control and/or source water treatment (whichever sampling occurs later), shall replace lead service lines in accordance with the requirements of this section. If a system is in violation of § 141.81 or § 141.83 for failure to install source water or corrosion control treatment, the State may require the system to commence lead service line replacement under this section after the date by which the system was required to conduct monitoring under § 141.86(d)(2) has passed.

(b) A system shall replace annually at least 7 percent of the initial number of lead service lines in its distribution system. The initial number of lead service lines is the number of lead lines in place at the time the replacement program begins. The system shall identify the initial number of lead service lines in its distribution system based upon a materials evaluation, including the evaluation required under § 141.86(a). The first year of lead service line replacement shall begin on the date the action level was exceeded in tap sampling referenced in paragraph (a) of this section.

(c) A system is not required to replace an individual lead service line if the lead concentration in all service line samples from that line, taken pursuant to § 141.86(b)(3), is less than or equal to 0.015 mg/L.

(d) A water system shall replace the entire service line (up to the building inlet) unless it demonstrates to the satisfaction of the State under paragraph (e) of this section that it controls less than the entire service line. In such cases, the system shall replace the portion of the line which the State determines is under the system's control. The

system shall notify the user served by the line that the system will replace the portion of the service line under its control and shall offer to replace the building owner's portion of the line, but is not required to bear the cost of replacing the building owner's portion of the line. For buildings where only a portion of the lead service line is replaced, the water system shall inform the resident(s) that the system will collect a first flush tap water sample after partial replacement of the service line is completed if the resident(s) so desire. In cases where the resident(s) accept the offer, the system shall collect the sample and report the results to the resident(s) within 14 days following partial lead service line replacement.

(e) A water system is presumed to control the entire lead service line (up to the building inlet) unless the system demonstrates to the satisfaction of the State, in a letter submitted under § 141.90(e)(4), that it does not have any of the following forms of control over the entire line (as defined by state statutes, municipal ordinances, public service contracts or other applicable legal authority): authority to set standards for construction, repair, or maintenance of the line, authority to replace, repair, or maintain the service line, or ownership of the service line. The State shall review the information supplied by the system and determine whether the system controls less than the entire service line and, in such cases, shall determine the extent of the system's control. The State's determination shall be in writing and explain the basis for its decision.

(f) The State shall require a system to replace lead service lines on a shorter schedule than that required by this section, taking into account the number of lead service lines in the system, where such a shorter replacement schedule is feasible. The State shall make this determination in writing and notify the system of its finding within 6 months after the system is triggered into lead service line replacement based on monitoring referenced in paragraph (a) of this section.

(g) Any system may cease replacing lead service lines whenever first draw samples collected pursuant to § 141.86(b)(2) meet the lead action level during each of two consecutive monitoring periods and the system submits the results to the State. If first draw tap samples collected in any such system thereafter exceeds the lead action level, the system shall recommence replacing lead service lines pursuant to paragraph (b) of this section.

(h) To demonstrate compliance with paragraphs (a) through (d) of this section, a system shall report to the State the information specified in § 141.90(e).

[56 FR 26548, June 7, 1991; 57 FR 28788, June 29, 1992]

§ 141.85 Public education and supplemental monitoring requirements.

A water system that exceeds the lead action level based on tap water samples collected in accordance with § 141.86 shall deliver the public education materials contained in paragraphs (a) and (b) of this section in accordance with the requirements in paragraph (c) of this section.

(a) *Content of written materials.* A water system shall include the following text in all of the printed materials it distributes through its lead public education program. Any additional information presented by a system shall be consistent with the information below and be in plain English that can be understood by laypersons.

(1) *Introduction.* The United States Environmental Protection Agency (EPA) and [insert name of water supplier] are concerned about lead in your drinking water. Although most homes have very low levels of lead in their drinking water, some homes in the community have lead levels above the EPA action level of 15 parts per billion (ppb), or 0.015 milligrams of lead per liter of water (mg/L). Under Federal law we are required to have a program in place to minimize lead in your drinking water by [insert date when corrosion control will be completed for your system]. This program includes corrosion control treatment, source water treatment, and public education. We are also required to replace each lead service line that we control if the line contributes lead concentrations of more than 15 ppb after we have completed the comprehensive treatment program. If you have any questions about how we are carrying out the requirements of the lead regulation please give us a call at [insert water system's phone number]. This brochure explains the simple steps you can take to protect you and your family by reducing your exposure to lead in drinking water.

(2) *Health effects of lead.* Lead is a common metal found throughout the environment in lead-based paint, air, soil, household dust, food, certain types of pottery porcelain and pewter, and water. Lead can pose a significant risk to your health if too much of it enters your body. Lead builds up in the body over many years and can cause damage to the brain, red blood cells and kidneys. The greatest risk is to young children and pregnant women. Amounts of lead that won't hurt adults can slow down normal mental and physical development of growing bodies. In addition, a child at play often comes into contact with sources of lead contamination—like dirt and dust—that rarely affect an adult. It is important to wash children's hands and toys often, and to try to make sure they only put food in their mouths.

(3) *Lead in drinking water.* (i) Lead in drinking water, although rarely the sole cause of lead poisoning, can significantly increase a person's total lead exposure, particularly the exposure of infants who drink baby formulas and concentrated juices that are mixed with water. The EPA estimates that drinking water can make up 20 percent or more of a person's total exposure to lead.

(ii) Lead is unusual among drinking water contaminants in that it seldom occurs naturally in water supplies like rivers and lakes. Lead enters drinking water primarily as a result of the corrosion, or wearing away, of materials containing lead in the water distribution system and household plumbing. These materials include lead-based solder used to join copper pipe, brass and chrome plated brass faucets, and in some cases, pipes made of lead that connect your house to the water main (service lines). In 1986, Congress banned the use of lead solder containing greater than 0.2% lead, and restricted the lead content of faucets, pipes and other plumbing materials to 8.0%.

(iii) When water stands in lead pipes or plumbing systems containing lead for several hours or more, the lead may dissolve into your drinking water. This means the first water drawn from the tap in the morning, or later in the afternoon after returning from work or school, can contain fairly high levels of lead.

(4) *Steps you can take in the home to reduce exposure to lead in drinking water.* (i) Despite our best efforts mentioned earlier to control water corrosivity and remove lead from the water supply, lead levels in some homes or buildings can be high. To find out whether you need to take action in your own home, have your drinking water tested to determine if it contains excessive concentrations of lead. Testing the water is essential because you cannot see, taste, or smell lead in drinking water. Some local laboratories that can provide this service are listed at the end of this booklet. For more information on having your water tested, please call [insert phone number of water system].

(ii) If a water test indicates that the drinking water drawn from a tap in your home contains lead above 15 ppb, then you should take the following precautions:

(A) Let the water run from the tap before using it for drinking or cooking any time the water in a faucet has gone unused for more than six hours. The longer water resides in your home's plumbing the more lead it may contain. Flushing the tap means running the cold water faucet until the water gets noticeably colder, usually about 15–30 seconds. If your house has a lead service line to the water main, you may have to flush the water for a longer time, perhaps one minute, before drinking. Although toilet flushing or showering flushes water through a portion of your home's plumbing system, you still need to flush the water in each faucet before using it for drinking or cooking. Flushing tap water is a simple and inexpensive measure you can take to protect your family's health. It usually uses less than one or two gallons of water and costs less than [insert a cost estimate based on flushing two times a day for 30 days] per month. To conserve water, fill a couple of bottles for drinking water after flushing the tap, and whenever possible use the first flush water to wash the dishes or water the plants. If you live in a high-rise building, letting the water flow before using it may not work to lessen your risk from lead. The plumbing systems have more, and sometimes larger pipes than smaller buildings. Ask your landlord for help in locating the source of the lead and for advice on reducing the lead level.

(B) Try not to cook with, or drink water from the hot water tap. Hot water can dissolve more lead more quickly than cold water. If you need hot water, draw water from the cold tap and heat it on the stove.

(C) Remove loose lead solder and debris from the plumbing materials installed in newly constructed homes, or homes in which the plumbing has recently been replaced, by removing the faucet strainers from all taps and running the water from 3 to 5 minutes. Thereafter, periodically remove the strainers and flush out any debris that has accumulated over time.

(D) If your copper pipes are joined with lead solder that has been installed illegally since it was banned in 1986, notify the plumber who did the work and request that he or she replace the lead solder with lead-free solder. Lead solder looks dull gray, and when scratched with a key looks shiny. In addition, notify your State [insert name of department responsible for enforcing the Safe Drinking Water Act in your State] about the violation.

(E) Determine whether or not the service line that connects your home or apartment to the water main is made of lead. The best way to determine if your service line is made of lead is by either hiring a licensed plumber to inspect the line or by contacting the plumbing contractor who installed the line. You can identify the plumbing contractor by checking the city's record of building permits which should be maintained in the files of the [insert name of department that issues building permits]. A licensed plumber can at the same time check to see if your homes's plumbing contains lead solder, lead pipes, or pipe fittings that contain lead. The public water system that delivers water to your home should also maintain records of the materials located in the distribution system. If the service line that connects your dwelling to the water main contributes more than 15 ppb to drinking water, after our comprehensive treatment program is in place, we are required to replace the

line. If the line is only partially controlled by the [insert name of the city, county, or water system that controls the line], we are required to provide you with information on how to replace your portion of the service line, and offer to replace that portion of the line at your expense and take a follow-up tap water sample within 14 days of the replacement. Acceptable replacement alternatives include copper, steel, iron, and plastic pipes.

(F) Have an electrician check your wiring. If grounding wires from the electrical system are attached to your pipes, corrosion may be greater. Check with a licensed electrician or your local electrical code to determine if your wiring can be grounded elsewhere. DO NOT attempt to change the wiring yourself because improper grounding can cause electrical shock and fire hazards.

(iii) The steps described above will reduce the lead concentrations in your drinking water. However, if a water test indicates that the drinking water coming from your tap contains lead concentrations in excess of 15 ppb after flushing, or after we have completed our actions to minimize lead levels, then you may want to take the following additional measures:

(A) Purchase or lease a home treatment device. Home treatment devices are limited in that each unit treats only the water that flows from the faucet to which it is connected, and all of the devices require periodic maintenance and replacement. Devices such as reverse osmosis systems or distillers can effectively remove lead from your drinking water. Some activated carbon filters *may* reduce lead levels at the tap, however all lead reduction claims should be investigated. Be sure to check the actual performance of a specific home treatment device before and after installing the unit.

(B) Purchase bottled water for drinking and cooking.

(iv) You can consult a variety of sources for additional information. Your family doctor or pediatrician can perform a blood test for lead and provide you with information about the health effects of lead. State and local government agencies that can be contacted include:

(A) [insert the name of city or county department of public utilities] at [insert phone number] can provide you with information about your community's water supply, and a list of local laboratories that have been certified by EPA for testing water quality;

(B) [insert the name of city or county department that issues building permits] at [insert phone number] can provide you with information about building permit records that should contain the names of plumbing contractors that plumbed your home; and

(C) [insert the name of the State Department of Public Health] at [insert phone number] or the [insert the name of the city or county health department] at [insert phone number] can provide you with information about the health effects of lead and how you can have your child's blood tested.

(v) The following is a list of some State approved laboratories in your area that you can call to have your water tested for lead. [Insert names and phone numbers of at least two laboratories].

(b) *Content of broadcast materials.* A water system shall include the following information in all public service announcements submitted under its lead public education program to television and radio stations for broadcasting:

(1) Why should everyone want to know the facts about lead and drinking water? Because unhealthy amounts of lead can enter drinking water through the plumbing in your home. That's why I urge you to do what I did. I had my water tested for [insert free or $ per sample]. You can contact the [insert the name of the city or water system] for information on testing and on simple ways to reduce your exposure to lead in drinking water.

(2) To have your water tested for lead, or to get more information about this public health concern, please call [insert the phone number of the city or water system].

(c) *Delivery of a public education program.* (1) In communities where a significant proportion of the population speaks a language other than English, public education materials shall be communicated in the appropriate language(s).

(2) A community water system that fails to meet the lead action level on the basis of tap water samples collected in accordance with § 141.86 shall, within 60 days:

(i) Insert notices in each customer's water utility bill containing the information in paragraph (a) of this section, along with the following alert on the water bill itself in large print: ''SOME HOMES IN THIS COMMUNITY HAVE ELEVATED LEAD LEVELS IN THEIR DRINKING WATER. LEAD CAN POSE A SIGNIFICANT RISK TO YOUR HEALTH. PLEASE READ THE ENCLOSED NOTICE FOR FURTHER INFORMATION.''

(ii) Submit the information in paragraph (a) of this section to the editorial departments of the major daily and weekly newspapers circulated throughout the community.

(iii) Deliver pamphlets and/or brochures that contain the public education materials in paragraphs (a) (2) and (4) of this section to facilities and organizations, including the following:

(A) Public schools and/or local school boards;

(B) City or county health department;

(C) Women, Infants, and Children and/or Head Start Program(s) whenever available;

(D) Public and private hospitals and/or clinics;
(E) Pediatricians;
(F) Family planning clinics; and
(G) Local welfare agencies.

(iv) Submit the public service announcement in paragraph (b) of this section to at least five of the radio and television stations with the largest audiences that broadcast to the community served by the water system.

(3) A community water system shall repeat the tasks contained in paragraphs (c)(2) (i), (ii) and (iii) of this section every 12 months, and the tasks contained in paragraphs (c)(2)(iv) of this section every 6 months for as long as the system exceeds the lead action level.

(4) Within 60 days after it exceeds the lead action level, a non-transient non-community water system shall deliver the public education materials contained in paragraphs (a) (1), (2), and (4) of this section as follows:

(i) Post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system; and

(ii) Distribute informational pamphlets and/or brochures on lead in drinking water to each person served by the non-transient non-community water system.

(5) A non-transient non-community water system shall repeat the tasks contained in paragraph (c)(4) of this section at least once during each calendar year in which the system exceeds the lead action level.

(6) A water system may discontinue delivery of public education materials if the system has met the lead action level during the most recent six-month monitoring period conducted pursuant to § 141.86. Such a system shall recommence public education in accordance with this section if it subsequently exceeds the lead action level during any monitoring period.

(d) *Supplemental monitoring and notification of results.* A water system that fails to meet the lead action level on the basis of tap samples collected in accordance with § 141.86 shall offer to sample the tap water of any customer who requests it. The system is not required to pay for collecting or analyzing the sample, nor is the system required to collect and analyze the sample itself.

[56 FR 26548, June 7, 1991; 57 FR 28788, June 29, 1992]

§ 141.86 Monitoring requirements for lead and copper in tap water.

(a) *Sample site location.* (1) By the applicable date for commencement of monitoring under paragraph (d)(1) of this section, each water system shall complete a materials evaluation of its distribution system in order to identify a pool of targeted sampling sites that meets the requirements of this section, and which is sufficiently large to ensure that the water system can collect the number of lead and copper tap samples required in paragraph (c) of this section. All sites from which first draw samples are collected shall be selected from this pool of targeted sampling sites. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic contaminants.

(2) A water system shall use the information on lead, copper, and galvanized steel that it is required to collect under § 141.42(d) of this part [special monitoring for corrosivity characteristics] when conducting a materials evaluation. When an evaluation of the information collected pursuant to § 141.42(d) is insufficient to locate the requisite number of lead and copper sampling sites that meet the targeting criteria in paragraph (a) of this section, the water system shall review the sources of information listed below in order to identify a sufficient number of sampling sites. In addition, the system shall seek to collect such information where possible in the course of its normal operations (e.g., checking service line materials when reading water meters or performing maintenance activities):

(i) All plumbing codes, permits, and records in the files of the building department(s) which indicate the plumbing materials that are installed within publicly and privately owned structures connected to the distribution system;

(ii) All inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system; and

(iii) All existing water quality information, which includes the results of all prior analyses of the system or individual structures connected to the system, indicating locations that may be particularly susceptible to high lead or copper concentrations.

(3) The sampling sites selected for a community water system's sampling pool (''tier l sampling sites'') shall consist of single family structures that:

(i) Contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(ii) Are served by a lead service line. When multiple-family residences comprise at least 20 percent of the structures served by a water system, the system may include these types of structures in its sampling pool.

(4) Any community water system with insufficient tier 1 sampling sites shall complete its sampling pool with ''tier 2 sampling sites'', consisting of buildings, including multiple-family residences that:

(i) Contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(ii) Are served by a lead service line.

(5) Any community water system with insufficient tier 1 and tier 2 sampling sites shall complete its sampling pool with ''tier 3 sampling sites'', consisting of single family structures that contain copper pipes with lead solder installed before 1983.

(6) The sampling sites selected for a non-transient noncommunity water system (''tier l sampling sites'') shall consist of buildings that:

(i) Contain copper pipes with lead solder installed after 1982 or contain lead pipes; and/or

(ii) Are served by a lead service line.

(7) A non-transient non-community water system with insufficient tier 1 sites that meet the targeting criteria in paragraph (a)(6) of this section shall complete its sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983.

(8) Any water system whose sampling pool does not consist exclusively of tier 1 sites shall demonstrate in a letter submitted to the State under § 141.90(a)(2) why a review of the information listed in paragraph (a)(2) of this section was inadequate to locate a sufficient number of tier l sites. Any community water system which includes tier 3 sampling sites in its sampling pool shall demonstrate in such a letter why it was unable to locate a sufficient number of tier l and tier 2 sampling sites.

(9) Any water system whose distribution system contains lead service lines shall draw 50 percent of the samples it collects during each monitoring period from sites that contain lead pipes, or copper pipes with lead solder, and 50 percent of the samples from sites served by a lead service line. A water system that cannot identify a sufficient number of sampling sites served by a lead service line shall demonstrate in a letter submitted to the State under § 141.90(a)(4) why the system was unable to locate a sufficient number of such sites. Such a water system shall collect first draw samples from all of the sites identified as being served by such lines.

(b) *Sample collection methods.* (1) All tap samples for lead and copper collected in accordance with this subpart, with the exception of lead service line samples collected under § 141.84(c), shall be first draw samples.

(2) Each first draw tap sample for lead and copper shall be one liter in volume and have stood motionless in the plumbing system of each sampling site for at least six hours. First draw samples from residential housing shall be collected from the cold water kitchen tap or bathroom sink tap. First-draw samples from a nonresidential building shall be collected at an interior tap from which water is typically drawn for consumption. First draw samples may be collected by the system or the system may allow residents to collect first draw samples after instructing the residents of the sampling procedures specified in this paragraph. To avoid problems of residents handling nitric acid, acidification of first draw samples may be done up to 14 days after the sample is collected. If the sample is not acidified immediately after collection, then the sample must stand in the original container for at least 28 hours after acidification. If a system allows residents to perform sampling, the system may not challenge, based on alleged errors in sample collection, the accuracy of sampling results.

(3) Each service line sample shall be one liter in volume and have stood motionless in the lead service line for at least six hours. Lead service line samples shall be collected in one of the following three ways:

(i) At the tap after flushing the volume of water between the tap and the lead service line. The volume of water shall be calculated based on the interior diameter and length of the pipe between the tap and the lead service line;

(ii) Tapping directly into the lead service line; or

(iii) If the sampling site is a building constructed as a single-family residence, allowing the water to run until there is a significant change in temperature which would be indicative of water that has been standing in the lead service line.

(4) A water system shall collect each first draw tap sample from the same sampling site from which it collected a previous sample. If, for any reason, the water system cannot gain entry to a sampling site in order to collect a follow-up tap sample, the system may collect the follow-up tap sample from another sampling site in its sampling pool as long as the new site meets the same targeting criteria, and is within reasonable proximity of the original site.

(c) *Number of samples.* Water systems shall collect at least one sample during each monitoring period specified in paragraph (d) of this section from the number of sites listed in the first column below (''standard monitoring''). A system conducting reduced monitoring under paragraph (d)(4) of this section may collect one sample from the number of sites specified in the second column below during each monitoring period specified in paragraph (d)(4) of this section.

System size (No. people served)	No. of sites (standard monitoring)	No. of sites (reduced monitoring)
>100,000	100	50
10,001–100,000	60	30
3,301 to 10,000	40	20
501 to 3,300	20	10
101 to 500	10	5

System size (No. people served)	No. of sites (standard monitoring)	No. of sites (reduced monitoring)
≤100	5	5

(d) *Timing of monitoring*—(1) *Initial tap sampling.*

The first six-month monitoring period for small, medium-size and large systems shall begin on the following dates:

System size (No. people served)	First six-month monitoring period begins on
>50,000	January 1, 1992.
3,301 to 50,000	July 1, 1992.
≤3,300	July 1, 1993.

(i) All large systems shall monitor during two consecutive six-month periods.

(ii) All small and medium-size systems shall monitor during each six-month monitoring period until:

(A) The system exceeds the lead or copper action level and is therefore required to implement the corrosion control treatment requirements under § 141.81, in which case the system shall continue monitoring in accordance with paragraph (d)(2) of this section, or

(B) The system meets the lead and copper action levels during two consecutive six-month monitoring periods, in which case the system may reduce monitoring in accordance with paragraph (d)(4) of this section.

(2) *Monitoring after installation of corrosion control and source water treatment.* (i) Any large system which installs optimal corrosion control treatment pursuant to § 141.81(d)(4) shall monitor during two consecutive six-month monitoring periods by the date specified in § 141.81(d)(5).

(ii) Any small or medium-size system which installs optimal corrosion control treatment pursuant to § 141.81(e)(5) shall monitor during two consecutive six-month monitoring periods by the date specified in § 141.81(e)(6).

(iii) Any system which installs source water treatment pursuant to § 141.83(a)(3) shall monitor during two consecutive six-month monitoring periods by the date specified in § 141.83(a)(4).

(3) *Monitoring after State specifies water quality parameter values for optimal corrosion control.* After the State specifies the values for water quality control parameters under § 141.82(f), the system shall monitor during each subsequent six-month monitoring period, with the first monitoring period to begin on the date the State specifies the optimal values under § 141.82(f).

(4) *Reduced monitoring.* (i) A small or medium-size water system that meets the lead and copper action levels during each of two consecutive six-month monitoring periods may reduce the number of samples in accordance with paragraph (c) of this section, and reduce the frequency of sampling to once per year.

(ii) Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) during each of two consecutive six-month monitoring periods may request that the State allow the system to reduce the frequency of monitoring to once per year and to reduce the number of lead and copper samples in accordance with paragraph (c) of this section. The State shall review the information submitted by the water system and shall make its decision in writing, setting forth the basis for its determination. The State shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(iii) A small or medium-size water system that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years. Any water system that maintains the range of values for the water quality control parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) during three consecutive years of monitoring may request that the State allow the system to reduce the frequency of monitoring from annually to once every three years. The State shall review the information submitted by the water system and shall make its decision in writing, setting forth the basis for its determination. The State shall review, and where appropriate, revise its determination when the system submits new monitoring or treatment data, or when other data relevant to the number and frequency of tap sampling becomes available.

(iv) A water system that reduces the number and frequency of sampling shall collect these samples from sites included in the pool of targeted sampling sites identified in paragraph (a) of this section. Systems sampling annually or less frequently shall conduct the lead and copper tap sampling during the months of June, July, August or September.

(v) A small- or medium-size water system subject to reduced monitoring that exceeds the lead or copper action level shall resume sampling in accordance with paragraph (d)(3) of this section and collect the number of samples specified for standard monitoring under paragraph (d) of this section. Such system shall also conduct water quality parameter monitoring in accordance with § 141.87 (b), (c) or (d) (as appropriate) during the monitoring period in which it exceeded the action level.

Any water system subject to the reduced monitoring frequency that fails to operate within the range of values for the water quality parameters specified by the State under § 141.82(f) shall resume tap water sampling in accordance with paragraph (d)(3) of this section and collect the number of samples specified for standard monitoring under paragraph (c) of this section.

(e) *Additional monitoring by systems.* The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the State in making any determinations (i.e., calculating the 90th percentile lead or copper level) under this subpart.

[56 FR 26548, June 7, 1991; 56 FR 32113, July 15, 1991; 57 FR 28788, June 29, 1992]

§ 141.87 Monitoring requirements for water quality parameters.

All large water systems, and all small- and medium-size systems that exceed the lead or copper action level shall monitor water quality parameters in addition to lead and copper in accordance with this section. The requirements of this section are summarized in the table at the end of this section.

(a) *General requirements*—(1) *Sample collection methods.* (i) Tap samples shall be representative of water quality throughout the distribution system taking into account the number of persons served, the different sources of water, the different treatment methods employed by the system, and seasonal variability. Tap sampling under this section is not required to be conducted at taps targeted for lead and copper sampling under § 141.86(a). [Note: Systems may find it convenient to conduct tap sampling for water quality parameters at sites used for coliform sampling under 40 CFR 141.21.]

(ii) Samples collected at the entry point(s) to the distribution system shall be from locations representative of each source after treatment. If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e., when water is representative of all sources being used).

(2) *Number of samples.* (i) Systems shall collect two tap samples for applicable water quality parameters during each monitoring period specified under paragraphs (b) through (e) of this section from the following number of sites.

System size (No. people served)	No. of sites for water quality parameters
>100,000	25
10,001–100,000	10
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
≤100	1

(ii) Systems shall collect two samples for each applicable water quality parameter at each entry point to the distribution system during each monitoring period specified in paragraph (b) of this section. During each monitoring period specified in paragraphs (c)–(e) of this section, systems shall collect one sample for each applicable water quality parameter at each entry point to the distribution system.

(b) *Initial sampling* All large water systems shall measure the applicable water quality parameters as specified below at taps and at each entry point to the distribution system during each six-month monitoring period specified in § 141.86(d)(1). All small and medium-size systems shall measure the applicable water quality parameters at the locations specified below during each six-month monitoring period specified in § 141.86(d)(1) during which the system exceeds the lead or copper action level.

(1) At taps:

(i) pH;

(ii) Alkalinity;

(iii) Orthophosphate, when an inhibitor containing a phosphate compound is used;

(iv) Silica, when an inhibitor containing a silicate compound is used;

(v) Calcium;

(vi) Conductivity; and

(vii) Water temperature.

(2) At each entry point to the distribution system: all of the applicable parameters listed in paragraph (b)(1) of this section.

(c) *Monitoring after installation of corrosion control.* Any large system which installs optimal corrosion control treatment pursuant to § 141.81(d)(4) shall measure the water quality parameters at the locations and frequencies specified below during each six-month monitoring period specified in § 141.86(d)(2)(i). Any small or medium-size system which installs optimal corrosion control treatment shall conduct such monitoring during each six-month monitoring period specified in § 141.86(d)(2)(ii) in which the system exceeds the lead or copper action level.

(1) At taps, two samples for:

(i) pH;

(ii) Alkalinity;

(iii) Orthophosphate, when an inhibitor containing a phosphate compound is used;

(iv) Silica, when an inhibitor containing a silicate compound is used;

(v) Calcium, when calcium carbonate stabilization is used as part of corrosion control.

(2) At each entry point to the distribution system, one sample every two weeks (bi-weekly) for:

(i) pH;

(ii) When alkalinity is adjusted as part of optimal corrosion control, a reading of the dosage rate of the chemical used to adjust alkalinity, and the alkalinity concentration; and

(iii) When a corrosion inhibitor is used as part of optimal corrosion control, a reading of the dosage rate of the inhibitor used, and the concentration of orthophosphate or silica (whichever is applicable).

(d) *Monitoring after State specifies water quality parameter values for optimal corrosion control.* After the State specifies the values for applicable water quality control parameters reflecting optimal corrosion control treatment under § 141.82(f), all large systems shall measure the applicable water quality parameters in accordance with paragraph (c) of this section during each monitoring period specified in § 141.86(d)(3). Any small or medium-size system shall conduct such monitoring during each monitoring period specified in § 141.86(d)(3) in which the system exceeds the lead or copper action level. The system may take a confirmation sample for any water quality parameter value no later than 3 days after the first sample. If a confirmation sample is taken, the result must be averaged with the first sampling result and the average must be used for any compliance determinations under § 141.82(g). States have discretion to delete results of obvious sampling errors from this calculation.

(e) *Reduced monitoring.* (1) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment during each of two consecutive six-month monitoring periods under paragraph (d) of this section shall continue monitoring at the entry point(s) to the distribution system as specified in paragraph (c)(2) of this section. Such system may collect two tap samples for applicable water quality parameters from the following reduced number of sites during each six-month monitoring period.

System size (No. of people served)	Reduced No. of sites for water quality parameters
>100,000	10
10,001 to 100,000	7
3,301 to 10,000	3
501 to 3,300	2
101 to 500	1
≤100	1

(2) Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) during three consecutive years of monitoring may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in this paragraph (e)(1) of this section from every six months to annually. Any water system that maintains the range of values for the water quality parameters reflecting optimal corrosion control treatment specified by the State under § 141.82(f) during three consecutive years of annual monitoring under this paragraph may reduce the frequency with which it collects the number of tap samples for applicable water quality parameters specified in paragraph (e)(1) from annually to every three years.

(3) A water system that conducts sampling annually shall collect these samples evenly throughout the year so as to reflect seasonal variability.

(4) Any water system subject to the reduced monitoring frequency that fails to operate within the range of values for the water quality parameters specified by the State in § 141.82(f) shall resume tap water sampling in accordance with the number and frequency requirements in paragraph (d) of this section.

(f) *Additional monitoring by systems.* The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the State in making any determinations (i.e., determining concentrations of water quality parameters) under this section or § 141.82.

SUMMARY OF MONITORING REQUIREMENTS FOR WATER QUALITY PARAMETERS [1]

Monitoring Period	Parameters [2]	Location	Frequency
Initial Monitoring	pH, alkalinity, orthophosphate or silica [3], calcium, conductivity, temperature.	Taps and at entry point(s) to distribution system.	Every 6 months
After Installation of Corrosion Control	pH, alkalinity, orthophosphate or silica [3], calcium [4].	Taps	Every 6 months

SUMMARY OF MONITORING REQUIREMENTS FOR WATER QUALITY PARAMETERS [1]—Continued

Monitoring Period	Parameters [2]	Location	Frequency
	pH, alkalinity dosage rate and concentration (if alkalinity adjusted as part of corrosion control), inhibitor dosage rate and inhibitor residual [5].	Entry point(s) to distribution system.	Biweekly
After State Specifies Parameter Values For Optimal Corrosion Control.	pH, alkalinity, orthophosphate or silica [3], calcium [4].	Taps	Every 6 months
	pH, alkalinity dosage rate and concentration (if alkalinity adjusted as part of corrosion control), inhibitor dosage rate and inhibitor residual [5].	Entry point(s) to distribution system.	Biweekly
Reduced Monitoring	pH, alkalinity, orthophosphate or silica [3], calcium [4].	Taps	Every 6 months at a reduced number of sites
	pH, alkalinity dosage rate and concentration (if alkalinity adjusted as part of corrosion control), inhibitor dosage rate and inhibitor residual [5].	Entry point(s) to distribution system.	Biweekly

[1] Table is for illustrative purposes; consult the text of this section for precise regulatory requirements.
[2] Small and medium-size systems have to monitor for water quality parameters only during monitoring periods in which the system exceeds the lead or copper action level.
[3] Orthophosphate must be measured only when an inhibitor containing a phosphate compound is used. Silica must be measured only when an inhibitor containing silicate compound is used.
[4] Calcium must be measured only when calcium carbonate stabilization is used as part of corrosion control.
[5] Inhibitor dosage rates and inhibitor residual concentrations (orthophosphate or silica) must be measured only when an inhibitor is used.

[56 FR 26548, June 7, 1991; 57 FR 28788, June 29, 1992, as amended at 59 FR 33862, June 30, 1994]

§ 141.88 Monitoring requirements for lead and copper in source water.

(a) *Sample location, collection methods, and number of samples.* (1) A water system that fails to meet the lead or copper action level on the basis of tap samples collected in accordance with § 141.86 shall collect lead and copper source water samples in accordance with the requirements regarding sample location, number of samples, and collection methods specified in § 141.23(a) (1)–(4) (inorganic chemical sampling). (Note: The timing of sampling for lead and copper shall be in accordance with paragraphs (b) and (c) of this section, and not dates specified in § 141.23(a) (1) and (2)).

(2) Where the results of sampling indicate an exceedance of maximum permissible source water levels established under § 141.83(b)(4), the State may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point. If a State-required confirmation sample is taken for lead or copper, then the results of the initial and confirmation sample shall be averaged in determining compliance with the State-specified maximum permissible levels. Any sample value below the detection limit shall be considered to be zero. Any value above the detection limit but below the PQL shall either be considered as the measured value or be considered one-half the PQL.

(b) *Monitoring frequency after system exceeds tap water action level.* Any system which exceeds the lead or copper action level at the tap shall collect one source water sample from each entry point to the distribution system within six months after the exceedance.

(c) *Monitoring frequency after installation of source water treatment.* Any system which installs source water treatment pursuant to § 141.83(a)(3) shall collect an additional source water sample from each entry point to the distribution system during two consecutive six-month monitoring periods by the deadline specified in § 141.83(a)(4).

(d) *Monitoring frequency after State specifies maximum permissible source water levels or determines that source water treatment is not needed.* (1) A system shall monitor at the frequency specified below in cases where the State specifies maximum permissible source water levels under § 141.83(b)(4) or determines that the system is not required to install source water treatment under § 141.83(b)(2).

(i) A water system using only groundwater shall collect samples once during the three-year compliance period (as that term is defined in § 141.2) in effect when the applicable State determination under paragraph (d)(1) of this section is made. Such systems shall collect samples once during each subsequent compliance period.

(ii) A water system using surface water (or a combination of surface and groundwater) shall collect samples once during each year, the first annual monitoring period to begin on the date on which the applicable State determination is made under paragraph (d)(1) of this section.

(2) A system is not required to conduct source water sampling for lead and/or copper if the system meets the action level for the specific contaminant in tap water samples during the entire source water sampling period applicable to the system under paragraph (d)(1) (i) or (ii) of this section.

(e) *Reduced monitoring frequency.* (1) A water system using only groundwater which demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and/or copper concentrations specified by the State in § 141.83(b)(4) during at least three consecutive compliance periods under paragraph (d)(1) of this section may reduce the monitoring frequency for lead and/or copper to once during each nine-year compliance cycle (as that term is defined in § 141.2).

(2) A water system using surface water (or a combination of surface and ground waters) which demonstrates that finished drinking water entering the distribution system has been maintained below the maximum permissible lead and copper concentrations specified by the State in § 141.83(b)(4) for at least three consecutive years may reduce the monitoring frequency in paragraph (d)(1) of this section to once during each nine-year compliance cycle (as that term is defined in § 141.2).

(3) A water system that uses a new source of water is not eligible for reduced monitoring for lead and/or copper until concentrations in samples collected from the new source during three consecutive monitoring periods are below the maximum permissible lead and copper concentrations specified by the State in § 141.83(a)(5).

[56 FR 26548, June 7, 1991; 57 FR 28788 and 28789, June 29, 1992]

§ 141.89 Analytical methods.

(a) Analyses for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature shall be conducted with the methods in § 141.23(k)(1).

(1) Analyses under this section shall only be conducted by laboratories that have been certified by EPA or the State. To obtain certification to conduct analyses for lead and copper, laboratories must:

(i) Analyze performance evaluation samples which include lead and copper provided by EPA Environmental Monitoring and Support Laboratory or equivalent samples provided by the State; and

(ii) Achieve quantitative acceptance limits as follows:

(A) For lead: ±30 percent of the actual amount in the Performance Evaluation sample when the actual amount is greater than or equal to 0.005 mg/L. The Practical Quantitation Level, or PQL for lead is 0.005 mg/L.

(B) For Copper: ±10 percent of the actual amount in the Performance Evaluation sample when the actual amount is greater than or equal to 0.050 mg/L. The Practical Quantitation Level, or PQL for copper is 0.050 mg/L;

(iii) Achieve method detection limits according to the procedures in appendix B of part 136 of this title as follows:

(A) Lead: 0.001 mg/L (only if source water compositing is done under § 141.23(a)(4)); and

(B) Copper: 0.001 mg/L or 0.020 mg/L when atomic absorption direct aspiration is used (only if source water compositing is done under § 141.23(a)(4)).

(iv) Be currently certified by EPA or the State to perform analyses to the specifications described in paragraph (a)(2) of this section.

(2) States have the authority to allow the use of previously collected monitoring data for purposes of monitoring, if the data were collected and analyzed in accordance with the requirements of this subpart.

(3) All lead and copper levels measured between the PQL and MDL must be either reported as measured or they can be reported as one-half the PQL specified for lead and copper in paragraph (a)(1)(ii) of this section. All levels below the lead and copper MDLs must be reported as zero.

(4) All copper levels measured between the PQL and the MDL must be either reported as measured or they can be reported as one-half the PQL (0.025 mg/L). All levels below the copper MDL must be reported as zero.

(b) [Reserved]

[56 FR 26548, June 7, 1991, as amended at 57 FR 28789, June 29, 1992; 57 FR 31847, July 17, 1992; 59 FR 33863, June 30, 1994; 59 FR 62470, Dec. 5, 1994]

§ 141.90 Reporting requirements.

All water systems shall report all of the following information to the State in accordance with this section.

(a) *Reporting requirements for tap water monitoring for lead and copper and for water quality parameter monitoring.* (1) A water system shall report the information specified below for all tap water samples within the first 10 days following the end of each applicable monitoring period specified in §§ 141.86 and 141.87 and 141.88 (i.e., every six-months, annually, or every 3 years).

(i) The results of all tap samples for lead and copper including the location of each site and the criteria under § 141.86(a) (3), (4), (5), (6), and/or (7) under which the site was selected for the system's sampling pool;

(ii) A certification that each first draw sample collected by the water system is one-liter in volume and, to the best of their knowledge, has stood motionless in the service line, or in the interior plumbing of a sampling site, for at least six hours;

(iii) Where residents collected samples, a certification that each tap sample collected by the residents was taken after the water system informed them of proper sampling procedures specified in § 141.86(b)(2);

(iv) The 90th percentile lead and copper concentrations measured from among all lead and copper tap water samples collected during each monitoring period (calculated in accordance with § 141.80(c)(3));

(v) With the exception of initial tap sampling conducted pursuant to § 141.86(d)(1), the system shall designate any site which was not sampled during previous monitoring periods, and include an explanation of why sampling sites have changed;

(vi) The results of all tap samples for pH, and where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica collected under § 141.87 (b)–(e);

(vii) The results of all samples collected at the entry point(s) to the distribution system for applicable water quality parameters under § 141.87 (b)–(e).

(2) By the applicable date in § 141.86(d)(1) for commencement of monitoring, each community water system which does not complete its targeted sampling pool with tier 1 sampling sites meeting the criteria in § 141.86(a)(3) shall send a letter to the State justifying its selection of tier 2 and/or tier 3 sampling sites under § 141.86 (a)(4) and/or (a)(5).

(3) By the applicable date in § 141.86(d)(1) for commencement of monitoring, each non-transient, non-community water system which does not complete its sampling pool with tier 1 sampling sites meeting the criteria in § 141.86(a)(6) shall send a letter to the State justifying its selection of sampling sites under § 141.86(a)(7).

(4) By the applicable date in § 141.86(d)(1) for commencement of monitoring, each water system with lead service lines that is not able to locate the number of sites served by such lines required under § 141.86(a)(9) shall send a letter to the State demonstrating why it was unable to locate a sufficient number of such sites based upon the information listed in § 141.86(a)(2).

(5) Each water system that requests that the State reduce the number and frequency of sampling shall provide the information required under § 141.86(d)(4).

(b) *Source water monitoring reporting requirements.* (1) A water system shall report the sampling results for all source water samples collected in accordance with § 141.88 within the first 10 days following the end of each source water monitoring period (i.e., annually, per compliance period, per compliance cycle) specified in § 141.88.

(2) With the exception of the first round of source water sampling conducted pursuant to § 141.88(b), the system shall specify any site which was not sampled during previous monitoring periods, and include an explanation of why the sampling point has changed.

(c) *Corrosion control treatment reporting requirements.* By the applicable dates under § 141.81, systems shall report the following information:

(1) For systems demonstrating that they have already optimized corrosion control, information required in § 141.81(b) (2) or (3).

(2) For systems required to optimize corrosion control, their recommendation regarding optimal corrosion control treatment under § 141.82(a).

(3) For systems required to evaluate the effectiveness of corrosion control treatments under §141.82(c), the information required by that paragraph.

(4) For systems required to install optimal corrosion control designated by the State under § 141.82(d), a letter certifying that the system has completed installing that treatment.

(d) *Source water treatment reporting requirements.* By the applicable dates in § 141.83, systems shall provide the following information to the State:

(1) If required under § 141.83(b)(1), their recommendation regarding source water treatment;

(2) For systems required to install source water treatment under § 141.83(b)(2), a letter certifying that the system has completed installing the treatment designated by the State within 24 months after the State designated the treatment.

(e) *Lead service line replacement reporting requirements.* Systems shall report the following information to the State to demonstrate compliance with the requirements of § 141.84:

(1) Within 12 months after a system exceeds the lead action level in sampling referred to in § 141.84(a), the system shall demonstrate in writing to the State that it has conducted a material evaluation, including the evaluation in § 141.86(a), to identify the initial number of lead service lines in its distribution system, and shall provide the State with the system's schedule for replacing annually at least 7 percent of the initial number of lead service lines in its distribution system.

(2) Within 12 months after a system exceeds the lead action level in sampling referred to in § 141.84(a), and every 12 months thereafter, the system shall demonstrate to the State in writing that the system has either:

(i) Replaced in the previous 12 months at least 7 percent of the initial lead service lines (or a greater number of lines specified by the State under § 141.84(f)) in its distribution system, or

(ii) Conducted sampling which demonstrates that the lead concentration in all service line samples from an individual line(s), taken pursuant to § 141.86(b)(3), is less than or equal to 0.015 mg/L. In such cases, the total number of lines replaced and/or which meet the criteria in § 141.84(c) shall equal at least 7 percent of the initial number of lead lines identified under paragraph (a) of this section (or the percentage specified by the State under § 141.84(f)).

(3) The annual letter submitted to the State under paragraph (e)(2) of this section shall contain the following information:

(i) The number of lead service lines scheduled to be replaced during the previous year of the system's replacement schedule;

(ii) The number and location of each lead service line replaced during the previous year of the system's replacement schedule;

(iii) If measured, the water lead concentration and location of each lead service line sampled, the sampling method, and the date of sampling.

(4) As soon as practicable, but in no case later than three months after a system exceeds the lead action level in sampling referred to in § 141.84(a), any system seeking to rebut the presumption that it has control over the entire lead service line pursuant to § 141.84(d) shall submit a letter to the State describing the legal authority (e.g., state statutes, municipal ordinances, public service contracts or other applicable legal authority) which limits the system's control over the service lines and the extent of the system's control.

(f) *Public education program reporting requirements.* By December 31st of each year, any water system that is subject to the public education requirements in § 141.85 shall submit a letter to the State demonstrating that the system has delivered the public education materials that meet the content requirements in § 141.85 (a) and (b) and the delivery requirements in § 141.85(c). This information shall include a list of all the newspapers, radio stations, television stations, facilities and organizations to which the system delivered public education materials during the previous year. The water system shall submit the letter required by this paragraph annually for as long as it exceeds the lead action level.

(g) *Reporting of additional monitoring data.* Any system which collects sampling data in addition to that required by this subpart shall report the results to the State within the first ten days following the end of the applicable monitoring period under §§ 141.86, 141.87 and 141.88 during which the samples are collected.

[56 FR 26548, June 7, 1991; 57 FR 28789, June 29, 1992, as amended at 59 FR 33864, June 30, 1994]

§ 141.91 Recordkeeping requirements.

Any system subject to the requirements of this subpart shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, State determinations, and any other information required by §§ 141.81 through 141.88. Each water system shall retain the records required by this section for no fewer than 12 years.

Subpart J—Use of Non-Centralized Treatment Devices

SOURCE: 52 FR 25716, July 8, 1987, unless otherwise noted.

§ 141.100 Criteria and procedures for public water systems using point-of-entry devices.

(a) Public water systems may use point-of-entry devices to comply with maximum contaminant levels only if they meet the requirements of this section.

(b) It is the responsibility of the public water system to operate and maintain the point-of-entry treatment system.

(c) The public water system must develop and obtain State approval for a monitoring plan before point-of-entry devices are installed for compliance. Under the plan approved by the State, point-of-entry devices must provide health protection equivalent to central water treatment. ''Equivalent'' means that the water would meet all national primary drinking water regulations and would be of acceptable quality similar to water distributed by a well-operated central treatment plant. In addition to the VOCs, monitoring must include physical measurements and observations such as total flow treated and mechanical condition of the treatment equipment.

(d) Effective technology must be properly applied under a plan approved by the State and the microbiological safety of the water must be maintained.

(1) The State must require adequate certification of performance, field testing, and, if not included in the certification process, a rigorous engineering design review of the point-of-entry devices.

(2) The design and application of the point-of-entry devices must consider the tendency for increase in heterotrophic bacteria concentrations in

water treated with activated carbon. It may be necessary to use frequent backwashing, post-contactor disinfection, and Heterotrophic Plate Count monitoring to ensure that the microbiological safety of the water is not compromised.

(e) *All consumers shall be protected.* Every building connected to the system must have a point-of-entry device installed, maintained, and adequately monitored. The State must be assured that every building is subject to treatment and monitoring, and that the rights and responsibilities of the public water system customer convey with title upon sale of property.

[52 FR 25716, July 8, 1987; 53 FR 25111, July 1, 1988]

§ 141.101 Use of other non-centralized treatment devices.

Public water systems shall not use bottled water or point-of-use devices to achieve compliance with an MCL. Bottled water or point-of-use devices may be used on a temporary basis to avoid an unreasonable risk to health.

Subpart K—Treatment Techniques

SOURCE: 56 FR 3594, Jan. 30, 1991, unless otherwise noted.

§ 141.110 General requirements.

The requirements of subpart K of this part constitute national primary drinking water regulations. These regulations establish treatment techniques in lieu of maximum contaminant levels for specified contaminants.

§ 141.111 Treatment techniques for acrylamide and epichlorohydrin.

Each public water system must certify annually in writing to the State (using third party or manufacturer's certification) that when acrylamide and epichlorohydrin are used in drinking water systems, the combination (or product) of dose and monomer level does not exceed the levels specified as follows:

Acrylamide=0.05% dosed at 1 ppm (or equivalent)
Epichlorohydrin=0.01% dosed at 20 ppm (or equivalent)

Certifications can rely on manufacturers or third parties, as approved by the State.

Subpart M—Information Collection Requriements (ICR) for Public Water Systems

SOURCE: 61 FR 24368, May 14, 1996, unless otherwise noted.

EFFECTIVE DATE NOTE: At 61 FR 24368, May 14, 1996, subpart M consisting of §§ 141.140 through 141.144 were added, effective June 18, 1996 and will expire on Dec. 31, 2000.

§ 141.140 Definitions specific to subpart M.

The following definitions apply only to the requirements of subpart M of this part and are arranged alphabetically.

Distribution system means the components of a PWS that are under the control of that PWS located after the point where the finished water sample is taken and that provide distribution, storage, and/or booster disinfection of finished water.

Distribution System Equivalent (DSE) sample means a sample collected from the distribution system for the purpose of comparing it with the ''simulated distribution system (SDS) sample''. The DSE sample shall be selected using the following criteria:

(1) No additional disinfectant added between the treatment plant and the site where the DSE sample is collected;

(2) Approximate detention time of water is available; and

(3) There is no blending with finished water from other treatment plants.

Entry point to distribution system means a location following one or more finished water sample points but prior to the beginning of the distribution system.

Finished water means water that does not undergo further treatment by a treatment plant other than maintenance of a disinfection residual.

Haloacetic acids (five) (HAA5) means the sum of the concentration in micrograms per liter of the haloacetic acids mono-, di-, and trichloroacetic acid; mono-, and di-, bromoacetic acid, rounded to two significant figures.

Haloacetic acids (six) (HAA6) means the concentration in micrograms per liter of the haloacetic acids mono-, di-, and trichloroacetic acid; mono-, and di- bromoacetic acid; and bromochloroacetic acid, rounded to two significant figures.

Haloacetonitriles (HAN) means the concentration in micrograms per liter of the haloacetonitriles dichloro-, trichloro-, bromochloro-, and dibromoacetonitrile, rounded to two significant figures.

Haloketones (HK) means the concentration in micrograms per liter of the haloketones 1,1-dichloropropanone and 1,1,1- trichloropropanone, rounded to two significant figures.

Intake means the physical location at which the PWS takes water from a water resource. Thereafter, the water is under the control of that PWS.

Notice of applicability means a notice sent by EPA to a PWS that indicates that EPA believes that the PWS must comply with some or all requirements of subpart M. The PWS is required to

reply to this notice by providing information specified in the notice (e.g., retail and wholesale population served, types of water sources used, volume of water treated) by the date provided in subpart M.

Process train means some number of unit processes connected in series starting from the treatment plant influent and ending with finished water. A particular unit process may be in more than one process train.

Purchased finished water means finished water purchased by one PWS from another PWS (the wholesaler). Purchased finished water includes both purchased finished water that is redisinfected and purchased finished water that is not.

Simulated distribution system (SDS) sample means a finished water sample incubated at the temperature and detention time of a ''DSE sample'' collected from the distribution system. Analytical results of the SDS sample will be compared with the DSE sample to determine how well the SDS sample predicts disinfection byproduct formation in the actual distribution system sample.

Total finished water means the flow (volume per unit of time) of finished water obtained from all treatment plants operated by a PWS and includes purchased finished water. This flow includes water entering the distribution system and water sold to another PWS.

Treatment plant means the PWS components that have as their exclusive source of water a shared treatment plant influent and that deliver finished water to a common point which is located prior to the point at which finished water enters a distribution system or is diverted for sale to another PWS. For these components of the PWS to be considered part of one treatment plant, the PWS must be able to collect one representative treatment plant influent sample, either at a single sample point or by a composite of multiple influent samples, and there must exist a single sampling point where a representative sample of finished water can be collected. For the purpose of subpart M, a treatment plant is considered to include any site where a disinfectant or oxidant is added to water prior to the water entering the distribution system. Facilities in which ground water is disinfected prior to entering a distribution system, and facilities in which purchased finished water has a disinfectant added prior to entering a distribution system, are considered treatment plants.

Treatment plant influent means water that represents the water quality challenge to a particular plant.

Treatment system means all treatment plants operated by one PWS.

Trihalomethanes (four) (THM4) means the sum of the concentration in micrograms per liter of the trihalomethanes chloroform, bromodichloromethane, dibromochloromethane, and bromoform, rounded to two significant figures.

Unit process means a component of a treatment process train which serves any treatment purpose such as mixing or sedimentation for which design and operating information is requested in § 141.142(a), Table 6c, of this subpart.

Water resource means a body of water before it passes through an intake structure. Examples of a water resource include a river, lake, or aquifer. For a PWS which purchases finished water, the water resource is the wholesale PWS which supplies the purchased finished water. Generally water resources are not under the direct control of a PWS.

Watershed control practice means protection of a water resource from microbiological contamination prior to the water entering an intake. These protective measures might include, but are not limited to, a watershed control program approved under § 141.71(b)(2) of this part, or land use restrictions.

§ 141.141 General requirements, applicability, and schedule for information collection.

(a) *General requirements.* (1) The purpose of subpart M is to collect specified information from certain PWSs for a limited period of time. Accordingly, subpart M is of limited duration and is effective for a defined period (see §§ 141.6(i) and 141.141(e) of this part). Since subpart M does not establish continuing obligations, a PWS that has completed all of its requirements at the required duration and frequency may discontinue its information collection efforts even if subpart M is still in effect.

(2) For the purpose of this subpart, a PWS shall make applicability determinations based on completion of data gathering, calculations, and treatment plant categorization specified in appendix A to paragraph (a) of this section.

(3) For the purpose of this subpart, a PWS that uses multiple wells drawing from the same aquifer and has no central treatment plant is considered to have one treatment plant for those wells and shall conduct required monitoring under this specification. A PWS with multiple wells in one or more aquifers that are treated in the same treatment plant is considered to have one treatment plant for those wells and shall conduct required monitoring under this specification.

(i) To the extent possible, the PWS should sample at the well with the largest flow and at the same well each month for the duration of required monitoring.

(ii) A PWS must report information from § 141.142(a) tables 6a through 6e of this subpart for each well that the PWS sampled.

(4) For the purpose of this subpart, a PWS shall treat ground water sources that have been classified by the State as under the direct influence of surface water by May 14, 1996, as surface water sources. A PWS shall treat ground water sources that either have not been classified by the State (as under the direct influence of surface water or not) or have been classified by the State as ground water, by May 14, 1996, as ground water sources.

APPENDIX A TO 40 CFR 141.141(a)

Purpose. The purpose of this appendix is to enable the PWS to assign proportional amounts of its retail and wholesale population served to specific treatment plants. The PWS shall then use these values to determine which specific requirements in subpart M that it must comply with and on what schedule.

Period of applicability determination. For the purpose of this appendix, a PWS shall make applicability determinations based on population calculated as annual averages based on PWS records of treatment system or treatment plant operation during calendar year 1995.

—If a natural disaster made a treatment system or treatment plant inoperable for one or more calendar months in 1995, the applicability determination will be based on those months in 1995 during which the treatment system or treatment plant was in operation, plus the calendar months from 1994 that are representative of those months of 1995 during which the treatment system or treatment plant was inoperable. The total time period shall be 12 months.

—If the treatment system or treatment plant was not in operation during one or more calendar months during 1995 due to a seasonal reduction in demand for finished water, the months that the treatment system or treatment plant was not in operation are to be included in the 12 months of applicability determination with zero flow indicating no operation.

—If the treatment system or treatment plant was not in operation for one or more calendar months in 1995 due to construction and/or maintenance, the applicability determination will be based on those months in 1995 during which the treatment system or treatment plant was in operation, plus the calendar months from 1994 that correspond to those months of 1995 during which the treatment system or treatment plant was inoperable. The total time period shall be 12 months.

—Treatment systems or treatment plants whose total operational lifetime is fewer than 12 calendar months as of December 1995 are not required to comply with subpart M requirements.

—PWSs that purchase all their water from one or more other PWSs and do not further treat any of their water are not required to comply with subpart M requirements.

Applicability determination. To determine applicability, the PWS is required to collect certain operational data and perform specified mathematical operations. All operational data and calculated values will be expressed as either ''F'' (for flow) or ''P'' (for population), with a one or two character subscript. Table A–1 contains a more detailed explanation.

TABLE A–1.—: APPENDIX A SUBSCRIPT IDENTIFICATION PROTOCOL

General.

1. ''F'' indicates a flow value. The PWS must use million gallons per day (MGD) to express the flow throughout its calculations.
2. ''P'' indicates a population value, expressed as a number of people.

Subscripts.

1. ''P_R'' is retail population, ''F_W'' is wholesale flow, and ''F_N'' is purchased finished water that is not further treated.
2. Each ''F'' value (in Table A–2) or ''P'' value (in Table A–4) will have a two character designator.
   a. The first character in the subscript indicates the source type. Possible entries are ''S'' (for surface water or ground water under the direct influence of surface water), ''G'' (for ground water not under the direct influence of surface water), ''P'' (for finished water purchased from another PWS and further treated at the entrance to the distribution system, such as by redisinfection), and ''C'' (for combined, or the sum of all water treated by the PWS, including purchased water that is further treated at the entrance to the distribution system).
   b. The second character in the subscript indicates the specific identification of the treatment plant. This will be a number (e.g., 1, 2, 3, * * *, with # being a non-specific designator) and ''T'' (for a Total).

Data from operational records. The PWS shall determine the following information based on operational records.

—P_R=Retail population served by the PWS
=____ (number of people)

—F_N=treated water bought from one or more other PWSs and not further treated at the entry point to the distribution system
=____ (MGD)

—F_W= finished water sold to one or more other PWSs, regardless of whether buying PWSs further treat the finished water
=____ (MGD)

—Flows from specific water resources to specific treatment plants. For each treatment plant operated by the PWS, the PWS must determine the flow from each water resource that provides water to the treatment plant. In the following table, the PWS must enter flow from each type of water resource into the appropriate

block, using the subscript identification protocol in table A–1.

—$F_{S\#}$=surface water treated at treatment plant ''#''
=____ (MGD) (enter into Table A–2)

—$F_{G\#}$=ground water treated at treatment plant ''#''
=____ (MGD) (enter into Table A–2)

—$F_{P\#}$=treated water bought from one or more other PWSs and further treated at treatment plant ''#'' prior to the entry point to the distribution system
=____ (MGD) (enter into Table A–2)

TABLE A–2.—TREATED FLOW VALUES

Water resources (by type source)	Sources of treated water (FLOW)			
	Treatment plants			
	#1	#2	#3	#4
Surface water (S)	(F_{S1})	(F_{S2})	(F_{S3})	(F_{S4})
Ground water (G)	(F_{G1})	(F_{G2})	(F_{G3})	(F_{G4})
Purchased finished water that is further treated (P)	(F_{P1})	(F_{P2})	(F_{P3})	(F_{P4})
Combined (C)	(F_{C1})	(F_{C2})	(F_{C3})	(F_{C4})

NOTE: The $F_{C\#}$ value is calculated by adding the $F_{S\#}$, $F_{G\#}$, and $F_{P\#}$ values in the column above.

—F_{CT}=finished water produced in all of the PWS's treatment plants (calculated by adding the combined flows from each treatment plant (Σ ($F_{C\#}$)).
=____ (MGD)

Calculated values. The PWS must calculate the following values.

—Population equivalents. Divide the flow values in Table A–2 by the conversion factor K below (a PWS-specific per capita finished water usage rate) and enter in the corresponding box in Table A–3 below. For each treatment plant operated by the PWS, the PWS must determine the population served by each type of water resource that provides water to the treatment plant.

Conversion factor=K=(F_{CT}+$F_N \cdot F_W$)/P_R=____

For Table A–3, P=F/K, using F values from Table A–2 (e.g., P_{S1}=F_{S1}/K).

TABLE A–3: POPULATION SERVED VALUES

Water resources (by type source)	Population served by treated water (number of people)			
	Treatment plants			
	#1	#2	#3	#4
Surface water (S)	(P_{S1})	(P_{S2})	(P_{S3})	(P_{S4})
Ground water (G)	(P_{G1})	(P_{G2})	(P_{G3})	(P_{G4})
Purchased finished water that is further treated (P)	(P_{P1})	(P_{P2})	(P_{P3})	(P_{P4})
Combined (C)	(P_{C1})	(P_{C2})	(P_{C3})	(P_{C4})

Note: The $P_{C\#}$ value is calculated by adding the $P_{S\#}$, $P_{G\#}$, and $P_{P\#}$ values in the column above.

—P_{CT}=number of people served by finished water produced in all of the PWS's treatment plants (calculated by adding the combined populations served by each treatment plant (Σ ($P_{C\#}$)))
=____ (people)

NOTE: A PWS that sells all its finished water and thus has no retail population must calculate the population served by the PWS by raising the PWS's average treated flow (in MGD) to the 0.95 power and multiplying the result by 7,700. As an equation, this would appear as:

PWS population served=7,700 (PWS's average treated flow in MGD)$^{0.95}$

The PWS may then calculate the population served by each of its treatment plants by multiplying the PWS population served times the average treated flow from the treatment plant divided by the average treated flow for the PWS. As an equation, this would appear as:

ER14MY96.001

Treatment plant categorization. A PWS must categorize its treatment plants to determine its specific compliance requirements by reviewing Table A–4 below.

TABLE A–4.—TREATMENT PLANT CATEGORIES

Treatment plant category	P_{CT}	$P_{C\#}$	$P_{S\#}$	$P_{G\#}$
A	≥100,000	≥100,000	≥1	NA.
B	≥100,000	≥100,000	Zero	NA.
C	≥100,000	$P_{C\#}$ is <100,000 and is largest $P_{C\#}$ in PWS	≥1	NA.
D	≥100,000	$P_{C\#}$ is <100,000 and is largest $P_{C\#}$ in PWS	Zero	NA.
E	≥100,000	<100,000 and is not largest $P_{C\#}$ in PWS	≥1	NA.
F	≥100,000	<100,000 and is not largest $P_{C\#}$ in PWS	Zero	NA.
G	50,000–99,999 and $P_{GT} \geq 50,000$	NA	NA	Largest $P_{G\#}$.

NA—not applicable.

(b) *Applicability.*

(1) Table 1 of this paragraph is a summary of treatment plant categorization under the provisions of appendix A to paragraph (a) of this section.

TABLE 1.—TREATMENT PLANT CATEGORIES

Treatment plant category	PWS combined population served	Treatment plant combined population served	Treatment plant surface water population served	Treatment plant ground water population served
A	≥100,000	≥100,000	≥1	NA.
B	≥100,000	≥100,000	zero	NA.
C	≥100,000	Plant serves <100,000 and is largest plant	≥1	NA.
D	≥100,000	Plant serves <100,000 and is largest plant	zero	<100,000.
E	≥100,000	Plant serves <100,000 and is not largest plant in PWS	≥1	NA.
F	≥100,000	Plant serves <100,000 and is not largest plant in PWS	zero	<100,000.
G	50,000–99,999 and ≥ 50,000 served by ground water.	NA	NA	Largest ground water plant.

NA–not applicable.

(2) Table 2 of this paragraph specifies applicability for requirements contained in §§ 141.142, 141.143, and 141.144 of this part, based on treatment plant categorization determined under the provisions of appendix A to paragraph (a) of this section.

TABLE 2—SUBPART M APPLICABILITY

Subpart M Requirements	Categories of treatment plants[1]						
	A	B	C	D	E	F	G
§ 141.142.—DBP and Related Monitoring							
Table 1a and 1b	X	X	X	X	X	X	.....
Table 2[2]	X	X	X	X	X	X	.....
Table 3[2]	X	X	X	X	X	X	.....
Table 4a and 4b[2]	X	X	X	X	X	X	.....
Table 5a and 5b[2]	X	X	X	X	X	X	.....
Table 6	X	X	X	X	X	X	.....
§ 141.143—Microbiological Monitoring							
Treatment plant influent monitoring	X	.....	X	.....	X	.....	.....
Finished water monitoring[3]	X	.....	X	.....	X	.....	.....
§ 141.144—Applicability Monitoring and Treatment Studies							
Treatment study applicability monitoring	X	X	X	X	.....	.....	X
Pilot-scale treatment studies[4]	X	X	.....	.....	.....	.....	.....
Bench- or pilot-scale treatment studies[4]	X	X	X	X	.....	.....	X

[1] As determined by Appendix A to paragraph (a) of this section.
[2] Table 2 required only for treatment plants using chloramines. Table 3 required only for treatment plants using hypochlorite solution. Table 4a and 4b required only for treatment plants using ozone. Table 5a and 5b required only for treatment plants using chlorine dio xide.
[3] Only required for a PWS that, during any of the first twelve months of monitoring at the treatment plant influent, detects 10 or more *Giardia* cysts, or 10 or more *Cryptosporidium* oocysts, or one or more total culturable viruses in one liter of water; or calculates a numerical value of the *Giardia* or *Cryptosporidium* concentration equal to or greater than 1000 per 100 liters or virus concentration equal to or greater than 100 per 100 liters; or detects no pathogens in the sample and calculates a numerical value of the detection limit for *Giardia* or *Cryptosporidium* concentration equal to or greater than 1000 per 100 liters or virus concentration equal to or greater than 100 per 100 liters.
[4] Pilot-scale treatment studies are required for treatment plants that serve a population of 500,000 or greater. Bench- or pilot-scale treatment studies are required for treatment plants that serve a population of fewer than 500,000.

(c) *Disinfection Byproduct and Related Monitoring.* A PWS must comply with the monitoring requirements in § 141.142 of this subpart for treatment plants in treatment plant categories A, B, C, D, and E listed in table 1 in paragraph (b)(1) of this section. The PWS shall monitor monthly for 18 consecutive months at each treatment plant, even if a treatment plant was not used for one or more calendar months. When the treatment plant is not operating, the PWS shall file the report required under § 141.142(c) of this subpart to indicate zero flow, and need only conduct treatment plant influent monitoring under the provisions of § 141.142 of this subpart. A PWS must comply with the monitoring requirements in § 141.142 of this subpart for treatment plants in treatment plant categories F listed in table 1 in paragraph (b)(1) of this section monthly for 18 consecutive months at each treatment plant, except if a treatment plant was not used for one or more calendar months. When the treatment plant is not operating, the PWS shall file the report required under § 141.142(c) of this subpart to indicate zero flow, and is not required to conduct treatment plant influent monitoring under the provisions of § 141.142 of this subpart.

(d) *Microbiological Monitoring.* A PWS must comply with the monitoring requirements in § 141.143 of this subpart for treatment plants in treatment plant categories A, C, and E listed in table 1 in paragraph (b)(1) of this section and table 3 of this paragraph. The PWS shall conduct 18 consecutive months of microbiological monitoring at each treatment plant, even if it is not operated each calendar month.

TABLE 3.—MICROBIOLOGICAL MONITORING REQUIREMENTS FOR SUBPART M

Microbial sample	Treatment plant category	
	A, C and E	
	Treatment plant influent	Finished water [1]
Total culturable viruses	1/month [2]	1/month.
Total coliforms	1/month	1/month.
Fecal coliforms or *E. coli*	1/month	1/month.
Giardia	1/month	1/month.[3]
Cryptosporidium	1/month	1/month.[3]

[1] Only required for a PWS that, during any of the first twelve months of monitoring at the treatment plant influent, detects 10 or more *Giardia* cysts, or 10 or more *Cryptosporidium* oocysts, or one or more total culturable viruses in one liter of water; or calculates a numerical value of the *Giardia* or *Cryptosporidium* concentration equal to or greater than 1000 per 100 liters or virus concentration equal to or greater than 100 per 100 liters; or detects no pathogens in the sample and calculates a numerical value of the detection limit for *Giardia* or *Cryptosporidium* concentration equal to or greater than 1000 per 100 liters or virus concentration equal to or greater than 100 per 100 liters. The PWS shall collect one sample of finished water during each month that the treatment plant is operated at each such treatment plant beginning in the first calendar month after the PWS learns of such a result. A PWS shall continue finished water monitoring monthly until 18 months of treatment plant influent monitoring has been completed.

[2] A PWS may avoid virus monitoring if the PWS has monitored total coliforms, fecal coliforms, or *E. coli* in the source water for at least five days/week for any period of six consecutive months beginning after January 1, 1994, and 90% of all samples taken in that six-month period contained no greater than 100 total coliforms/100 ml, or 20 fecal coliforms/100 ml, or 20 *E. coli*/100 ml.

[3] A PWS may avoid the requirement for finished water monitoring of *Giardia* and *Cryptosporidium* if the PWS notifies EPA that it will comply with the alternative monitoring requirements in §141.143(a)(2)(iii). The PWS must still conduct finished water monitoring for all other microorganisms, except that *Giardia* and *Cryptosporidium* monitoring in the finished water is not required.

(e) *Disinfection Byproduct Precursor Removal Studies (Treatment Studies).*

(1) A PWS shall comply with treatment study applicability monitoring in paragraph (e)(2) of this section at each treatment plant in treatment plant categories A, B, C, D, and G listed in table 1 in paragraph (b)(1) of this section. A PWS shall comply with the treatment study requirements in §141.144 of this subpart at each such treatment plant, except for those treatment plants:

(i) Meeting the source water quality, disinfection practice, or disinfection byproduct precursor removal practice criteria in paragraph (e)(3) of this section, for which no treatment study is required; or

(ii) Meeting the common water resource criteria in paragraph (e)(4) of this section, for which several PWSs may conduct treatment studies jointly, in lieu of separately; or

(iii) Meeting the common water resource criteria in paragraph (e)(5) of this section, for which a PWS may contribute funds towards research, in lieu of conducting a treatment study; or

(iv) At which a previous treatment study that meets the criteria in paragraph (e)(6) of this section has already been conducted, for which a PWS may use the results of this previous treatment study, in lieu of conducting another treatment study; or

(v) Operated by the PWS that use the same water resource, as classified by the procedure in paragraph (e)(4) of this section. The PWS is not required to conduct more than one treatment study for those treatment plants. If both pilot-scale and bench-scale treatment studies would otherwise be required for treatment plants on the same water resource, the PWS shall conduct a pilot-scale study. A PWS with multiple water resources shall conduct treatment studies for each treatment plant that uses different water resources.

(2) Treatment study applicability monitoring.

(i) PWSs shall monitor total organic carbon (TOC) monthly for 12 months. Treatment plants using surface water shall monitor treatment plant influent. Treatment plants using ground water shall monitor finished water.

(ii) Treatment study applicability monitoring for THM4 and HAA5 is only required by a PWS that intends to qualify for avoiding a treatment study under the provisions of paragraph (e)(3)(i) of this section.

(iii) Total organic halides formed under the uniform formation conditions (UFCTOX) monitoring is only required by a PWS that intends to qualify for a joint treatment study under the provisions of paragraph (e)(4)(i)(A)(*2*) of this section or for the alternative to conducting a treatment study under the provisions of paragraph (e)(5) of this section.

(3) *Criteria under which no treatment study is required.* A PWS identified in paragraph (e)(1) of this section is not required to conduct a treatment study at any treatment plant that satisfies any criteria in paragraphs (e)(3) (i) through (iv) of this section, provided that the PWS has also complied with the requirements in paragraph (e)(7)(i) of this section and EPA has approved the PWS's request to avoid the treatment study.

(i) Treatment plants that use chlorine as both the primary and residual disinfectant and have, as an annual average of four quarterly averages, levels of less than 40

μg/l for THM4 and less than 30 μg/l for HAA5. Quarterly averages are the arithmetic average of the four distribution system samples collected under the requirements of § 141.142(a)(1) of this subpart.

(ii) Treatment plants using surface water that do not exceed a TOC annual average of 4.0 mg/l in the treatment plant influent, measured in accordance with §§ 141.141(f)(4) and 141.144(a) of this subpart and calculated by averaging the initial 12 monthly TOC samples.

(iii) Treatment plants using only ground water not under the direct influence of surface water that do not exceed a TOC annual average of 2.0 mg/l in the finished water, measured in accordance with §§ 141.141(f)(4) and 141.144(a) of this subpart and calculated by averaging the initial 12 monthly TOC samples.

(iv) Treatment plants that already use full scale membrane or GAC technology. For a treatment plant that already uses full-scale GAC or membrane technology capable of achieving precursor removal, a PWS shall conduct monitoring and submit full-scale plant data required for disinfection byproduct and related monitoring by § 141.142(a) of this subpart, ensuring that the GAC or membrane processes are included in the process train being monitored. For a treatment plant to be considered to have membrane technology to achieve precursor removal, the PWS shall have used nanofiltration or reverse osmosis membranes. GAC capable of removing precursors is defined as GAC with an empty bed contact time (EBCT) of 15 minutes or greater, with a time between carbon reactivation or replacement of no more than nine months. PWSs that operate treatment plants that use GAC with either an EBCT of less than 15 minutes or a replacement or reactivation frequency for GAC longer than nine months may submit a request to avoid treatment studies under the provisions of paragraph (e)(7)(i) of this section by including data demonstrating effective DBP precursor removal.

(4) *Criteria under which joint treatment studies are allowed.* (i) PWSs that use common water resources and have similar treatment trains may conduct joint treatment studies. A common water resource for all types of surface water resources requires the mean treatment plant influent TOC or UFCTOX of each of the cooperating treatment plants to be within 10% of the average of the mean treatment plant influent TOCs or UFCTOX of all the cooperating treatment plants. A common water resource for all types of ground water resources requires the mean treatment plant finished water TOC or UFCTOX of each of the cooperating treatment plants to be within 10% of the average of the mean treatment plant finished water TOCs or UFCTOX of all the cooperating treatment plants. The mean is calculated from the monthly TOC or UFCTOX monitoring data for the initial twelve months of monitoring under § 141.144(a) of this subpart. Similar treatment trains means that, for example, softening plants may not conduct joint studies with conventional treatment plants. In addition, the applicable requirements in paragraphs (e)(4)(i) (A) through (C) of this section shall be met for the water resource to be considered a common water resource. If otherwise eligible, a PWS may choose to either perform a joint treatment study with other eligible systems or contribute funds to a cooperative research program, as described in paragraph (e)(5) of this section, as an alternative to conducting a treatment study.

(A) *River sources.* Treatment plants with river intakes are considered to have a common water resource if the PWS meets either criteria in paragraphs (e)(4)(i)(A) (*1*) or (*2*) of this section.

(*1*) The intakes are no more than 20 river miles apart and TOC at each treatment plant influent is within 10% of the mean TOC of all the treatment plant influents.

(*2*) The intakes are at least 20, but no more than 200, river miles apart and the PWS demonstrates that the mean water resource UFCTOX is within 10% of the mean UFCTOX of all the treatment plant influents, based on UFCTOX analytical results of the same 12 consecutive months for all cooperating treatment plants.

(B) *Lake/reservoir.* Treatment plants with lake or reservoir intakes are considered to have a common water resource if the same lake or reservoir serves all the cooperating treatment plants and TOC at each treatment plant influent is within 10% of the mean TOC of all the treatment plant influents.

(C) *Ground water not under the direct influence of surface water.* Treatment plants with intakes from a single aquifer are considered to have a common water resource if treatment plant finished water TOC at each treatment plant is within 10% of the mean finished water TOC of all the treatment plants.

(ii) PWSs that meet the requirements of paragraph (e)(4)(i) of this section shall conduct at least the number and type of joint studies noted in the following tables. Joint studies shall only be conducted among treatment plants in the same size category, i.e. a population served of either ≥500,000 or of <500,000. The maximum number of treatment plants with a population served ≥500,000 persons allowed to join together to conduct a study is three. The maximum number of treatment plants with a population served <500,000 persons allowed to join together to conduct a study is six.

JOINT STUDIES REQUIREMENT FOR TREATMENT PLANTS WITH A POPULATION SERVED OF <500,000

Number of plants	Minimum studies to be conducted
2	1 pilot (GAC or membrane).
3	1 pilot and 1 bench (GAC or membrane).
4	2 pilots (GAC and/or membrane).
5	2 pilots (GAC and/or membrane), 1 bench (GAC or membrane).
6	2 pilots and 2 bench (GAC and/or membrane).

JOINT STUDIES REQUIREMENT FOR TREATMENT PLANTS WITH A POPULATION SERVED OF ≥500,000

Number of plants	Minimum studies to be conducted
2	1 pilot (GAC or membrane), 2 bench (GAC and/or membrane).
3	2 pilots (GAC and/or membrane).

(5) *Criteria under which an alternative to conducting a treatment study is allowed.* In lieu of conducting the required treatment study, a PWS may apply to EPA to contribute funds to a cooperative research effort. The PWS shall submit an application to EPA Technical Support Division, ICR Precursor Removal Studies Coordinator, 26 W. Martin Luther King Drive, Cincinnati, OH 45268. The application shall show that the treatment plant for which the waiver of the treatment study is sought uses a common water resource, as described in paragraph (e)(4) of this section, that is being studied by another PWS or cooperative of PWSs operating treatment plants in the same size category. A PWS operating treatment plants serving a population of fewer than 500,000 may also contribute to this fund if there is a common water resource (as defined in paragraph (e)(4) of this section) treatment plant serving 500,000 or more conducting a treatment study. If EPA approves the application, the PWS shall contribute funds in the amount specified in paragraph (e)(5)(i) of this section to the Disinfection Byproducts/Microbial Research Fund, to be administered by the American Water Works Association Research Foundation (AWWARF) under the direction of an independent research council, for use in a dedicated cooperative research program related to disinfectants, disinfection byproducts, and enhanced surface water treatment.

(i) The PWS shall contribute $300,000 for a treatment plant with a population served of 500,000 or more. The PWS shall contribute $100,000 for a treatment plant with a population served of fewer than 500,000.

(ii) The PWS shall send the contribution to the address specified in EPA's approval letter not later than 90 days after EPA approves the PWS application for waiver of the treatment study.

(6) *Criteria under which a previous treatment study is acceptable (grandfathered studies).* A PWS that has conducted studies of precursor removal that meet all the criteria in paragraphs (e)(6) (i) and (ii) of this section may use the results of that study in lieu of conducting another treatment study.

(i) The PWS used analytical methods specified in table 7 of § 141.142(b)(1) of this subpart and used the analytical and quality control procedures described in ''DBP/ICR Analytical Methods Manual'', EPA 814–B–96–002.

(ii) The PWS followed a protocol similar to that specified and supplies the data specified in ''ICR Bench- and Pilot-scale Treatment Study Manual'' (EPA 814–B–96–003, April 1996).

(7) *Process for a PWS to obtain EPA approval of criteria applicability.* A PWS wanting to avoid the requirements for a treatment study under the provisions of paragraphs (e) (3) through (6) of this section shall submit the applicable information in paragraphs (e)(7) (i) through (iv) of this section and in ''ICR Bench- and Pilot-scale Treatment Study Manual'' (EPA 814–B–96–003, April 1996) and all monitoring data required under §§ 141.142(a) and 141.143(a) of this subpart to EPA, Technical Support Division, ICR Precursor Removal Studies Coordinator, 26 W. Martin Luther King Drive, Cincinnati, OH 45268.

(i) *Approval of request to avoid treatment studies.* A PWS that believes it qualifies to avoid the requirements for a treatment study under the provisions of paragraph (e)(3) (i) through (iii) of this section shall submit the information showing the applicable criterion for not conducting the study has been met not later than November 14, 1997. A PWS wanting to avoid the requirements for a treatment study under the provisions of paragraph (e)(3)(iv) of this section shall submit the supporting information, including any pilot- or full-scale data showing effective precursor removal, not later than November 14, 1997. A PWS that applies to avoid a treatment study under the provisions of paragraph (e) (4) through (6) of this section and subsequently qualifies to avoid a treatment study under the provisions of paragraph (e)(3) (i) through (iii) of this section may elect to avoid a treatment study under the provisions of paragraph (e)(3) (i) through (iii) of this section. If the PWS elects to avoid a treatment study under the provisions of paragraph (e)(3) (i) through (iii) of this section, the PWS shall notify all PWSs that were associated with the application to avoid a treatment study under the provisions of paragraph (e) (4) through (6) of this section.

(ii) *Approval of request to conduct joint studies.* A PWS that believes it qualifies to avoid the requirements for a treatment study under the joint study provisions of paragraph (e)(4) of this section shall submit a letter of intent to EPA with the information in paragraphs (e)(7)(ii) (A) through (F) of this section for all treatment plants to be included in the joint study not later than May 14, 1997. The letter shall be signed by all PWSs planning to participate in the joint study. All PWSs shall submit a combined application for joint studies approval to EPA (including 12 months of treatment plant influent TOC or finished water TOC results or UFCTOX results, as appropriate, for each treatment plant to be included in the joint study) not later than November 14, 1997.

(A) Data to support their common water resource designation.

(B) Information to demonstrate that treatment plants have similar treatment trains.

(C) Information that treatment plants are in the same size category.

(D) The treatment plant influent TOC or finished water TOC results, or UFCTOX results, as appropriate, from the first six months of monitoring.

(E) What studies will be conducted (i.e., combination of bench/pilot and GAC/membrane).

(F) Any additional supporting data.

(iii) *Approval of request for alternative to treatment studies.* A PWS that believes it qualifies to avoid the requirements for a treatment study under the provisions for an alternative in paragraph (e)(5) of this section shall submit a letter of intent expressing its intention to contribute funds to the cooperative research effort not later than May 14, 1997. The letter shall identify the other treatment plants using the same water resource which will be conducting studies. Each PWS shall submit an application for approval of alternative to treatment studies to EPA (including 12 months of treatment plant influent TOC or finished water TOC results or UFCTOX results, as appropriate) not later than November 14, 1997. EPA shall notify the PWS whether a treatment study is required (because there is no other appropriately sized treatment plant using the same water resource conducting a treatment study) or if the PWS can avoid the study by contributing funds to the cooperative research effort specified in paragraph (e)(5) of this section.

(iv) *Approval of request to use grandfathered studies.* A PWS that believes it qualifies to avoid the requirements for a treatment study under the grandfathered study provisions of paragraph (e)(6) of this section shall submit the following information not later than February 14, 1997: a description of the study, the equipment used, the experimental protocol, the analytical methods, the quality assurance plan, and any reports resulting from the study. EPA shall review the information and inform the PWS whether or not the prior study meets the ICR requirements. Not later than November 14, 1997, the PWS must submit study data in the format specified in ''ICR Manual for Bench- and Pilot-scale Treatment Studies'', EPA 814–B–96–003, April 1996. An approved grandfathered study can be justification for common water resource PWSs contributing to the cooperative research effort under the provisions of paragraph (e)(5) of this section, but may not be used as joint treatment studies unless it incorporates the requirements listed in § 141.141(e)(4) of this section and the PWS submits written concurrence of the PWS which conducted the study.

(f) *Effective dates.* (1) A PWS shall respond to the Notice of Applicability sent by EPA within 35 calendar days of receipt of that notice. The PWS's response to the Notice shall indicate what requirements in subpart M apply to each treatment plant operated by the PWS. If a PWS meets the applicability criteria in paragraph (b) of this section and has not received a Notice of Applicability from EPA by June 28, 1996, that PWS must request a Notice of Applicability from EPA by contacting the ICR Utilities Coordinator, TSD, USEPA, 26 West Martin Luther King Drive, Cincinnati, OH 45268, not later than July 15, 1996.

(2) A PWS required to monitor under both paragraphs (c) and (d) of this section shall begin monitoring to comply with the provisions of § 141.142 (Disinfection Byproduct and Related Monitoring) and § 141.143 (Microbiological Monitoring) of this subpart in the same month. The PWS must submit the sampling plans required by §§ 141.142(c)(2)(ii) and 141.143(c)(3)(ii) of this subpart at the same time.

(3) *Disinfection Byproduct and Related Monitoring.* A PWS operating a treatment plant required to comply with § 141.142 of this subpart shall begin monitoring in the calendar month following approval of the DBP and related monitoring sampling plan submitted under the provisions of § 141.142(c)(2)(ii) of this subpart. Once a PWS has begun monitoring, it shall continue to monitor for 18 consecutive months.

(4) *Microbiological Monitoring.* A PWS operating a treatment plant identified in paragraph (d) of this section shall begin monitoring under the provisions of § 141.143 of this subpart in the calendar month following approval of the sampling plan submitted under the provisions of § 141.143(c)(3)(ii) of this subpart. Once a PWS has begun monitoring, it shall continue to monitor for 18 consecutive months.

(5) DBP precursor removal studies. (i) *TOC, UFCTOX, THM4, and HAA5 monitoring.* A PWS required to comply with § 141.144 of this subpart

shall begin TOC, UFCTOX, THM4, and HAA5 monitoring specified in paragraph (e)(2) of this section not later than August 14, 1996 and continue this monitoring for 12 consecutive months for TOC and UFCTOX and four consecutive quarters for THM4 and HAA5.

(ii) A PWS required to conduct a disinfection byproduct precursor removal study (treatment study) under the provisions of paragraph (e)(1) of this section shall begin conducting such treatment studies not later than April 14, 1998 and submit the report(s) of the completed study to EPA not later than July 14, 1999.

§ 141.142 Disinfection byproduct and related monitoring.

(a) *Monitoring requirements.* Samples taken under the provisions of this section shall be taken according to the procedures described in the ''ICR Sampling Manual,'' EPA 814–B–96–001, April 1996. If a treatment plant configuration results in two required sampling points from any table in this section when in fact it is a single location, duplicate analyses are not required for the same location and time. A PWS that uses purchased finished water shall determine whether any monitoring of treatment plant influent is required under paragraphs (a) (2) through (5) of this section because of certain treatment (e.g., use of hypochlorite or chlorine dioxide) of the water provided by the selling PWS.

(1) A PWS shall obtain a complete set of samples at the frequency and location noted in tables 1a and 1b of this section for treatment plants required to test under § 141.141(b) of this subpart. Samples shall be taken according to the sampling plan approved under the provisions of paragraph (c)(2)(ii) of this section.

(i) Samples of finished water shall be collected at a point after which all treatment processes for a particular treatment plant are complete (including the clearwell and final point of chlorination) and before the distribution system begins. A PWS that purchases finished water shall collect a sample before additional disinfectant is added to the purchased finished water. A PWS shall collect a sample of purchased finished water only if the PWS redisinfects the purchased finished water. A sample of finished water is a sample representing the final product water from a particular treatment plant.

(ii) A sample of treatment plant influent for a PWS that treats untreated water shall be taken at a location at the upstream end of a treatment plant where waters from all intakes are blended prior to any treatment or chemical addition. For treatment plants that have multiple intakes and add chemicals at the intake, the sample of treatment plant influent shall be a flow proportional composite of intake samples collected before chemical addition and before pretreatment. If the intakes are expected to have the same source water quality, one representative intake sample may be taken. If a disinfectant is added at or before the intake (e.g., for zebra mussel control), the sample shall be taken in the vicinity of the intake so that the sample is not contaminated by the disinfectant. A sample of treatment plant influent for a PWS that treats purchased finished water is taken at a location just before the purchased finished water is treated. An intake sample is collected after the intake but before blending with waters from other intakes and before addition of chemicals or any treatment.

TABLE 1A.—MONTHLY MONITORING REQUIREMENTS FOR TREATMENT PLANTS

Sampling point	Monthly analyses [1]
Treatment plant influent for non-finished water.	pH, Alkalinity, Turbidity, Temperature, Calcium and Total Hardness, TOC, UV_{254}, Bromide, Ammonia.
Treatment plant influent for purchased finished water [2].	pH, Alkalinity, Turbidity, Temperature, Calcium and Total Hardness, TOC, UV_{254}, Disinfectant residual [3].
Before first point of oxidant addition	Chlorine demand test.
Washwater return between washwater treatment plant and point of addition to process train [4].	pH, Alkalinity, Turbidity, Temperature, Calcium and Total hardness, TOC, UV_{254}, Bromide, Ammonia, Disinfectant residual [3] if disinfectant is used.
Additional water sources added to process train after treatment plant influent. The sample point is before additional water is blended with the process train.	pH, Alkalinity, Turbidity, Temperature, Calcium and Total hardness, TOC, UV_{254}, Bromide, Ammonia, Disinfectant residual [3] if disinfectant is used.
Before Filtration	pH, Alkalinity, Turbidity, Temperature, Calcium and Total Hardness, TOC, and UV_{254}.
After Filtration	pH, Alkalinity, Turbidity, Temperature, Calcium and Total Hardness, TOC, and UV_{254}.
Before each Point of Disinfection [5]	pH, Alkalinity, Turbidity, Temperature, Calcium and Total Hardness, TOC, and UV_{254}.
After every unit process that is downstream from the addition of chlorine or chloramines.	Disinfectant Residual [3].

TABLE 1A.—MONTHLY MONITORING REQUIREMENTS FOR TREATMENT PLANTS—Continued

Sampling point	Monthly analyses [1]
Finished water sample point (Plant effluent).	pH, Alkalinity, Turbidity, Temperature, Calcium and Total Hardness, TOC, UV_{254}, Disinfectant Residual [3].
Entry point to distribution system [6]	pH, Alkalinity, Turbidity, Temperature, Calcium and Total Hardness, TOC, UV_{254}, Disinfectant Residual [3].

[1] TOC: total organic carbon. UV_{254}: absorbance of ultraviolet light at 254 nanometers.
[2] Samples of purchased finished water shall be taken prior to addition of any more disinfectant.
[3] Free chlorine residual and total chlorine residual shall be measured in treatment systems using free chlorine. Total chlorine residual, but not free chlorine residual, shall be measured in treatment systems using chloramines as the residual disinfectant.
[4] Washwater return shall be sampled prior to blending with the process train.
[5] For utilities using ozone or chlorine dioxide, Tables 4 and 5, respectively, of this section, show additional monitoring requirements at this sampling point. Addition of ammonia for the purpose of converting free chlorine to chloramines is considered a point of disinfectant addition. PWSs that disinfect just before filtration may use the ''before filtration'' sampling point analytical results to meet the monitoring requirement for this point.
[6] Entry point to distribution system only required for treatment plants that blend finished water with finished water from other treatment plant(s) prior to entry point of distribution system. For most treatment plants, the finished water sample point and the entry point to the distribution system are the same.

TABLE 1B.—QUARTERLY MONITORING REQUIREMENTS FOR TREATMENT PLANTS

Sampling point	Quarterly analyses [1]
Treatment plant influent for non-finished water.	TOX.
Treatment plant influent for purchased finished water.	THM4, HAA6[7], HAN, CP, HK, CH, TOX.
Washwater Return between washwater treatment plant and point of addition to process train.	TOX.
After filtration if disinfectant is applied at any point in the treatment plant prior to filtration.	THM4, HAA6[7], HAN, CP, HK, CH, TOX.
Finished water sample point (Plant Effluent).	THM4, HAA6[7], HAN, CP, HK, CH, TOX.
Entry point to distribution system[2]	THM4, HAA6[7], HAN, CP, HK, CH, TOX.
SDS[3]	THM4, HAA6[7], HAN, CP, HK, CH, TOX, pH, Alkalinity, Turbidity, Temperature, Calcium and Total Hardness, Disinfectant Residual[5].
Four monitoring points in distribution system[4,6].	THM4, HAA6[7], HAN, CP, HK, CH, TOX, pH, Alkalinity, Turbidity, Temperature, Calcium and Total Hardness, Disinfectant Residual[5].

[1] TOC: total organic carbon. THM4: trihalomethane (four). HAA6: haloacetic acids (six). HAN: Haloacetonitriles. CP: chloropicrin. HK: haloketones. CH: chloral hydrate. TOX: total organic halide. For THM4, HAA6, HAN, and HK, analytical results for individual analytes shall be reported.
[2] Entry point to distribution system only required for treatment plants that blend finished water with finished water from other treatment plant(s) prior to entry point of distribution system. For most treatment plants, the finished water sample point and the entry point to the distribution system are the same.
[3] Simulated Distribution System (SDS) sample shall be collected at the finished water sampling point (or entry point to distribution system if finished water from two or more plants are blended prior to entering the distribution system) and analyzed using the method specified in § 141.142. PWSs using purchased finished water are not required to take an SDS sample at treatment plants that use only purchased finished water.
[4] For each treatment plant, one distribution system equivalent sample location (known as DSE) shall be chosen to correspond to the SDS sample, one sample location shall be chosen to be representative of maximum residence time for the treatment plant, and the remaining two sample locations shall be representative of the average residence time in the distribution system for the treatment plant. PWSs using purchased finished water shall take three samples representing the average residence time in the distribution system for the treatment plant and one representing the maximum residence time for the treatment plant (no DSE sample required).
[5] Free chlorine residual and total chlorine residual shall be measured in treatment systems using free chlorine. Total chlorine residual, but not free chlorine residual, shall be measured in treatment systems using chloramines as the residual disinfectant.
[6] A PWS may use TTHM compliance monitoring locations and analytical results under § 141.30 of this part to the extent that such locations and analytical results are consistent with the requirements of this section.
[7] PWSs are encouraged to also analyze for the additional haloacetic acids bromodichloro-, chlorodibromo-, and tribromo-acetic acid, and report the results as part of the reports specified in paragraph (c)(1) of this section.

(2) *Additional requirements for PWSs using chloramines.* For each treatment plant that uses chloramines for treatment or disinfection residual maintenance, a PWS shall also conduct the additional sampling identified in table 2 of this section. A PWS shall send samples of cyanogen chloride taken under the provisions of this paragraph for analysis to EPA, following the procedures contained in the ''ICR Sampling Manual,'' EPA 814–B–96–001, April 1996.

TABLE 2.—ADDITIONAL QUARTERLY MONITORING FOR TREATMENT PLANTS USING CHLORAMINES

Sampling point	Quarterly analyses
Treatment plant influent for purchased finished water [1]	Cyanogen Chloride[2].

TABLE 2.—ADDITIONAL QUARTERLY MONITORING FOR TREATMENT PLANTS USING CHLORAMINES—Continued

Sampling point	Quarterly analyses
Finished water sample point (plant effluent)	Cyanogen Chloride[2].
Distribution system sample point representing a maximum residence time in distribution system relative to the treatment plant.	Cyanogen Chloride[2].

[1] Applicable only when wholesale water provider is using chloramines.
[2] EPA shall provide all analytical results to the PWS. The PWS shall report all results in its monthly report.

(3) *Additional requirements for PWSs using hypochlorite solutions.* For each treatment plant that uses hypochlorite solutions for treatment or disinfection residual maintenance, a PWS shall also conduct the additional sampling identified in table 3 of this section.

TABLE 3.—ADDITIONAL QUARTERLY MONITORING FOR TREATMENT PLANTS USING HYPOCHLORITE SOLUTIONS

Sampling point	Quarterly analyses
Treatment plant influent for non-finished water	Chlorate.
Treatment plant influent for purchased finished water[1]	Chlorate.
Hypochlorite Stock Solution	pH, Temperature, Free Residual Chlorine, Chlorate.
Finished Water Sample Point (Plant Effluent)	Chlorate.

[1] Applicable only when wholesale water provider is using hypochlorite solutions.

(4) *Additional requirements for PWSs using ozone.* For each treatment plant that uses ozone for treatment, a PWS shall also conduct the additional sampling identified in tables 4a and 4b of this section. A PWS shall collect samples for bromate taken under the provisions of this paragraph in duplicate, with the PWS analyzing one aliquot and submitting the other aliquot for analysis to EPA, following the procedures contained in the ''ICR Sampling Manual,'' EPA 814–B–96–001, April 1996. A PWS shall submit samples for aldehydes taken under the provisions of this paragraph for analysis to EPA, following the procedures contained in the ''ICR Sampling Manual,'' EPA 814–B–96–001, April 1996.

TABLE 4a.—ADDITIONAL MONTHLY MONITORING FOR TREATMENT PLANTS USING OZONE

Sampling point	Monthly analyses
Ozone Contactor Influent	Bromide, bromate[2,3], and ammonia.
Each Ozone Contact Chamber Effluent[1]	Ozone residual.
Ozone Contactor Effluent	Bromate[2].
Finished Water Sample Point (Plant Effluent)	Bromate[2].

[1] Each ozone contactor can be subdivided into its contact chambers. Measure ozone residual in effluent of all contact chambers until <0.05 mg/l is measured in two consecutive chambers.
[2] EPA shall provide all analytical results to the PWS. The PWS shall report all results in its monthly report.
[3] PWSs are not required to analyze a bromate sample at this location. However, PWSs are still required to submit a sample to EPA for analysis.

Table 4B.—ADDITIONAL QUARTERLY MONITORING FOR TREATMENT PLANTS USING OZONE

Sampling point	Quarterly analyses
Ozone Contactor Influent	Aldehydes[1] and AOC/BDOC[2].
Ozone Contactor Effluent	Aldehydes[1] and AOC/BDOC[2].
Finished Water Sample Point (Plant Effluent)	Aldehydes[1] and AOC/BDOC[2].

[1] EPA shall measure the following aldehydes: formaldehyde, acetaldehyde, propanal, butanal, pentanal, glyoxal, and methyl glyoxal. EPA may analyze for other aldehydes. EPA shall provide all analytical results to the PWS. The PWS shall report all results in its monthly report.
[2] Analysis and submission of data for both assimilable organic carbon (AOC) and biodegradable organic carbon (BDOC) are optional. Analytical methods for AOC and BDOC are listed in ''DBP/ICR Analytical Methods Manual,'' EPA 814–B–96–002, April 1996.

(5) *Additional sampling requirements for PWSs using chlorine dioxide.* For each treatment plant that uses chlorine dioxide for treatment or disinfection residual maintenance, a PWS shall also conduct the additional sampling identified in tables 5a and 5b of this section. A PWS shall collect samples for bromate taken under the provisions of this paragraph in duplicate, with the PWS analyzing one aliquot and submitting the other aliquot for analysis to EPA, following the procedures contained in the ''ICR Sampling Manual,'' EPA 814–B–96–001, April 1996. A PWS shall submit samples for aldehydes taken under the provisions of this paragraph for analysis to EPA, following the procedures contained in the ''ICR Sampling Manual,'' EPA 814–B–96–001, April 1996.

TABLE 5A.—ADDITIONAL MONTHLY MONITORING FOR TREATMENT PLANTS USING CHLORINE DIOXIDE

Sampling point	Monthly analyses
Treatment plant influent for purchased finished water [1]	Chlorine Dioxide Residual, Chlorite, Chlorate.
Before first chlorine dioxide application	Chlorate, bromate [2,3].
Before application of ferrous salts, sulfur reducing agents, or GAC.	Chlorine Dioxide Residual, Chlorite, Chlorate, pH.
Finished water sample point (plant effluent)	Chlorine Dioxide Residual, Chlorite, Chlorate, Bromate [2].
Three distribution system sampling points (1 near first customer, 1 in middle of distribution system, and 1 representative of maximum residence time in the distribution system).	Chlorine Dioxide Residual, Chlorite, Chlorate, pH, and Temperature.

[1] Applicable only when wholesale water provider is using chlorine dioxide.
[2] EPA shall provide all analytical results to the PWS. The PWS shall report all results in its monthly report.
[3] PWSs are not required to analyze a bromate sample at this location. However, PWSs are still required to submit a sample to EPA for analysis.

TABLE 5b.—ADDITIONAL QUARTERLY MONITORING FOR TREATMENT PLANTS USING CHLORINE DIOXIDE

Sampling point	Quarterly analyses
Before First Chlorine Dioxide Application	Aldehydes [1] and AOC/BDOC [2].
Before First Point of Downstream Chlorine/Chloramine Application After Chlorine Dioxide Addition.	Aldehydes [1] and AOC/BDOC [2].
Finished Water Sample Point (Plant Effluent)	Aldehydes [1] and AOC/BDOC [2].

[1] EPA shall measure the following aldehydes: formaldehyde, acetaldehyde, propanal, butanal, pentanal, glyoxal, and methyl glyoxal. EPA may analyze for other aldehydes. EPA shall provide all analytical results to the PWS. The PWS shall report all results in its monthly report.
[2] Analysis and submission of data for both assimilable organic carbon (AOC) and biodegradable organic carbon (BDOC) are optional. Analytical methods for AOC and BDOC are listed in ''DBP/ICR Analytical Methods Manual,'' EPA 814–B–96–002, April 1996.

(6) *Additional requirements.* A PWS shall also report the applicable information in tables 6a through 6e of this section. A PWS is required to provide the information in paragraphs (a)(6) (i) through (iii) of this section for each unit process listed in table 6c. The PWS may provide the information in paragraphs (a)(6) (iv) and (v) of this section for each unit process listed in table 6c. T_{10} and T_{50} tracer studies shall be conducted as specified in ''Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems using Surface Water Sources'', appendix C.

(i) Unit process flow (MGD) at time of sampling.

(ii) T_{10} (minutes). A PWS shall determine T_{10} based on a one-time tracer study in the clearwell of all treatment plants required to conduct microbiological monitoring under the provisions of § 141.141(d) of this subpart. The PWS may use results of a tracer study conducted to meet the requirements of subpart H (Filtration and Disinfection) of this part to meet this requirement. For subsequent T_{10} determinations, the PWS shall use a flow-proportional interpolation of the clearwell tracer study. For unit processes other than a clearwell, a PWS shall either estimate T_{10} or use an interpolation of tracer study T_{10} using multiple flows for each unit process in which a disinfectant residual exists.

(iii) Chemicals in use at time of sampling. Report chemical name, chemical dose at time of sampling, and measurement formula. Measurement formulas (e.g., mg/l as Aluminum) shall be provided to determine the correct amount of the chemical compound being added.

(iv) Short circuiting factor (optional). The short circuiting factor is an assumed value for the ratio of T_{10} to nominal contact time (volume divided by flow).

(v) T_{50} (minutes) (optional). T_{50} should be reported only if based on a tracer study.

TABLE 6a.—PUBLIC WATER SYSTEM INFORMATION

Permanent data	Design data	Monthly data
Public Water System: Utility Name Public Water Supply Identification Number (PWSID) Water Industry Data Base (WIDB) Number [Optional] Official Contact Person: Name Mailing Address Phone Number [optional] FAX Number [optional] ICR Contact Person: Name Mailing Address Phone Number [optional] FAX Number [optional] E-Mail Address [optional]		Sampling Dates: From (date) To (date). Retail population on day of sampling. Wholesale population on day of sampling. Monthly average Retail flow (MGD). Monthly average Wholesale flow (MGD).
Treatment Plant: [1] Plant name ICR plant number assigned by EPA [2] PWSID number of treatment plant [3] State approved (permitted) plant capacity (MGD) Historical minimum water temperature (°C) Installed sludge handling capacity (lb/day) Process Train: Name	Plant type (e.g., Conventional Filtration, Direct Filtration, In-Line Filtration, Two Stage Softening, Disinfection Only/Groundwater, Other Groundwater treatment) Process Train Type (e.g., Conventional Filtration, Direct Filtration, In-Line Filtration, Two Stage Softening, Disinfection Only/Groundwater, Other Groundwater treatment)	Hours of operation (hours per day) Sludge solids production (lb/day) Percent solids in sludge (%)

[1] A PWS that operates more than one treatment plant shall report treatment plant information in this table for each treatment plant.
[2] EPA shall assign ICR plant number after the PWS submits sampling plan.
[3] PWSID of treatment plant if different from the PWSID reported in ''Public Water System''.

TABLE 6b.—PLANT INFLUENT INFORMATION

Permanent data	Monthly data
Water Resource[1]	
Name of resource: Type of resource (One of the following): 1 Flowing stream 2 Reservoir/Lake 3 Ground water classified as under the direct influence of surface water (GWUDI) 4 Ground water 5 Purchased finished water 6 Non-Fresh (such as salt water)	If Reservoir/Lake: Mean Residence Time (days).
Intake-Surface Water[2]	
Location of intake:[3] Latitude (deg/min/sec) Longitude (deg/min/sec) Hydrologic unit code (8 digit), if known[4] Stream Reach Code (3 digit) (if known) River mile number (mile) (if known) Is watershed control practiced? (yes/no)	Flow on day of sampling (MGD).
Intake-Ground Water[5][6]	
Location of intake: Latitude (deg/min/sec) Longitude (deg/min/sec) Hydrological unit code (8 digit), if known[4] Is wellhead protection practiced? (yes/no)	Flow on day of sampling (MGD).
Intake-Purchased Finished Water[7]	
Name of supplying utility ..... PWSID of supplying utility	Flow on day of sampling (MGD).
Plant Influent[8]	
	Monthly average flow (MGD). Flow at time of sampling (MGD).

[1] Each treatment plant shall have at least one water resource. Each water resource shall have at least one intake. A treatment plant that uses more than one water resource shall report water resource information in this table for each water resource.
[2] Intake-Surface Water describes the physical location of an intake structure located in a river, lake, or other surface water resource or, for ground water under the direct influence of surface water, the physical location of a well.
[3] The location of the intake will allow cross referencing into other data bases containing information on possible contamination threats to the intake.
[4] The hydrologic unit code will allow cross referencing into other data bases containing information on possible contamination threats to the intake.
[5] An Intake-Ground Water describes the physical location of a well or well field (if multiple wells draw from a common aquifer.

[6] A PWS is not required to report information for ground water that is not treated.
[7] A PWS is required to report information for purchased finished water only if that water is further treated.
[8] Multiple ''Intakes'' combine into one ''Plant Influent.'' Each treatment plant has only one treatment plant influent. The treatment plant influent shall mark the point in the treatment plant where the ''Plant Influent'' sample shall be collected as described in Tables 1, 2, 3 and 5 of this section.

TABLE 6C.—UNIT PROCESS INFORMATION

Design data	Monthly data
Presedimentation Basin[1]	
Tube Settler Brand Name Plate Settler Brand Name Baffling type[2]	Liquid volume (gallons). Surface area (ft^2). Projected Tube Settler Surface Area (ft^2). Projected Plate Settler Surface Area (ft^2).
Ozone Contact Basin	
Information for the complete ozone contact basin: Type of Ozone Contactor (One of the following) 1 Bubble Diffusion 2 Turbine Number of Chambers Information for each ozone contact chamber: Chamber sequence number Liquid volume (ft^3) Surface area (ft^2) Water/Ozone flow regime (one of the following) 1 Counter-current 2 Co-current	Information for the complete ozone contact basin: Ozone CT (mg min/l).[10] Ozone Giardia Inactivation (logs). Ozone Virus Inactivation (logs). Ozone concentration in feed gas (% by weight). Total Ozone Gas Flow Rate to Contactor (SCFM).[3] Type of feed gas used to generate ozone (one of the following). 1 Air. 2 Oxygen. Total Ozone Applied Dose (mg/l). Information for each ozone contact chamber: Percent ozone gas flow split to this chamber (%). Hydrogen peroxide dose (mg/l).
Washwater Return Point[8]	
Indicate which washwater treatment processes are being used on day of sampling Is there treatment (yes/no):	Flow of returned washwater at time of sampling (MGD). 24 hr average flow prior to sampling (MGD).

TABLE 6c.—UNIT PROCESS INFORMATION—Continued

Design data	Monthly data
If yes: Plain sedimentation (yes/no) Coagulation/sedimentation (yes/no) Filtration (yes/no) Disinfection (yes/no) Other Treatment (Text)	
Rapid Mix	
Type of mixer (one of the following): 1 Mechanical 2 Hydraulic 3 Static 4 Other Baffling type [2]	Mean velocity gradient "G" (sec^{-1}).[4] Liquid volume (gallons).
Flocculation Basin	
Type of mixer (one of the following): 1 Mechanical 2 Hydraulic Number of stages Baffling type [2]	Mean velocity gradient "G" (sec^{-1}) in each stage.[4] Liquid volume of each stage (gallons).
Sedimentation Basin	
Tube settler brand name Plate settler brand name Baffling type [2]	Liquid volume (gallons). Surface area (ft^2). Projected tube settler surface area (ft^2). Projected plate settler surface area (ft^2).
Solids Contact Clarifier	
Brand name:	Liquid volume (gallons). Surface area of settling zone (ft^2). Projected tube settler surface area (ft^2). Projected plate settler surface area (ft^2).

Type (check all that apply): Rectangular basin Upflow Reactor-clarifier Sludge blanket Tube settler brand name Plate settler brand name Baffling type [2]	
Adsorption Clarifier	
Brand Name Baffling type [2]	Liquid volume (gallons). Surface area (ft^2).
Dissolved Air Flotation	
Baffling type [2]	Liquid volume (gallons). Surface area (ft^2). Percent recycle rate (%). Recycle stream pressure (psi).
Recarbonation Basin	
Baffling type [2]	Liquid volume (gallons). Surface area (ft^2).
Filtration	
Media Type (one of the following): 1 Dual media (Anthracite/Sand) 2 GAC over sand 3 Tri media (Anthracite/Sand/Garnet) 4 Sand 5 Deep bed monomedia anthracite 6 Deep bed monomedia GAC 7 Greensand 8 Other Design depth of GAC (inch) Type and manufacturer of activated carbon Design media depth (inch) Minimum water depth to top of media (ft) Depth from top of media to top of backwash trough (ft)	Liquid volume (gallons). Surface area (ft^2). Average filter run time (hr).

TABLE 6c.—UNIT PROCESS INFORMATION—Continued

Design data	Monthly data
Slow Sand Filtration	
Media type Media depth Media size	Surface area (ft^2). Average filter run length. Cleaning method.
Diatomaceous Earth Filter	
	Effective DE filter surface (ft^2). Precoat (lb/ft^2). Bodyfeed (mg/l). Run length (hours).
Granular Activated Carbon—Post-Filter Adsorber	
Manufacturer of activated carbon Type of activated carbon	Liquid volume (gallons). Surface area (ft^2). Carbon volume (ft^3). Empty bed contact time (minutes). Operating reactivation frequency (days).
Membranes	
Model name: Type (one of the following): 1 Reverse osmosis 2 Nanofiltration 3 Ultrafiltration 4 Microfiltration 5 Electrodialysis Number of stages Molecular weight cutoff (daltons) Design flux (gpd/ft^2) Design pressure (psi)	Surface area (ft^2). Percent recovery (%). Operating pressure (psi). Operating flux (gpd/ft^2). Cleaning method (one of the following) Hydraulic. Chemical. Cleaning frequency (days).
Air Stripping	
Packing height (ft) Design air to water ratio (volume/volume) Type of packing (Name) Nominal size of packing (inch)	Horizontal cross-section area (ft^2). Air flow (SCFM).[3]

Ion Exchange	
Resin (Name) Resin manufacturer Design exchange capacity (equ/ft^3) [3] Bed depth (ft)	Liquid volume (gallons). Surface area (ft^2).
Disinfection Contact Basin [5 6]	
Baffling type [2]	Liquid volume (gallons). Surface area (ft^2).
Clearwell [7]	
Baffling type [2] Minimum liquid volume (gallons) Covered or Open	Liquid volume (gallons). Surface area (ft^2).
Additional Water Sources [9]	
Type of water source: Purchased Finished water Untreated ground water Treated ground water Untreated surface water Treated surface water Other	Flow of additional source (MGD).[6]
Other Treatment	
Purpose	Surface area (ft^2) [optional]. Liquid Volume (gallons) [optional].

[1] A reservoir to which oxidants, disinfectants, or coagulants are added is considered a presedimentation basin.

[2] Baffling type classified as one of the following: 1 (Unbaffled (mixed tank)), 2 (Poor (inlet/outlet only)), 3 (Average (Inlet/Outlet and intermediate)), 4 (Superior (Serpentine)), or 5 (Perfect (Plug flow)). Information on classifying baffling types can be found in ''Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems using Surface Water Sources'', Appendix C.

[3] ''SCFM'' is standard cubic feet per minute. ''Equ/ft^3'' is equivalents per cubic foot.

[4] The mean velocity gradient is typically computed as G=square root of (P/uV) where P=power expended, u=viscosity, and V=liquid volume.

[5] The disinfection contact basin shall have a stable liquid level.

[6] Disinfection Contact Basin can be used to represent a pipe with a long contact time.

[7] A clear well may have a variable liquid level.

[8] The ''Washwater Return'' shall mark the point in the process train where washwater joins the main flow.

[9] Additional water sources includes water that is added to the process train after the influent.

[10] Ozone CT calculated using the procedure contained in ''Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems using Surface Water Sources'', Appendix O, 1991.

TABLE 6d.—ADDITIONAL PROCESS TRAIN INFORMATION

Design data	Monthly data
Disinfectant Addition	
	Disinfectants in use at time of sampling. Dose (mg/l). Chemical formula (e.g., mg/l as chlorine).
Finished Water Sample Point (Plant Effluent)[1][2]	
	Monthly average flow (MGD). Flow at time of sampling (MGD).

[1] This shall mark the end of a treatment plant.
[2] Unless the finished water of this treatment plant is blended with finished water from another treatment plant, this point is also the entry point to the distribution system.

TABLE 6e.—FINISHED WATER DISTRIBUTION INFORMATION

Design data	Monthly data
Entry Point to Distribution System[1]	
	Monthly average flow (MGD). Flow at time of sampling (MGD).
Wholesale Information[2]	
Name of purchaser ..... PWSID of purchaser	Flow at time of sampling (MGD).
Distribution System	
Typical maximum residence time (days) Average residence time (days) Design volume of distribution system storage (million gallon) Total surface area of open reservoirs in distribution system storage (ft^2)	Maximum residence time (days). Average residence time (days). Number of disinfection booster stations in operation at time of sampling: Chlorine. Chloramine. Chlorine dioxide. Range of distribution system disinfectant dosages. Chlorine: High (mg/l) Low (mg/l). Chloramine: High (mg/l) Low (mg/l). Chlorine dioxide: High (mg/l) Low (mg/l).

[1] Multiple treatment plants can feed into one entry point to the distribution system. If there is only one treatment plant then "Finished Water Sample Point (Plant Effluent)" and "Entry Point to Distribution System" are the same.
[2] The supplying public water system shall report "Wholesale Information" for each public water system which purchases finished water.

(b) Analytical methods. (1) A PWS shall use the methods identified in table 7 of this section for conducting analyses required by this subpart.

TABLE 7.—ANALYTICAL METHODS APPROVED FOR SUBPART M

Analyte	Methodology [1]		
	40 CFR reference [2]	EPA method	Standard method [3]
pH, alkalinity, calcium hardness, temperature	§141.23(k)(1)		
Turbidity	§141.74(a)(1)		
Disinfectant residuals: free chlorine, total chlorine, chlorine dioxide, ozone.	§141.74(a)(2)		4500–Cl B [9]
Trihalomethanes: chloroform, bro	§141.24(e)	551.1 [4]	
modichloromethane, dibro			
mochloromethane, bromoform			
Haloacetic acids: mono-, di-, and trichloroacetic acids; mono- and dibromoacetic acid; bromochloroacetic acid.		552.1,[5] 552.2 [4]	6251 B
Chloral hydrate		551.1 [4]	
Haloacetonitriles: di- and trichloroacetonitrile; bromochloroacetonitrile; dibromoacetonitrile.		551.1 [4]	
Haloketones: 1,1-Dichloropropanone; 1,1,1-trichloropropanone.		551.1 [4]	
Chloropicrin		551.1 [4]	
Chlorite		300.0 [6]	
Chlorate		300.0 [6]	
Bromide		300.0 [6]	
Bromate		300.0 [6]	
Total Organic Halide (TOX)			5320 B
Total Organic Carbon			5310 B, 5310 C, 5310 D
UV absorbance at 254 nm			5910
Simulated Distribution System Test (SDS)			5710 C
Total Hardness			2340 B,[7] 2340 C
Ammonia	§136.3, Table 1b [8]	350.1 [6]	4500–NH_3 D, 4500–NH_3 G
Chlorine Demand Test			2350 B

[1] Analyses shall be conducted by using mandatory analytical and quality control procedures contained in ''DBP/ICR Analytical Methods Manual'', EPA 814–B–96–002.

[2] Currently approved methodology for drinking water compliance monitoring is listed in Title 40 of the Code of Federal Regulations in the sections referenced in this column. The 18th and 19th editions of *Standard Methods for the Examination of Water and Wastewater,* American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005, are equivalent for the methods cited in these sections. Therefore, either edition may be used.

[3] Except where noted, all methods refer to the 19th edition of *Standard Methods for the Examination of Water and Wastewater,* American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005.

[4] Analytical method reprinted in ''Reprints of EPA Methods for Chemical Analyses Under the Information Collection Rule'', EPA 814–B–96–006. Originally published in ''Methods for the Determination of Organic Compounds in Drinking Water—Supplement III,'' EPA/600/R–95/131, August 1995, PB95–261616.

[5] Analytical method reprinted in ''Reprints of EPA Methods for Chemical Analyses Under the Information Collection Rule'', EPA 814–B–96–006. Originally published in ''Methods for the Determination of Organic Compounds in Drinking Water—Supplement II,'' EPA/600/R–92/129, August 1992, PB92–207703.

[6] Analytical method reprinted in ''Reprints of EPA Methods for Chemical Analyses Under the Information Collection Rule'', EPA 814–B–96–006. Originally published in ''Methods for the Determination of Inorganic Substances in Environmental Samples,'' EPA/600/R–93/100, August 1993, PB94–121811.

[7] The following methods, cited at §141.23(k)(1) of this part, can be used to determine calcium and magnesium concentrations for use in conjunction with Standard Method 2340 B: EPA Method 200.7, Standard Method 3111 B, Standard Method 3120 B, or ASTM Method D511–93 B.

[8] PWSs may use only the automated electrode method from §136.3, Table 1b.

[9] Standard Method 4500–Cl B is approved only for determining free chlorine residual concentrations in hypochlorite stock solutions. This method may not be used for any other disinfectant residual analyses.

(2) Analyses under this section shall be conducted by laboratories that have received approval from EPA to perform sample analysis for compliance with this rule. Laboratories that wish to become approved shall contact EPA in writing at USEPA, Technical Support Division, ICR Laboratory Coordinator, 26 W. Martin Luther King Drive, Cincinnati, OH 45268 not later than November 14, 1996. Requirements for approval are included in ''DBP/ICR Analytical Methods Manual'', EPA 814–B–96–002.

(c) *Reporting.* (1) A PWS shall report required data and information collected under the provisions of paragraph (a) of this section to EPA, using an EPA-specified computer readable format. A PWS shall submit a monthly report that indicates the analytical results of all samples collected, including quarterly samples taken in that same month, and all process train data. These reports shall be submitted on a diskette no later than the fourth month following sampling. In addition to the information in tables 1 through 6 in paragraph (a) of this section, reports shall include PWSID, ICR plant identification, sample date, analysis date, laboratory identification numbers, analytical methods used, sample identification numbers, quality assurance code, internal standards, surrogate standards, and preserved sample pH, if appropriate.

(2) *Additional Requirements.* A PWS shall submit a DBP and related monitoring sampling plan for EPA approval, using software provided by EPA, for each treatment plant specified in § 141.141(b)(2) of this subpart that indicates sampling point locations and monitoring to be conducted at each point, and process treatment train information. This sampling plan shall be submitted to EPA at the same time and on the same diskette as the microbiological sampling plan required by § 141.143(c)(3) and no later than eight weeks after the PWS receives the Notice of ICR Final Applicability Determination from EPA, using the procedure specified in ''ICR Sampling Manual'', EPA 814–B–96–001, April 1996.

(3) All reports required by this section shall be submitted to USEPA (ICR4600), ICR Data Center, Room 1111 East Tower, 401 M Street SW., Washington, DC 20460.

(4) The PWS shall keep all data for at least three years following data submission to EPA.

(d) *Incorporation by reference.* The documents and methods listed in paragraphs (d) (1) and (2) of this section are incorporated by reference for purposes specified in this section. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at USEPA, Drinking Water Docket (4101), 401 M Street SW., Washington, DC 20460, or at Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(1) ''Standard Methods for the Examination of Water and Wastewater,'' 19th edition, 1995. Available from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005.

(2) ''Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems using Surface Water Sources'', Appendices C and O, 1991. Available from American Water Works Association, 6666 West Quincy Avenue, Denver, CO 80235.

§ 141.143 Microbial monitoring.

(a) Monitoring requirements. (1) *Parameters.* A PWS shall sample for the following parameters for the period specified in § 141.141(d) of this subpart and at the location specified and using the analytical methods specified in paragraphs (a)(2) and (b), respectively, of this section. For each sample, a PWS shall determine the densities of total coliforms, fecal coliforms or *Escherichia coli*, *Giardia*, *Cryptosporidium*, and total culturable viruses for each treatment plant required to monitor under the provisions of § 141.141(b) of this subpart.

(2) *Monitoring locations.* (i) A PWS shall collect one sample of the treatment plant influent at the frequency specified in § 141.141(d) of this subpart.

(A) A sample of treatment plant influent shall be taken at a location at the upstream end of a treatment plant where waters from all intakes are blended prior to any treatment or chemical addition.

(B) For treatment plants that have multiple intakes and add chemicals at the intake, the PWS shall take an intake sample of the water resource with the poorest microbiological quality (or, if that cannot be determined, the water resource with the highest flow) collected before chemical addition and before pretreatment. If the intakes are expected to have the same source water quality, one representative intake sample may be taken. If a disinfectant is added at or before the intake (e.g., for zebra mussel control), the sample shall be taken in the vicinity of the intake in such manner that the sample is not contaminated by the disinfectant.

(ii) A PWS that, during any of the first twelve months of monitoring at the treatment plant influent, detects 10 or more *Giardia* cysts, or 10 or more *Cryptosporidium* oocysts, or one or more total culturable viruses, in one liter of water; or calculates a numerical value of the *Giardia* or *Cryptosporidium* concentration equal to or greater than 1000 per 100 liters or virus concentration

equal to or greater than 100 per 100 liters; or detects no pathogens in the sample and calculates a numerical value of the detection limit for *Giardia* or *Cryptosporidium* concentration equal to or greater than 1000 per 100 liters or virus concentration equal to or greater than 100 per 100 liters; shall also collect one sample of finished water per month at each such treatment plant, beginning in the first calendar month after the PWS learns of such a result. The sample of finished water shall be collected at a point after which all treatment processes for a particular treatment plant are complete (including the clearwell and final point of disinfection) and before the distribution system begins. For each sample of finished water, PWSs shall determine the density of total coliforms, fecal coliforms or *E. coli*, *Giardia*, *Cryptosporidium*, and total culturable viruses. A PWS shall continue finished water monitoring monthly until 18 months of treatment plant influent monitoring has been completed.

(iii) In lieu of conducting finished water monitoring of *Giardia* and *Cryptosporidium* specified in paragraph (a)(2)(ii) of this section, a PWS may notify EPA in its response to the notice of applicability required by paragraph (c)(3)(i) of this section that the PWS will comply with the alternative monitoring requirements in paragraphs (a)(2)(iii)(A) and (B) of this section. The PWS shall still conduct finished water monitoring for all other microorganisms, except for *Giardia* and *Cryptosporidium* monitoring in the finished water.

(A) The PWS measures the particle counts in the treatment plant influent, at points immediately prior to filtration and after filtration (but before the addition of post-filtration chemicals). Particle counting shall be conducted on the same treatment train as is sampled for monitoring conducted under the provisions of § 141.142(a) of this subpart. Such samples shall be collected monthly during the entire 18-month monitoring period, using the procedures contained in the ''ICR Sampling Manual'', EPA 814–B–96–001, April 1996. The PWS may use either grab or continuous particle counting. Particle counting shall be conducted during the same time as protozoa monitoring required by paragraph (a)(2)(iii)(B) of this section.

(*1*) If grab sampling is conducted, the PWS shall collect 12 samples per location at the treatment plant influent, filter influent, and filter effluent, over either a 24-hour period or the duration of the filter run, whichever is shorter.

(*2*) If continuous particle counting is conducted, the PWS shall collect 12 instrument readings per location, evenly spaced in time, at the treatment plant influent, filter influent, and filter effluent, over either a 24-hour period or the duration of the filter run, whichever is shorter.

(*3*) For each sample, the PWS shall measure particle counts per milliliter in the size ranges of 3μm-5μm, 5μm-7μm, 7μm-10μm, 10μm–15μm, and >15μm, and shall report to EPA the mean value in each size range of the 12 values collected over the sampling period.

(B) The PWS collects and analyzes at least four consecutive months of *Giardia* and *Cryptosporidium* samples at the same locations specified in paragraph (a)(2)(iii)(A) of this section, within the first 12 months of the 18 months of sampling. The PWS shall collect *Giardia* and *Cryptosporidium* samples during the same time period as it is conducting particle counting. The minimum sample volume for *Giardia* and *Cryptosporidium* analyses shall be 100 liters for treatment plant influent and 1,000 liters for water that has undergone any treatment. The PWS may use results of monitoring for *Giardia* and *Cryptosporidium* in the treatment plant influent specified in paragraph (a)(2) of this section to meet the requirements of this paragraph as long as such monitoring meets the requirements of both this paragraph and paragraph (a)(2) of this section.

(iv) If a PWS has monitored total coliforms, fecal coliforms, or *E. coli* in the treatment plant influent for at least five days/week for any period of six consecutive months beginning after January 1, 1994 and 90% of all samples taken in that six-month period contained no greater than 100 total coliforms/100 ml, or 20 fecal coliforms/100 ml, or 20 *E. coli*/100 ml, the PWS may request to not conduct virus monitoring for that treatment plant, for the duration of the requirement. Even if approved, the PWS may subsequently be required to monitor under the criteria in paragraph (a)(2)(iv)(A) of this section. This request shall be submitted as part of the response to the notice of applicability required by paragraph (c)(3)(i) of this section.

(A) If the PWS is subsequently required to monitor the finished water under the provisions of paragraph (a)(2)(ii) of this section, the PWS shall monitor, along with the other specified organisms, total culturable viruses, as specified in paragraph (a)(2)(i) of this section for treatment plant influent and as specified in paragraph (a)(2)(ii) of this section for finished water, until 18 months of microbial monitoring is completed.

(B) A PWS may use coliform data collected under § 141.71(a)(1) of this part for this purpose but, if this is done, the PWS shall submit two separate monitoring reports. One report, to meet the requirements of § 141.71(a)(1) of this part, shall continue to be submitted as required by subpart H of this part. The other report shall be submitted to meet the requirements of paragraph (c)(3) of this section.

(C) If a PWS does not provide EPA with six months of suitable coliform results as part of its response to the notice of applicability, the PWS shall begin virus monitoring. If a PWS begins virus monitoring and subsequently provides EPA with six months of coliform results that are at or below the indicated density limit, and EPA approves the request to not conduct virus monitoring, the PWS may avoid subsequent treatment plant virus monitoring.

(b) Analytical Methods. (1) A PWS shall use the methods listed in paragraphs (b)(1) (i) through (v) of this section for monitoring under this subpart.

(i) Fecal coliforms—specified at § 141.74(a)(1) of this part, except that whenever paired source water samples and finished water samples are to be collected, only the fecal coliform procedure (Standard Method 9221E), as specified in § 141.74(a)(1) of this part, using EC Medium, can be used. The time between sample collection and initiation of sample analysis shall not exceed eight hours. Samples shall be chilled, but not frozen, and shipped at a temperature of less than 10°C. Samples not processed immediately at the laboratory shall be refrigerated. The laboratory must invalidate samples that arrive frozen or at a temperature greater than 10°C.

(ii) Total coliforms—specified at § 141.74(a)(2) of this part. The time between sample collection and initiation of sample analysis shall not exceed eight hours. Samples shall be chilled, but not frozen, and shipped at a temperature of less than 10°C. Samples not processed immediately at the laboratory shall be refrigerated. The laboratory must invalidate samples that arrive frozen or at a temperature greater than 10°C.

(iii) *E. coli*—as specified by § 141.21(f)(6) (i) through (iii) of this part, except that the density shall be reported. PWSs using the EC+MUG and ONPG-MUG tests shall use either a 5-tube or 10-tube 10-ml configuration, with serial dilutions of the original sample as needed, and report the Most Probable Number. PWSs may also use a commercial multi-test system for *E. coli* enumeration, as long as they use M-Endo medium for the initial isolation of the organisms, pick every colony on the plate with the appearance of a total coliform, and streak it for purification before subjecting the colony to a multi-test system. The time between sample collection and initiation of sample analysis, regardless of method used, shall not exceed eight hours. Samples shall be chilled, but not frozen, and shipped at a temperature of less than 10°C. Samples not processed immediately at the laboratory shall be refrigerated. The laboratory must invalidate samples that arrive frozen or at a temperature greater than 10°C.

(iv) *Giardia* and *Cryptosporidium*—ICR Protozoan Method, as described in ''ICR Microbial Laboratory Manual'', EPA 600/R–95/178, April 1996.

(v) Total culturable viruses—Virus Monitoring Protocol, as described in ''ICR Microbial Laboratory Manual'', EPA 600/R–95/178, April 1996.

(2) *Laboratories.* A PWS shall use EPA-approved laboratories to analyze for *Giardia*, *Cryptosporidium*, and total culturable viruses. A PWS shall use laboratories certified for microbiology analyses by either EPA or a State under the EPA or State drinking water program for the analysis of total coliforms, fecal coliforms, and *E. coli*. Laboratories that wish to become approved shall contact EPA in writing at USEPA, Technical Support Division, ICR Laboratory Coordinator, 26 W. Martin Luther King Drive, Cincinnati, OH 45268 not later than August 14, 1996. Laboratory approval criteria for *Giardia*, *Cryptosporidium*, and total culturable viruses are found in the ''ICR Microbial Laboratory Manual'', EPA 600/R–95/178, April 1996.

(3) A PWS shall send EPA a virus archive sample prepared as described in Chapter VIII of ''ICR Microbial Laboratory Manual'', EPA 600/R–95/178, April 1996, for each water sample identified in paragraph (b)(3) (i) or (ii) of this section.

(i) Samples of treatment plant influent and finished water, for every month after the PWS learns that viruses were detected in any previous sample of finished water.

(ii) Samples of treatment plant influent and finished water, regardless of whether viruses are detected in the finished water, for every month after the PWS learns that a density of at least 10 viruses/L was detected in any previous treatment plant influent water sample.

(iii) A PWS may arrange to have virus samples shipped directly to EPA by its virus laboratory for archiving.

(iv) Samples shall be sent on dry ice to ICR Virus Archiving Coordinator following the procedures specified in ''ICR Microbial Laboratory Manual'', EPA 600/R–95/178, April 1996.

(c) *Reporting.* (1) A PWS shall report data and information required under paragraphs (a) and (b) of this section using an EPA-specified computer readable format. A PWS shall submit a monthly report on a diskette, no later than the fourth month following sampling, that indicates the analytical results of all samples collected. Reports shall include PWSID, ICR plant identification, sample date, analysis date, laboratory identification numbers, analytical methods used, sample identification numbers, analytical batch numbers, quality assurance code, and processing batch numbers, if appropriate.

(2)(i) For a PWS using the alternative to *Giardia* and *Cryptosporidium* monitoring in paragraph (a)(2)(iii) of this section, the PWS shall report to EPA the mean value in each size range of the 12 particle counting values collected over the sampling period. In addition, during the four consecutive months when the PWS collects *Giardia* and *Cryptosporidium* samples specified in paragraph (a)(2)(iii)(B) of this section, the PWS shall report to EPA, for each measured site, the densities of *Giardia* and *Cryptosporidium* at each measured site. This information shall be submitted at the same time as the report required by paragraph (c)(1) of this section.

(ii) A PWS that is not required to monitor for total culturable viruses under the provisions of paragraph (a)(2)(iv) of this section shall report to EPA the dates and results of all total coliform, fecal coliform, or *E. coli* monitoring used by the PWS to determine that additional virus monitoring is unnecessary. The report shall indicate all data collected during the six-month time period, and how the data were used to calculate compliance with this requirement.

(3) *Additional Requirements.* A PWS shall submit a microbiological sampling plan for EPA approval, using software provided by EPA, for each treatment plant specified in § 141.141(b) of this subpart that indicates sampling point locations and monitoring to be conducted at each point. This sampling plan shall be submitted to EPA at the same time and on the same diskette as the DBP and related monitoring sampling plan required by § 141.142(c)(2) and no later than eight weeks after the PWS receives the Notice of ICR Final Applicability Determination from EPA, using the procedure specified in ''ICR Sampling Manual'', EPA 814–B–96–001, April 1996.

(4) All reports required by this section shall be submitted to USEPA (ICR4600), ICR Data Center, Room 1111 East Tower, 401 M Street SW., Washington, DC 20460.

(5) The PWS shall keep all data for at least three years following data submission to EPA.

§ 141.144 Disinfection byproduct precursor removal studies.

(a) *TOC, UFCTOX, THM4, and HAA5 applicability monitoring.* A PWS required to comply with this section shall conduct TOC, UFCTOX, THM4, and HAA5 monitoring specified in § 141.141(e)(2) of this subpart. A PWS may use monitoring results from samples required by § 141.142(a) of this subpart to meet this requirement to the extent that all requirements in each section are met.

(b) *Treatment study requirements.* A PWS identified in § 141.141(b) of this subpart shall conduct disinfection byproduct precursor removal studies (treatment studies). The treatment study shall use bench-and/or pilot-scale systems for at least one of the two appropriate candidate technologies (GAC or membrane processes) for the reduction of organic DBP precursors. The treatment studies shall be designed to yield representative performance data and allow the development of national treatment cost estimates for different levels of organic disinfection byproduct control. The treatment objective of the studies is the achievement of levels of byproducts less than 40 μg/L TTHM and 30 μg/L HAA5, as an annual average. The treatment study shall be conducted with the effluent from treatment processes already in place that remove disinfection byproduct precursors and TOC, to simulate the most likely treatment scenario. PWSs are permitted to optimize these processes or pilot additional processes appropriate for pretreatment for treatment studies. In order to minimize the formation of DBPs, the test water for both the bench- and pilot-scale tests shall be obtained from a location before the first point at which oxidants or disinfectants that form halogenated disinfection byproducts are added. If the use of these oxidants or disinfectants precedes any full-scale treatment process that removes disinfection byproduct precursors, then bench- and pilot-scale treatment processes that represent these full-scale treatment processes are required prior to the GAC or membrane process. A PWS should exercise sound judgement in its selection of treatment process to study and the point at which to obtain water for study. Depending upon the type of treatment study, the study shall be conducted in accordance with the following criteria.

(1) Bench-scale tests are continuous flow tests using rapid small scale column test (RSSCT) for GAC and small scale membrane test apparatus as specified in ''ICR Manual for Bench- and Pilot-scale Treatment Studies'' (EPA 814–B–96–003, April 1996).

(i) GAC bench-scale testing shall include information on the experimental conditions and results necessary to adequately determine the scaled-up breakthrough curves under the conditions of each RSSCT. At least two empty bed contact times (EBCTs) shall be tested using the RSSCT. These RSSCT EBCTs shall be designed to represent a full-scale EBCT of 10 min and a full-scale EBCT of 20 min. Additional EBCTs may be tested. The RSSCT testing is described in the ''ICR Bench- and Pilot-scale Treatment Study Manual'' (EPA 814–B–96–003, April 1996). The RSSCT tests at each EBCT shall be run quarterly to ascertain the impact of seasonal variation. Thus a total of four RSSCTs at each EBCT should be run. When seasonal variation is not significant, as is the case in most ground waters, the quarterly tests should be run to investigate other variables, as described in the ''ICR Bench- and Pilot-scale Treatment Study

Manual'' (EPA 814–B–96–003, April 1996). The RSSCT shall be run until the effluent TOC concentration is at least 70% of the average influent TOC concentration or the effluent TOC reaches a plateau at greater than 50% of the influent TOC (i.e., the effluent TOC does not increase over a two-month full-scale-equivalent time period by more than 10% of the average influent TOC concentration) or a RSSCT operation time that represents the equivalent of one year of full-scale operation, whichever is shorter. The average influent TOC is defined as the running average of the influent TOC at the time of effluent sampling. If, after completion of the first quarter RSSCTs, the PWS finds that the effluent TOC reaches 70% of the average influent TOC within 20 full-scale equivalent days on the EBCT=10 min test and within 30 full-scale equivalent days on the EBCT=20 min test, the last three quarterly tests shall be conducted using membrane bench-scale testing with only one membrane, as described in paragraph (b)(1)(ii) of this section.

(ii) Membrane bench-scale testing shall include information on the experimental conditions and results necessary to determine the water quality produced by the membrane treatment and a preliminary estimate of productivity. The testing procedures and monitoring and reporting requirements are described in the ''ICR Bench- and Pilot-scale Treatment Study Manual'' (EPA 814–B–96–003, April 1996). A minimum of two different membrane types with nominal molecular weight cutoffs of less than 1000 shall be investigated. Membrane tests shall be conducted quarterly over one year to determine the seasonal variation. Thus, a total of four bench-scale tests with each membrane shall be run. If seasonal variation is not significant, as is the case of most ground waters, the quarterly tests should be run to evaluate the impact of other variables, such as pretreatment, or additional membranes could be tested. Alternatively, a PWS may choose to conduct a long-term, single element study using a single membrane type in lieu of evaluating two membranes in four quarterly short-term tests, using the protocol in the ''ICR Bench- and Pilot-scale Treatment Study Manual'' (EPA 814–B–96–003, April 1996).

(2) A PWS shall conduct pilot-scale testing as continuous flow tests. For GAC, the PWS shall use GAC of particle size representative of that used in full-scale practice, a pilot GAC column with a minimum inner diameter of 2.0 inches, and hydraulic loading rate (volumetric flow rate/column cross-sectional area) representative of that used in full-scale practice. The PWS shall design a pilot-scale membrane system as a staged array of elements as described in ''ICR Manual for Bench- and Pilot-scale Treatment Studies'', EPA 814–B–96–003, April 1996.

(i) GAC pilot-scale testing. (A) The pilot testing procedures and monitoring and reporting requirements are prescribed in the ''ICR Bench- and Pilot-scale Treatment Study Manual'' (EPA 814–B–96–003, April 1996).

(B) At least two EBCTs shall be tested, EBCT=10 min and EBCT=20 min, using the pilot-scale plant. Additional EBCTs may be tested.

(C) The pilot tests at each EBCT shall continue until the effluent TOC concentration is at least 70% of the average influent TOC concentration on two consecutive TOC sample dates that are at least two weeks apart or the effluent TOC reaches a plateau at greater than 50% of the influent TOC (i.e., the effluent TOC does not increase over a two-month period by more than 10% of the average influent TOC concentration). If either of these criteria is met for the 20-minute EBCT prior to six months run time, a second pilot test at each EBCT shall be conducted following the same sampling requirements. In all cases the maximum length of the pilot study (one or two tests) is one year. The average influent TOC is defined as the running average of the influent TOC at the time of sampling. The pilot-scale testing shall be timed to capture seasonal variation. If seasonal variation is not significant, as is the case with most ground waters, the pilot-scale test runs shall be designed to evaluate the impact of other variables, such as pretreatment.

(ii) Membrane pilot-scale testing.

(A) The membrane pilot testing procedures and monitoring and reporting requirements are prescribed in the ''ICR Bench- and Pilot-scale Treatment Study Manual'' (EPA 814–B–96–003, April 1996).

(B) The membrane test system shall be designed to yield information on loss of productivity (fouling), pretreatment requirements, cleaning requirements, and permeate quality and operated at a recovery representative of full-scale operation.

(C) The pilot-scale testing shall be run for one year.

(3) Chlorination under simulated distribution system (SDS) conditions shall be used prior to the measurement of THM4, HAA6, TOX, and chlorine demand. These conditions are described in ''ICR Manual for Bench- and Pilot-scale Treatment Studies'' (EPA 814–B–96–003, April 1996) and represent the average conditions in the distribution system at that time with regard to holding time, temperature, pH, and chlorine residual. If chlorine is not used as the final disinfectant in practice, then a chlorine dose shall be set to yield a free chlorine residual of 1.0 to 0.5 mg/l after a holding time, temperature, and pH equal to those representative of the distribution system averages.

(c) *Analytical Methods*. All analyses required by paragraphs (a) and (b) of this section shall be conducted using the methods and the mandatory analytical and quality control procedures contained in either ''DBP/ICR Analytical Methods Manual'' (EPA 814–B–96–002, April 1996) or ''ICR Manual for Bench- and Pilot-scale Treatment Studies'' (EPA 814–B–96–003, April 1996). In addition, TOC analyses required by paragraph (a) of this section shall be conducted by a laboratory approved under the provisions of § 141.142(b)(2) of this subpart.

(d) *Reporting*. (1) TOC and UFCTOX reporting. A PWS shall submit the monthly results of 12 months of TOC or UFCTOX monitoring required by paragraph (a)(1) of this section and the annual average of those monthly results not later than October 14, 1997. This report is not required to be submitted electronically. Although a PWS may use monitoring results from samples required by § 141.142(a) of this subpart to meet this requirement, it shall submit separate reports to meet this reporting requirement and the reporting requirement in § 141.142(c)(1) of this subpart.

(2) A PWS shall report all data collected under the provisions of paragraph (b) of this section. In addition, a PWS shall report the information for water resource and full-scale and pilot- or bench-scale pretreatment processes that precede the bench/pilot systems. These data and information shall be reported in the format specified in ''ICR Manual for Bench- and Pilot-scale Treatment Studies'' (EPA 814–B–96–003, April 1996) not later than July 14, 1999.

(3) All reports required by this section shall be submitted to USEPA, Technical Support Division, ICR Precursor Removal Studies Coordinator, 26 West Martin Luther King Drive, Cincinnati, OH 45268.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

Subpart A—General Provisions

Subpart B—Primary Enforcement Responsibility

Subpart C—Review of State-Issued Variances and Exemptions

Subpart D—Federal Enforcement

Subpart E—Variances Issued by the Administrator

Subpart F—Exemptions Issued by the Administrator

Subpart G—Identification of Best Technology, Treatment Techniques or Other Means Generally Available

Subpart H—Indian Tribes

Subpart I—Administrator's Review of State Decisions that Implement Criteria Under Which Filtration Is Required

Subpart J—Procedures for PWS Administrative Compliance Orders

AUTHORITY: 42 U.S.C. 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

SOURCE: 41 FR 2918, Jan. 20, 1976, unless otherwise noted.

Subpart A—General Provisions

§ 142.1 Applicability.

This part sets forth, pursuant to sections 1413 through 1416, 1445, and 1450 of the Public Health

Service Act, as amended by the Safe Drinking Water Act, Public Law 93–523, regulations for the implementation and enforcement of the national primary drinking water regulations contained in part 141 of this chapter.

§ 142.2 Definitions.

As used in this part, and except as otherwise specifically provided:

Act means the Public Health Service Act.

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

Agency means the United States Environmental Protection Agency.

Approved State primacy program consists of those program elements listed in § 142.11(a) that were submitted with the initial State application for primary enforcement authority and approved by the EPA Administrator and all State program revisions thereafter that were approved by the EPA Administrator.

Contaminant means any physical, chemical, biological, or radiological substance or matter in water.

Federal agency means any department, agency, or instrumentality of the United States.

Indian Tribe means any Indian Tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

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

Maximum contaminant level means the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system; except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except for those resulting from corrosion of piping and plumbing caused by water quality are excluded from this definition.

Municipality means a city, town, or other public body created by or pursuant to State law, or an Indian Tribe which does not meet the requirements of subpart H of this part.

National primary drinking water regulation means any primary drinking water regulation contained in part 141 of this chapter.

Person means an individual; corporation; company; association; partnership; municipality; or State, federal, or Tribal agency.

Primary enforcement responsibility means the primary responsibility for administration and enforcement of primary drinking water regulations and related requirements applicable to public water systems within a State.

Public water system means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

Sanitary survey means an onsite review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.

State means one of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an eligible Indian tribe.

State primary drinking water regulation means a drinking water regulation of a State which is comparable to a national primary drinking water regulation.

State program revision means a change in an approved State primacy program.

Supplier of water means any person who owns or operates a public water system.

Treatment technique requirement means a requirement of the national primary drinking water regulations which specifies for a contaminant a specific treatment technique(s) known to the Administrator which leads to a reduction in the level of such contaminant sufficient to comply with the requirements of part 141 of this chapter.

[41 FR 2918, Jan. 20, 1976, as amended at 53 FR 37410, Sept. 26, 1988; 54 FR 52137, Dec. 20, 1989; 59 FR 64344, Dec. 14, 1994]

§ 142.3 Scope.

(a) Except where otherwise provided, this part applies to each public water system in each State; except that this part shall not apply to a public water system which meets all of the following conditions:

(1) Which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) Which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(3) Which does not sell water to any person; and

(4) Which is not a carrier which conveys passengers in interstate commerce.

(b) In order to qualify for primary enforcement responsibility, a State's program for enforcement of primary drinking water regulations must apply to all other public water systems in the State, except for:

(1) Public water systems on carriers which convey passengers in interstate commerce;

(2) Public water systems on Indian land with respect to which the State does not have the necessary jurisdiction or its jurisdiction is in question; or

(3) Public water systems owned or maintained by a Federal agency where the Administrator has waived compliance with national primary drinking water regulations pursuant to section 1447(b) of the Act.

(c) Section 1451 of the SDWA authorizes the Administrator to delegate primary enforcement responsibility for public water systems to Indian Tribes. An Indian Tribe must meet the statutory criteria at 42 U.S.C. 300j–11(b)(1) before it is eligible to apply for Public Water System Supervision grants and primary enforcement responsibility. All primary enforcement responsibility requirements of parts 141 and 142 apply to Indian Tribes except where specifically noted.

[41 FR 2918, Jan. 20, 1976, as amended at 53 FR 37410, Sept. 26, 1988; 59 FR 64344, Dec. 14, 1994]

§ 142.4 State and local authority.

Nothing in this part shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems, but no such law or regulation shall relieve any person of any requirements otherwise applicable under this part.

Subpart B—Primary Enforcement Responsibility

§ 142.10 Requirements for a determination of primary enforcement responsibility.

A State has primary enforcement responsibility for public water systems in the State during any period for which the Administrator determines, based upon a submission made pursuant to § 142.11, and submission under § 142.12, that such State, pursuant to appropriate State legal authority:

(a) Has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations (NPDWRs) in effect under part 141 of this chapter;

(b) Has adopted and is implementing adequate procedures for the enforcement of such State regulations, such procedures to include:

(1) Maintenance of an inventory of public water systems.

(2) A systematic program for conducting sanitary surveys of public water systems in the State, with priority given to sanitary surveys of public water systems not in compliance with State primary drinking water regulations.

(3)(i) The establishment and maintenance of a State program for the certification of laboratories conducting analytical measurements of drinking water contaminants pursuant to the requirements of the State primary drinking water regulations including the designation by the State of a laboratory officer, or officers, certified by the Administrator, as the official(s) responsible for the State's certification program. The requirements of this paragraph may be waived by the Administrator for any State where all analytical measurements required by the State's primary drinking water regulations are conducted at laboratories operated by the State and certified by the Agency. Until such time as the Agency establishes a National quality assurance program for laboratory certification the State shall maintain an interim program for the purpose of approving those laboratories from which the required analytical measurements will be acceptable.

(ii) Upon a showing by an Indian Tribe of an intergovernmental or other agreement to have all analytical tests performed by a certified laboratory, the Administrator may waive this requirement.

(4) Assurance of the availability to the State of laboratory facilities certified by the Administrator and capable of performing analytical measurements of all contaminants specified in the State primary drinking water regulations. Until such time as the Agency establishes a National quality assurance program for laboratory certification the Administrator will approve such State laboratories on an interim basis.

(5) The establishment and maintenance of an activity to assure that the design and construction of new or substantially modified public water system facilities will be capable of compliance with the State primary drinking water regulations.

(6) Statutory or regulatory enforcement authority adequate to compel compliance with the State primary drinking water regulations in appropriate cases, such authority to include:

(i) Authority to apply State primary drinking water regulations to all public water systems in the State covered by the national primary drinking

water regulations, except for interstate carrier conveyances and systems on Indian land with respect to which the State does not have the necessary jurisdiction or its jurisdiction is in question.

(ii) Authority to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of the State primary drinking water regulations.

(iii) Right of entry and inspection of public water systems, including the right to take water samples, whether or not the State has evidence that the system is in violation of an applicable legal requirement.

(iv) Authority to require suppliers of water to keep appropriate records and make appropriate reports to the State.

(v) Authority to require public water systems to give public notice that is no less stringent than the EPA requirements in §§ 141.32 and 142.16(a).

(vi) Authority to assess civil or criminal penalties for violation of the State's primary drinking water regulations and public notification requirements, including the authority to assess daily penalties or multiple penalties when a violation continues;

(c) Has established and will maintain record keeping and reporting of its activities under paragraphs (a), (b) and (d) in compliance with §§ 142.14 and 142.15;

(d) If it permits variances or exemptions, or both, from the requirements of the State primary drinking water regulations, it shall do so under conditions and in a manner no less stringent than the requirements under sections 1415 and 1416 of the Act. In granting variances, the State must adopt the Administrator's findings of best available technology, treatment techniques, or other means available as specified in subpart G of this part. (States with primary enforcement responsibility may adopt procedures different from those set forth in subparts E and F of this part, which apply to the issuance of variances and exemptions by the Administrator in States that do not have primary enforcement responsibility, provided, that the State procedures meet the requirements of this paragraph); and

(e) Has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances.

(f) An Indian Tribe shall not be required to exercise criminal enforcement jurisdiction to meet the requirements for primary enforcement responsibility.

[41 FR 2918, Jan. 20, 1976, as amended at 43 FR 5373, Feb. 8, 1978; 52 FR 20675, June 2, 1987; 52 FR 41550, Oct. 28, 1987; 53 FR 37410, Sept. 26, 1988; 54 FR 15188, Apr. 17, 1989; 54 FR 52138, Dec. 20, 1989]

§ 142.11 Initial determination of primary enforcement responsibility.

(a) A State may apply to the Administrator for a determination that the State has primary enforcement responsibility for public water systems in the State pursuant to section 1413 of the Act. The application shall be as concise as possible and include a side-by-side comparison of the Federal requirements and the corresponding State authorities, including citations to the specific statutes and administrative regulations or ordinances and, wherever appropriate, judicial decisions which demonstrate adequate authority to meet the requirements of § 142.10. The following information is to be included with the State application.

(1) The text of the State's primary drinking water regulations, with references to those State regulations that vary from comparable regulations set forth in part 141 of this chapter, and a demonstration that any different State regulation is at least as stringent as the comparable regulation contained in part 141.

(2) A description, accompanied by appropriate documentation, of the State's procedures for the enforcement of the State primary drinking water regulations. The submission shall include:

(i) A brief description of the State's program to maintain a current inventory of public water systems.

(ii) A brief description of the State's program for conducting sanitary surveys, including an explanation of the priorities given to various classes of public water systems.

(iii) A brief description of the State's laboratory approval or certification program, including the name(s) of the responsible State laboratory officer(s) certified by the Administrator.

(iv) Identification of laboratory facilities, available to the State, certified or approved by the Administrator and capable of performing analytical measurements of all contaminants specified in the State's primary drinking water regulations.

(v) A brief description of the State's program activity to assure that the design and construction of new or substantially modified public water system facilities will be capable of compliance with the requirements of the State primary drinking water regulations.

(vi) Copies of State statutory and regulatory provisions authorizing the adoption and enforcement of State primary drinking water regulations, and a brief description of State procedures for administrative or judicial action with respect to public water systems not in compliance with such regulations.

(3) A statement that the State will make such reports and will keep such records as may be required pursuant to §§ 142.14 and 142.15.

(4) If the State permits variances or exemptions from its primary drinking water regulations, the text of the State's statutory and regulatory provisions concerning variances and exemptions.

(5) A brief description of the State's plan for the provision of safe drinking water under emergency conditions. NOTE: In satisfaction of this requirement, for public water supplies from groundwater sources, EPA will accept the contingency plan for providing alternate drinking water supplies that is part of a State's Wellhead Protection Program, where such program has been approved by EPA pursuant to section 1428 of the SDWA.

(6)(i) A statement by the State Attorney General (or the attorney for the State primacy agency if it has independent legal counsel) or the attorney representing the Indian tribe that certifies that the laws and regulations adopted by the State or tribal ordinances to carry out the program were duly adopted and are enforceable. State statutes and regulations cited by the State Attorney General and tribal ordinances cited by the attorney representing the Indian tribe shall be in the form of lawfully adopted State statutes and regulations or tribal ordinances at the time the certification is made and shall be fully effective by the time the program is approved by EPA. To qualify as ''independent legal counsel,'' the attorney signing the statement required by this section shall have full authority to independently represent the State primacy agency or Indian tribe in court on all matters pertaining to the State or tribal program.

(ii) After EPA has received the documents required under paragraph (a) of this section, EPA may selectively require supplemental statements by the State Attorney General (or the attorney for the State primacy agency if it has independent legal counsel) or the attorney representing the Indian tribe. Each supplemental statement shall address all issues concerning the adequacy of State authorities to meet the requirements of § 142.10 that have been identified by EPA after thorough examination as unresolved by the documents submitted under paragraph (a) of this section.

(b) (1) The administrator shall act on an application submitted pursuant to § 142.11 within 90 days after receiving such application, and shall promptly inform the State in writing of this action. If he denies the application, his written notification to the State shall include a statement of reasons for the denial.

(2) A final determination by the Administrator that a State has met or has not met the requirements for primary enforcement responsibility shall take effect in accordance with the public notice requirements and related procedures under § 142.13.

(3) When the Administrator's determination becomes effective pursuant to § 142.13, it shall continue in effect unless terminated pursuant to § 142.17.

[41 FR 2918, Jan. 20, 1976, as amended at 54 FR 52138, Dec. 20, 1989; 60 FR 33661, June 28, 1995]

EFFECTIVE DATE NOTE: At 60 FR 33661, June 28, 1995, § 142.11 was amended by revising paragraph (b)(2), effective July 28, 1995. For the convenience of the user the superseded text appears as follows:

§ 142.11 Initial determination of primary enforcement responsibility.

* * * * *

(b) * * *

(2) A determination by the Administrator that a State has met the requirements for primary enforcement responsibility shall take effect in accordance with § 142.13.

* * * * *

§ 142.12 Revision of State programs.

(a) *General requirements.* Either EPA or the primacy State may initiate actions that require the State to revise its approved State primacy program. To retain primary enforcement responsibility, States must adopt all new and revised national primary drinking water regulations promulgated in part 141 of this chapter and any other requirements specified in this part.

(1) Whenever a State revises its approved primacy program to adopt new or revised Federal regulations, the State must submit a request to the Administrator for approval of the program revision, using the procedures described in paragraphs (b), (c), and (d) of this section. The Administrator shall approve or disapprove each State request for approval of a program revision based on the requirements of the Safe Drinking Water Act and of this part.

(2) For all State program revisions not covered under § 142.12(a)(1), the review procedures outlined in § 142.17(a) shall apply.

(b) *Timing of State requests for approval of program revisions to adopt new or revised Federal regulations.* (1) Complete and final State requests for approval of program revisions to adopt new or revised EPA regulations must be submitted to the Administrator within 18 months after promulgation of the new or revised EPA regulations, unless the State requests an extension and the Administrator has approved the request pursuant to paragraph (b)(2) of this section. If the State expects to submit a final State request for approval of a program revision to EPA more than 18 months after promulgation of the new or revised EPA regulations, the State shall request an extension of the deadline before the expiration of the 18-month period.

(2) The final date for submission of a complete and final State request for a program revision may be extended by EPA for up to a two-year period upon a written application by the State to the Administrator. In the extension application the State must demonstrate it is requesting the extension because it cannot meet the original deadline for reasons beyond its control despite a good faith effort to do so. The application must include a schedule for the submission of a final request by a certain time and provide sufficient information to demonstrate that the State:

(i)(A) Currently lacks the legislative or regulatory authority to enforce the new or revised requirements, or

(B) Currently lacks the program capability adequate to implement the new or revised requirements; or

(C) Is requesting the extension to group two or more program revisions in a single legislative or regulatory action; and

(ii) Is implementing the EPA requirements to be adopted by the State in its program revision pursuant to paragraph (b)(3) of this section within the scope of its current authority and capabilities.

(3) To be granted an extension, the State must agree with EPA to meet certain requirements during the extension period, which may include the following types of activities as determined appropriate by the Administrator on a case-by-case basis:

(i) Informing public water systems of the new EPA (and upcoming State) requirements and that EPA will be overseeing implementation of the requirements until EPA approves the State program revision;

(ii) Collecting, storing and managing laboratory results, public notices, and other compliance and operation data required by the EPA regulations;

(iii) Assisting EPA in the development of the technical aspects of enforcement actions and conducting informal follow-up on violations (telephone calls, letters, etc.);

(iv) Providing technical assistance to public water systems;

(v) Providing EPA with all information prescribed by § 142.15 of this part on State reporting; and

(vi) For States whose request for an extension is based on a current lack of program capability adequate to implement the new requirements, taking steps agreed to by EPA and the State during the extension period to remedy the deficiency.

(c) *Contents of a State request for approval of a program revision.* (1) The State request for EPA approval of a program revision shall be concise and must include:

(i) The documentation necessary (pursuant to § 142.11(a)) to update the approved State primacy program, and identification of those elements of the approved State primacy program that have not changed because of the program revision. The documentation shall include a side-by-side comparison of the Federal requirements and the corresponding State authorities, including citations to the specific statutes and administrative regulations or ordinances and, wherever appropriate, judicial decisions which demonstrate adequate authority to meet the requirements of § 142.10 as they apply to the program revision.

(ii) Any additional materials that are listed in § 142.16 of this part for a specific EPA regulation, as appropriate; and

(iii) For a complete and final State request only, unless one of the conditions listed in paragraph (c)(2) of this section are met, a statement by the State Attorney General (or the attorney for the State primacy agency if it has independent legal counsel) or the attorney representing the Indian tribe that certifies that the laws and regulations adopted by the State or tribal ordinances to carry out the program revision were duly adopted and are enforceable. State statutes and regulations cited by the State Attorney General and tribal ordinances cited by the attorney for the Indian tribe shall be in the form of lawfully adopted State statutes and regulations or tribal ordinances at the time the certification is made and shall be fully effective by the time the request for program revision is approved by EPA. To qualify as ''independent legal counsel,'' the attorney signing the statement required by this section shall have full authority to independently represent the State primacy agency or tribe in court on all matters pertaining to the State or tribal program.

(2) An Attorney General's statement will be required as part of the State request for EPA approval of a program revision unless EPA specifically waives this requirement for a specific regulation at the time EPA promulgates the regulation, or by later written notice from the Administrator to the State.

(3) After EPA has received the documents required under paragraph (c)(1) of this section, EPA may selectively require supplemental statements by the State Attorney General (or the attorney for the State primacy agency if it has independent legal counsel) or the attorney representing the Indian tribe. Each supplemental statement shall address all issues concerning the adequacy of State authorities to meet the requirements of § 142.10 that have been identified by EPA after thorough examination as unresolved by the documents submitted under paragraph (c)(1) of this section.

(d) *Procedures for review of a State request for approval of a program revision*—(1) *Preliminary request.* (i) The State may submit to the Administrator for his or her review a preliminary request

for approval of each program revision, containing the information listed in paragraph (c)(1) of this section, *in draft form.* The preliminary request does not require an Attorney General's statement in draft form, but does require draft State statutory or regulatory changes and a side-by-side comparison of State authorities with EPA requirements to demonstrate that the State program revision meets EPA requirements under § 142.10 of this part. The preliminary request should be submitted to the Administrator as soon as practicable after the promulgation of the EPA regulations.

(ii) The Administrator will review the preliminary request submitted in accordance with paragraph (d)(1)(i) of this section and make a tentative determination on the request. The Administrator will send the tentative determination and other comments or suggestions to the State for its use in developing the State's final request under paragraph (d)(2) of this section.

(2) *Final request.* The State must submit a complete and final request for approval of a program revision to the Administrator for his or her review and approval. The request must contain the information listed in paragraph (c)(1) of this section *in complete and final form,* in accordance with any tentative determination EPA may have issued. Complete and final State requests for program revisions shall be submitted within 18 months of the promulgation of the new or revised EPA regulations, as specified in paragraph (b) of this section.

(3) *EPA's determination on a complete and final request.* (i) The Administrator shall act on a State's request for approval of a program revision within 90 days after determining that the State request is complete and final and shall promptly notify the State of his/her determination.

(ii) If the Administrator disapproves a final request for approval of a program revision, the Administrator will notify the State in writing. Such notification will include a statement of the reasons for disapproval.

(iii) A final determination by the Administrator on a State's request for approval of a program revision shall take effect in accordance with the public notice requirements and related procedures under § 142.13.

[54 FR 52138, Dec. 20, 1989]

§ 142.13 Public hearing.

(a) The Administrator shall provide an opportunity for a public hearing before a final determination pursuant to § 142.11 that the State meets or does not meet the requirements for obtaining primary enforcement responsibility, or a final determination pursuant to § 142.12(d)(3) to approve or disapprove a State request for approval of a program revision, or a final determination pursuant to § 142.17 that a State no longer meets the requirements for primary enforcement responsibility.

(b) The Administrator shall publish notice of any determination specified in paragraph (a) of this section in the FEDERAL REGISTER and in a newspaper or newspapers of general circulation in the State involved within 15 days after making such determination, with a statement of his reasons for the determination. Such notice shall inform interested persons that they may request a public hearing on the Administrator's determination. Such notice shall also indicate one or more locations in the State where information submitted by the State pursuant to § 142.11 is available for inspection by the general public. A public hearing may be requested by any interested person other than a Federal agency. Frivolous or insubstantial requests for hearing may be denied by the Administrator.

(c) Requests for hearing submitted pursuant to paragraph (b) of this section shall be submitted to the Administrator within 30 days after publication of notice of opportunity for hearing in the FEDERAL REGISTER. Such requests shall include the following information:

(1) The name, address and telephone number of the individual, organization or other entity requesting a hearing.

(2) A brief statement of the requesting person's interest in the Administrator's determination and of information that the requesting person intends to submit at such hearing.

(3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

(d) The Administrator shall give notice in the FEDERAL REGISTER and in a newspaper or newspapers of general circulation in the State involved of any hearing to be held pursuant to a request submitted by an interested person or on his own motion. Notice of the hearing shall also be sent to the person requesting a hearing, if any, and to the State involved. Notice of the hearing shall include a statement of the purpose of the hearing, information regarding the time and location or locations for the hearing and the address and telephone number of an office at which interested persons may obtain further information concerning the hearing. At least one hearing location specified in the public notice shall be within the involved State. Notice of hearing shall be given not less than 15 days prior to the time scheduled for the hearing.

(e) Hearings convened pursuant to paragraph (d) of this section shall be conducted before a hearing officer to be designated by the Administrator. The hearing shall be conducted by the hearing officer

in an informal, orderly and expeditious manner. The hearing officer shall have authority to call witnesses, receive oral and written testimony and take such other action as may be necessary to assure the fair and efficient conduct of the hearing. Following the conclusion of the hearing, the hearing officer shall forward the record of the hearing to the Administrator.

(f) After reviewing the record of the hearing, the Administrator shall issue an order affirming the determination referred to in paragraph (a) of this section or rescinding such determination. If the determination is affirmed, it shall become effective as of the date of the Administrator's order.

(g) If no timely request for hearing is received and the Administrator does not determine to hold a hearing on his own motion, the Administrator's determination shall become effective 30 days after notice is issued pursuant to paragraph (b) of this section.

(h) If a determination of the Administrator that a State no longer meets the requirements for primary enforcement responsibility becomes effective, the State may subsequently apply for a determination that it meets such requirements by submitting to the Administrator information demonstrating that it has remedied the deficiencies found by the Administrator without adversely sacrificing other aspects of its program required for primary enforcement responsibility.

[41 FR 2918, Jan. 20, 1976, as amended at 54 FR 52140, Dec. 20, 1989; 60 FR 33661, June 28, 1995]

EFFECTIVE DATE NOTE: At 60 FR 33661, June 28, 1995, § 142.13 was amended by inserting the word ''final'' before the word ''determination'' in each of the three places where is occurs in paragraph (a), effective July 28, 1995.

§ 142.14 Records kept by States.

(a) Each State which has primary enforcement responsibility shall maintain records of tests, measurements, analyses, decisions, and determinations performed on each public water system to determine compliance with applicable provisions of State primary drinking water regulations.

(1) Records of microbiological analyses shall be retained for not less than 1 year. Actual laboratory reports may be kept or data may be transferred to tabular summaries, provided that the information retained includes:

(i) The analytical method used;

(ii) The number of samples analyzed each month;

(iii) The analytical results, set forth in a form which makes possible comparison with the limits specified in §§ 141.63, 141.71, and 141.72 of this chapter.

(2) Records of microbiological analyses of repeat or special samples shall be retained for not less than one year in the form of actual laboratory reports or in an appropriate summary form.

(3) Records of turbidity measurements shall be kept for not less than one year. The information retained must be set forth in a form which makes possible comparison with the limits specified in §§ 141.71 and 141.73 of this chapter. Until June 29, 1993, for any public water system which is providing filtration treatment and until December 30, 1991, for any public water system not providing filtration treatment and not required by the State to provide filtration treatment, records kept must be set forth in a form which makes possible comparison with the limits contained in § 141.13.

(i) Date and place of sampling.

(ii) Date and results of analyses.

(4)(i) Records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness in accordance with §§ 141.72 and 141.74 of this chapter and the reporting requirements of § 141.75 of this chapter shall be kept for not less than one year.

(ii) Records of decisions made on a system-by-system and case-by-case basis under provisions of part 141, subpart H, shall be made in writing and kept at the State.

(A) Records of decisions made under the following provisions shall be kept for 40 years (or until one year after the decision is reversed or revised) and a copy of the decision must be provided to the system:

(*1*) Section 141.73(a)(1)—Any decision to allow a public water system using conventional filtration treatment or direct filtration to substitute a turbidity limit greater than 0.5 NTU;

(*2*) Section 141.73(b)(1)—Any decision to allow a public water system using slow sand filtration to substitute a turbidity limit greater than 1 NTU;

(*3*) Section 141.74(b)(2)—Any decision to allow an unfiltered public water system to use continuous turbidity monitoring;

(*4*) Section 141.74(b)(6)(i)—Any decision to allow an unfiltered public water system to sample residual disinfectant concentration at alternate locations if it also has ground water source(s);

(*5*) Section 141.74(c)(1)—Any decision to allow a public water system using filtration treatment to use continuous turbidity monitoring; or a public water system using slow sand filtration or filtration treatment other than conventional treatment, direct filtration or diatomaceous earth filtration to reduce turbidity sampling to once per day; or for systems serving 500 people or fewer to reduce turbidity sampling to once per day;

(*6*) Section 141.74(c)(3)(i)—Any decision to allow a filtered public water system to sample disinfectant residual concentration at alternate locations if it also has ground water source(s);

(*7*) Section 141.75(a)(2)(ix)—Any decision to allow reduced reporting by an unfiltered public water system; and

(*8*) Section 141.75(b)(2)(iv)—Any decision to allow reduced reporting by a filtered public water system.

(B) Records of decisions made under the following provisions shall be kept for one year after the decision is made:

(*1*) Section 141.71(b)(1)(i)—Any decision that a violation of monthly CT compliance requirements was caused by circumstances that were unusual and unpredictable.

(*2*) Section 141.71(b)(1)(iv)—Any decision that a violation of the disinfection effectiveness criteria was not caused by a deficiency in treatment of the source water;

(*3*) Section 141.71(b)(5)—Any decision that a violation of the total coliform MCL was not caused by a deficiency in treatment of the source water;

(*4*) Section 141.74(b)(1)—Any decision that total coliform monitoring otherwise required because the turbidity of the source water exceeds 1 NTU is not feasible, except that if such decision allows a system to avoid monitoring without receiving State approval in each instance, records of the decision shall be kept until one year after the decision is rescinded or revised.

(C) Records of decisions made under the following provisions shall be kept for the specified period or 40 years, whichever is less.

(*1*) Section 141.71(a)(2)(i)—Any decision that an event in which the source water turbidity which exceeded 5 NTU for an unfiltered public water system was unusual and unpredictable shall be kept for 10 years.

(*2*) Section 141.71(b)(1)(iii)—Any decision by the State that failure to meet the disinfectant residual concentration requirements of § 141.72(a)(3)(i) was caused by circumstances that were unusual and unpredictable, shall be kept unless filtration is installed. A copy of the decision must be provided to the system.

(*3*) Section 141.71(b)(2)—Any decision that a public water system's watershed control program meets the requirements of this section shall be kept until the next decision is available and filed.

(*4*) Section 141.70(c)—Any decision that an individual is a qualified operator for a public water system using a surface water source or a ground water source under the direct influence of surface water shall be maintained until the qualification is withdrawn. The State may keep this information in the form of a list which is updated periodically. If such qualified operators are classified by category, the decision shall include that classification.

(*5*) Section 141.71(b)(3)—Any decision that a party other than the State is approved by the State to conduct on-site inspections shall be maintained until withdrawn. The State may keep this information in the form of a list which is updated periodically.

(*6*) Section 141.71(b)(4)—Any decision that an unfiltered public water system has been identified as the source of a waterborne disease outbreak, and, if applicable, that it has been modified sufficiently to prevent another such occurrence shall be kept until filtration treatment is installed. A copy of the decision must be provided to the system.

(*7*) Section 141.72—Any decision that certain interim disinfection requirements are necessary for an unfiltered public water system for which the State has determined that filtration is necessary, and a list of those requirements, shall be kept until filtration treatment is installed. A copy of the requirements must be provided to the system.

(*8*) Section 141.72(a)(2)(ii)—Any decision that automatic shut-off of delivery of water to the distribution system of an unfiltered public water system would cause an unreasonable risk to health or interfere with fire protection shall be kept until rescinded.

(*9*) Section 141.72(a)(4)(ii)—Any decision by the State, based on site-specific considerations, that an unfiltered system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified by § 141.74(a)(3) and that the system is providing adequate disinfection in the distribution system, so that the disinfection requirements contained in § 141.72(a)(4)(i) do not apply, and the basis for the decision, shall be kept until the decision is reversed or revised. A copy of the decision must be provided to the system.

(*10*) Section 141.72(b)(3)(ii)—Any decision by the State, based on site-specific conditions, that a filtered system has no means for having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified by § 141.74(a)(3) and that the system is providing adequate disinfection in the distribution system, so that the disinfection requirements contained in § 141.72(b)(3)(i) do not apply, and the basis for the decision, shall be kept until the decision is reversed or revised. A copy of the decision must be provided to the system.

(*11*) Section 141.73(d)—Any decision that a public water system, having demonstrated to the State that an alternative filtration technology, in combination with disinfection treatment, consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses, may use such alternative filtration technology, shall be kept until the decision is reversed or revised. A

copy of the decision must be provided to the system.

(*12*) Section 141.74(b), Table 3.1—Any decision that a system using either preformed chloramines or chloramines formed by the addition of ammonia prior to the addition of chlorine has demonstrated that 99.99 percent removal —nd/or inactivation of viruses has been achieved at particular CT values, and a list of those values, shall be kept until the decision is reversed or revised. A copy of the list of required values must be provided to the system.

(*13*) Section 141.74(b)(3)(v)—Any decision that a system using a disinfectant other than chlorine may use $CT_{99.9}$ values other than those in Tables 2.1 or 3.1 and/or other operational parameters to determine if the minimum total inactivation rates required by § 141.72(a)(1) are being met, and what those values or parameters are, shall be kept until the decision is reversed or revised. A copy of the list of required values or parameters must be provided to the system.

(*14*) Section 142.16(b)(2)(i)(B)—Any decision that a system using a ground water source is under the direct influence of surface water.

(iii) Records of any determination that a public water system supplied by a surface water source or a ground water source under the direct influence of surface water is not required to provide filtration treatment shall be kept for 40 years or until withdrawn, whichever is earlier. A copy of the determination must be provided to the system.

(5) Records of each of the following decisions made pursuant to the total coliform provisions of part 141 shall be made in writing and retained by the State.

(i) Records of the following decisions must be retained for 5 years.

(A) Section 141.21(b)(1)—Any decision to waive the 24-hour time limit for collecting repeat samples after a total coliform-positive routine sample if the public water system has a logistical problem in collecting the repeat sample that is beyond the system's control, and what alternative time limit the system must meet.

(B) Section 141.21(b)(5)—Any decision to allow a system to waive the requirement for five routine samples the month following a total coliform-positive sample. If the waiver decision is made as provided in § 141.21(b)(5), the record of the decision must contain all the items listed in that paragraph.

(C) Section 141.21(c)—Any decision to invalidate a total coliform-positive sample. If the decision to invalidate a total coliform-positive sample as provided in § 141.21(c)(1)(iii) is made, the record of the decision must contain all the items listed in that paragraph.

(ii) Records of each of the following decisions must be retained in such a manner so that each system's current status may be determined.

(A) Section 141.21(a)(2)—Any decision to reduce the total coliform monitoring frequency for a community water system serving 1,000 persons or fewer, that has no history of total coliform contamination in its current configuration and had a sanitary survey conducted within the past five years showing that the system is supplied solely by a protected groundwater source and is free of sanitary defects, to less than once per month, as provided in § 141.21(a)(2); and what the reduced monitoring frequency is. A copy of the reduced monitoring frequency must be provided to the system.

(B) Section 141.21(a)(3)(i)—Any decision to reduce the total coliform monitoring frequency for a non-community water system using only ground water and serving 1,000 persons or fewer to less than once per quarter, as provided in § 141.21(a)(3)(i), and what the reduced monitoring frequency is. A copy of the reduced monitoring frequency must be provided to the system.

(C) Section 141.21(a)(3)(ii)—Any decision to reduce the total coliform monitoring frequency for a non-community water system using only ground water and serving more than 1,000 persons during any month the system serves 1,000 persons or fewer, as provided in § 141.21(a)(3)(ii). A copy of the reduced monitoring frequency must be provided to the system.

(D) Section 141.21(a)(5)—Any decision to waive the 24-hour limit for taking a total coliform sample for a public water system which uses surface water, or ground water under the direct influence of surface water, and which does not practice filtration in accordance with part 141, subpart H, and which measures a source water turbidity level exceeding 1 NTU near the first service connection as provided in § 141.21(a)(5).

(E) Section 141.21(d)(1)—Any decision that a non-community water system is using only protected and disinfected ground water and therefore may reduce the frequency of its sanitary survey to less than once every five years, as provided in § 141.21(d), and what that frequency is. A copy of the reduced frequency must be provided to the system.

(F) Section 141.21(d)(2)—A list of agents other than the State, if any, approved by the State to conduct sanitary surveys.

(G) Section 141.21(e)(2)—Any decision to allow a public water system to forgo fecal coliform or *E. coli* testing on a total coliform-positive sample if that system assumes that the total coliform-positive sample is fecal coliform-positive or *E. coli*-positive, as provided in § 141.21(e)(2).

(6) Records of analysis for other than microbiological contaminants (including total coliform, fecal coliform, and heterotrophic plate count), residual disinfectant concentration, other parameters necessary to determine disinfection effectiveness (including temperature and pH measurements), and turbidity shall be retained for not less than 12 years and shall include at least the following information:

(i) Date and place of sampling.

(ii) Date and results of analyses.

(b) Records required to be kept pursuant to paragraph (a) of this section must be in a form admissible as evidence in State enforcement proceedings.

(c) Each State which has primary enforcement responsibility shall maintain current inventory information for every public water system in the State and shall retain inventory records of public water systems for not less than 12 years.

(d) Each State which has primary enforcement responsibility shall retain, for not less than 12 years, files which shall include for each such public water system in the State:

(1) Reports of sanitary surveys;

(2) Records of any State approvals;

(3) Records of any enforcement actions.

(4) A record of the most recent vulnerability determination, including the monitoring results and other data supporting the determination, the State's findings based on the supporting data and any additional bases for such determination; except that it shall be kept in perpetuity or until a more current vulnerability determination has been issued.

(5) A record of all current monitoring requirements and the most recent monitoring frequency decision pertaining to each contaminant, including the monitoring results and other data supporting the decision, the State's findings based on the supporting data and any additional bases for such decision; except that the record shall be kept in perpetuity or until a more recent monitoring frequency decision has been issued.

(6) A record of the most recent asbestos repeat monitoring determination, including the monitoring results and other data supporting the determination, the State's findings based on the supporting data and any additional bases for the determination and the repeat monitoring frequency; except that these records shall be maintained in perpetuity or until a more current repeat monitoring determination has been issued.

(7) Records of annual certifications received from systems pursuant to part 141, subpart K demonstrating the system's compliance with the treatment techniques for acrylamide and/or epichlorohydrin in § 14.111.

(8) Records of the currently applicable or most recent State determinations, including all supporting information and an explanation of the technical basis for each decision, made under the following provisions of 40 CFR, part 141, subpart I for the control of lead and copper:

(i) Section 141.82(b)—decisions to require a water system to conduct corrosion control treatment studies;

(ii) Section 141.82(d)—designations of optimal corrosion control treatment;

(iii) Section 141.82(f)—designations of optimal water quality parameters;

(iv) Section 141.82(h)—decisions to modify a public water system's optimal corrosion control treatment or water quality parameters;

(v) Section 141.83(b)(2)—determinations of source water treatment; and

(vi) Section 141.83(b)(4)—designations of maximum permissible lead and copper concentrations in source water.

(vii) Section 141.84(e)—determinations that a system does not control entire lead service lines.

(viii) Section 141.84(f)—determinations establishing a shorter lead service line replacement schedule than required by § 141.84.

(9) Records of reports and any other information submitted by PWSs under § 141.90;

(10) Records of state activities, and the results thereof, to verify compliance with State determinations issued under §§ 141.82(f), 141.82(h), 141.83(b)(2), and 141.83(b)(4) and compliance with lead service line replacement schedules under § 141.84.

(11) Records of each system's currently applicable or most recently designated monitoring requirements. If, for the records identified in §§ 142.14(d)(8)(i) through 142.14(d)(8)(viii) above, no change is made to State decision during a 12 year retention period, the State shall maintain the record until a new decision, determination or designation has been issued.

(e) Each State which has primary enforcement responsibility shall retain records pertaining to each variance and exemption granted by it for a period of not less than 5 years following the expiration of such variance or exemption.

(f) Records required to be kept under this section shall be available to the Regional Administrator upon request. The records required to be kept under this section shall be maintained and made available for public inspection by the State, or, the State at its option may require suppliers of water to make available for public inspection those records maintained in accordance with § 141.33.

[41 FR 2918, Jan. 20, 1976, as amended at 54 FR 27537, June 29, 1989; 55 FR 25065, June 19, 1990; 56 FR 3595, Jan. 30, 1991; 56 FR 26562, June 7, 1991]

§ 142.15 Reports by States.

Each State which has primary enforcement responsibility shall submit to the Administrator the following information:

(a) Each State which has primary enforcement responsibility shall submit quarterly reports to the Administrator on a schedule and in a format prescribed by the Administrator, consisting of the following information:

(1) New violations by public water systems in the State during the previous quarter of State regulations adopted to incorporate the requirements of national primary drinking water regulations;

(2) New enforcement actions taken by the State during the previous quarter against public water systems with respect to State regulations adopted to incorporate the requirements of national primary drinking water regulations;

(3) Notification of any new variance or exemption granted during the previous quarter. The notice shall include a statement of reasons for the granting of the variance or exemption, including documentation of the need for the variance or exemption and the finding that the granting of the variance or exemption will not result in an unreasonable risk to health. The State may use a single notification statement to report two or more similar variances or exemptions.

(b) Each State which has primary enforcement responsibility shall submit annual reports to the Administrator on a schedule and in a format prescribed by the Administrator, consisting of the following information:

(1) All additions or corrections to the State's inventory of public water systems;

(2) A summary of the status of each variance and exemption currently in effect.

(c) *Special reports.* (1) *Surface Water Treatment Rule.* (i)(A) A list identifying the name, PWS identification number and date of the determination for each public water system supplied by a surface water source or a ground water source under the direct influence of surface water, which the State has determined is not required to provide filtration treatment.

(B) A list identifying the name and PWS identification number of each public water system supplied by a surface water source or ground water source under the direct influence of surface water, which the State has determined, based on an evaluation of site-specific considerations, has no means of having a sample transported and analyzed for HPC by a certified laboratory under the requisite time and temperature conditions specified in § 141.74(a)(3) and is providing adequate disinfection in the distribution system, regardless of whether the system is in compliance with the criteria of § 141.72(a)(4)(i) or (b)(3)(i) of this chapter, as allowed by § 141.72(a)(4)(ii) and (b)(3)(ii). The list must include the effective date of each determination.

(ii) Notification within 60 days of the end of the calendar quarter of any determination that a public water system using a surface water source or a ground water source under the direct influence of surface water is not required to provide filtration treatment. The notification must include a statement describing the system's compliance with each requirement of the State's regulations that implement § 141.71 and a summary of comments, if any, received from the public on the determination. A single notification may be used to report two or more such determinations.

(2) *Total coliforms.* A list of public water systems which the State is allowing to monitor less frequently than once per month for community water systems or less frequently than once per quarter for non-community water systems as provided in § 141.21(a), including the effective date of the reduced monitoring requirement for each system.

(3) The results of monitoring for unregulated contaminants shall be reported quarterly.

(4) States shall report to EPA by May 15, August 15, November 15 and February 15 of each year the following information related to each system's compliance with the treatment techniques for lead and copper under 40 CFR Part 141, Subpart I during the preceding calendar quarter. Specifically, States shall report the name and PWS identification number of:

(i) Each public water system which exceeded the lead and copper action levels and the date upon which the exceedance occurred;

(ii) Each public water system required to complete the corrosion control evaluation specified in § 141.82(c) and the date the State received the results of the evaluations from each system;

(iii) Each public water system for which the State has designated optimal corrosion control treatment under § 141.82(d), the date of the determination, and each system that completed installation of treatment as certified under § 141.90(c)(3);

(iv) Each public water system for which the State has designated optimal water quality parameters under § 141.82(f) and the date of the determination;

(v) Each public water system which the State has required to install source water treatment under § 141.83(b)(2), the date of the determination, and each system that completed installation of treatment as certified under § 141.90(d)(2);

(vi) Each public water system for which the State has specified maximum permissible source water levels under § 141.83(b)(4); and

(vii) Each public water system required to begin replacing lead service lines as specified in § 141.84, each public water system for which the

State has established a replacement schedule under § 141.84(f), and each system reporting compliance with its replacement schedule under § 141.90(e)(2).

(d) The reports submitted pursuant to this section shall be made available by the State to the public for inspection at one or more locations within the State.

[41 FR 2918, Jan. 20, 1976, as amended at 43 FR 5373, Feb. 8, 1978; 54 FR 27539, June 29, 1989; 55 FR 52140, Dec. 20, 1989; 55 FR 25065, June 19, 1990; 56 FR 3595, Jan. 30, 1991; 56 FR 26562, June 7, 1991]

§ 142.16 Special primacy requirements.

(a) *State public notification requirements.* If a State exercises the option specified in § 141.32(b)(4) to authorize less frequent notice for minor monitoring violations, it must adopt a program revision enforceable under State authorities which promulgates rules specifying either: (1) Which monitoring violations are minor and the frequency of public notification for such violations; or (2) criteria for determining which monitoring violations are minor and the frequency of public notification.

(b) *Requirements for States to adopt 40 CFR part 141, subpart H Filtration and Disinfection.* In addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State provisions are no less stringent than the federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subpart H Filtration and Disinfection, must contain the information specified in this paragraph (b), except that States which require without exception all public water systems using a surface water source or a ground water source under the direct influence of surface water to provide filtration need not demonstrate that the State program has provisions that apply to systems which do not provide filtration treatment. However, such States must provide the text of the State statutes or regulations which specifies that all public water systems using a surface water source or a ground water source under the direct influence of surface water must provide filtration.

(1) *Enforceable requirements.* In addition to adopting criteria no less stringent than those specified in part 141, subpart H of this chapter, the State's application must include enforceable design and operating criteria for each filtration treatment technology allowed or a procedure for establishing design and operating conditions on a system-by-system basis (e.g., a permit system).

(2) *State practices or procedures.* (i) A State application for program revision approval must include a description of how the State will accomplish the following:

(A) Section 141.70(c) (qualification of operators)—Qualify operators of systems using a surface water source or a ground water source under the direct influence of surface water.

(B) Determine which systems using a ground water source are under the direct influence of surface water by June 29, 1994 for community water systems and by June 29, 1999 for non-community water systems.

(C) Section 141.72(b)(1) (achieving required *Giardia lamblia* and virus removal in filtered systems)—Determine that the combined treatment process incorporating disinfection treatment and filtration treatment will achieve the required removal and/or inactivation of *Giardia lamblia* and viruses.

(D) Section 141.74(a) (State approval of parties to conduct analyses)—approve parties to conduct pH, temperature, turbidity, and residual disinfectant concentration measurements.

(E) Determine appropriate filtration treatment technology for source waters of various qualities.

(ii) For a State which does not require all public water systems using a surface water source or ground water source under the direct influence of surface water to provide filtration treatment, a State application for program revision approval must include a description of how the State will accomplish the following:

(A) Section 141.71(b)(2) (watershed control program)—Judge the adequacy of watershed control programs.

(B) Section 141.71(b)(3) (approval of on-site inspectors)—Approve on-site inspectors other than State personnel and evaluate the results of on-site inspections.

(iii) For a State which adopts any of the following discretionary elements of part 141 of this chapter, the application must describe how the State will:

(A) Section 141.72 (interim disinfection requirements)—Determine interim disinfection requirements for unfiltered systems which the State has determined must filter which will be in effect until filtration is installed.

(B) Section 141.72(a)(4)(ii) and (b)(3)(ii) (determination of adequate disinfection in system without disinfectant residual)—Determine that a system is unable to measure HPC but is still providing adequate disinfection in the distribution system, as allowed by § 141.72(a)(4)(ii) for systems which do not provide filtration treatment and § 141.72(b)(3)(ii) for systems which do provide filtration treatment.

(C) Section 141.73(a)(1) and (b)(1) (alternative turbidity limit)—Determine whether an alternative turbidity limit is appropriate and what the level should be as allowed by § 141.73(a)(1) for a system using conventiona1 filtration treatment or direct filtration and by § 141.73(b)(1) for a system using slow sand filtration.

(D) Section 141.73(d) (alternative filtration technologies)—Determine that a public water system has demonstrated that an alternate filtration technology, in combination with disinfection treatment, achieves adequate removal and/or disinfection of *Giardia lamblia* and viruses.

(E) Section 141.74(a)(5) (alternate analytical method for chlorine)—Approve DPD colorimetric test kits for free and combined chlorine measurement or approve calibration of automated methods by the Indigo Method for ozone determination.

(F) Section 141.74 (b)(2) and (c)(1) (approval of continuous turbidity monitoring)—Approve continuous turbidity monitoring, as allowed by § 141.74(b)(2) for a public water system which does not provide filtration treatment and § 141.74(c)(1) for a system which does provide filtration treatment.

(G) Section 141.74 (b)(6)(i) and (c)(3)(i) (approval of alternate disinfectant residual concentration sampling plans)—Approve alternate disinfectant residual concentration sampling plans for systems which have a combined ground water and surface water or ground water and ground water under the direct influence of a surface water distribution system, as allowed by § 141.74(b)(6)(i) for a public water system which does not provide filtration treatment and § 141.74(c)(3)(i) for a public water system which does provide filtration treatment.

(H) Section 141.74(c)(1) (reduction of turbidity monitoring)—Decide whether to allow reduction of turbidity monitoring for systems using slow sand filtration, an approved alternate filtration technology or serving 500 people or fewer.

(I) Section 141.75 (a)(2)(ix) and (b)(2)(iv) (reduced reporting)—Determine whether reduced reporting is appropriate, as allowed by § 141.75(a)(2)(ix) for a public water system which does not provide filtration treatment and § 141.75(b)(2)(iv) for a public water system which does provide filtration treatment.

(iv) For a State which does not require all public water systems using a surface water source or ground water source under the direct influence of surface water to provide filtration treatment and which uses any of the following discretionary provisions, the application must describe how the State will:

(A) Section 141.71(a)(2)(i) (source water turbidity requirements)—Determine that an exceedance of turbidity limits in source water was caused by circumstances that were unusual and unpredictable.

(B) Section 141.71(b)(1)(i) (monthly CT compliance requirements)—Determine whether failure to meet the requirements for monthly CT compliance in § 141.72(a)(1) was caused by circumstances that were unusual and unpredictable.

(C) Section 141.71(b)(1)(iii) (residual disinfectant concentration requirements)—Determine whether failure to meet the requirements for residual disinfectant concentration entering the distribution system in § 141.72(a)(3)(i) was caused by circumstances that were unusual and unpredictable.

(D) Section 141.71(b)(1)(iv) (distribution system disinfectant residual concentration requirements)—Determine whether failure to meet the requirements for distribution system residual disinfectant concentration in § 141.72(a)(4) was related to a deficiency in treatment.

(E) Section 141.71(b)(4) (system modification to prevent waterborne disease outbreak)—Determine that a system, after having been identified as the source of a waterborne disease outbreak, has been modified sufficiently to prevent another such occurrence.

(F) Section 141.71(b)(5) (total coliform MCL)—Determine whether a total coliform MCL violation was caused by a deficiency in treatment.

(G) Section 141.72(a)(1) (disinfection requirements)—Determine that different ozone, chloramine, or chlorine dioxide $CT_{99.9}$ values or conditions are adequate to achieve required disinfection.

(H) Section 141.72(a)(2)(ii) (shut-off of water to distribution system)—Determine whether a shut-off of water to the distribution system when the disinfectant residual concentration entering the distribution system is less than 0.2 mg/1 will cause an unreasonable risk to health or interfere with fire protection.

(I) Section 141.74(b)(1) (coliform monitoring)—Determine that coliform monitoring which otherwise might be required is not feasible for a system.

(J) Section 141.74(b), Table 3.1 (disinfection with chloramines)—Determine the conditions to be met to insure 99.99 percent removal and/or inactivation of viruses in systems which use either preformed chloramines or chloramines for which ammonia is added to the water before chlorine, as allowed by Table 3.1.

(c) *Total coliform requirements.* In addition to meeting the general primacy requirements of this part, an application for approval of a State program revision that adopts the requirements of the national primary drinking water regulation for total coliforms must contain the following information:

(1) The application must describe the State's plan for determining whether sample siting plans are acceptable (including periodic reviews), as required by § 141.21(a)(1).

(2) The national primary drinking water regulation for total coliforms in part 141 gives States the option to impose lesser requirements in certain circumstances, which are listed below. If a State chooses to exercise any of these options, its application for approval of a program revision must in-

clude the information listed below (the State need only provide the information listed for those options it has chosen to use).

(i) Section 141.21(a)(2) (Reduced monitoring requirements for community water systems serving 1,000 or fewer persons)—A description of how the State will determine whether it is appropriate to reduce the total coliform monitoring frequency for such systems using the criteria in § 141.21(a)(2) and how it will determine the revised frequency.

(ii) Section 141.21(a)(3)(i) (Reduced monitoring requirements for non-community water systems using ground water and serving 1,000 persons or fewer)—A description of how the State will determine whether it is appropriate to reduce the total coliform monitoring frequency for such systems using the criteria in § 141.21(a)(3)(i) and how it will determine the revised frequency.

(iii) Section 141.21(a)(3)(ii) (Reduced monitoring for non-community water systems using ground water and serving more than 1,000 persons)—A description of how the State will determine whether it is appropriate to reduce the total coliform monitoring frequency for non-community water systems using only ground water and serving more than 1,000 persons during any month the system serves 1,000 persons or fewer and how it will determine the revised frequency.

(iv) Section 141.21(a)(5) (Waiver of time limit for sampling after a turbidity sampling result exceeds 1 NTU)—A description of how the State will determine whether it is appropriate to waive the 24-hour time limit.

(v) Section 141.21(b)(1) (Waiver of time limit for repeat samples)—A description of how the State will determine whether it is appropriate to waive the 24-hour time limit and how it will determine what the revised time limit will be.

(vi) Section 141.21(b)(3) (Alternative repeat monitoring requirements for systems with a single service connection)—A description of how the State will determine whether it is appropriate to allow a system with a single service connection to use an alternative repeat monitoring scheme, as provided in § 141.21(b)(3), and what the alternative requirements will be.

(vii) Section 141.21(b)(5) (Waiver of requirement to take five routine samples the month after a system has a total coliform-positive sample)—A description of how the State will determine whether it is appropriate to waive the requirement for certain systems to collect five routine samples during the next month it serves water to the public, using the criteria in § 141.21(b)(5).

(viii) Section 141.21(c) (Invalidation of total coliform-positive samples)—A description of how the State will determine whether it is appropriate to invalidate a total coliform-positive sample, using the criteria in § 141.21(c).

(ix) Section 141.21(d) (Sanitary surveys)—A description of the State's criteria and procedures for approving agents other than State personnel to conduct sanitary surveys.

(x) Section 141.21(e)(2) (Waiver of fecal coliform or *E. coli* testing on a total coliform-positive sample)—A description of how the State will determine whether it is appropriate to waive fecal coliform or *E. coli* testing on a total coliform-positive sample.

(d) Requirements for States to adopt 40 CFR part 141, Subpart I—Control of Lead and Copper. An application for approval of a State program revision which adopts the requirements specified in 40 CFR part 141, subpart I, must contain (in addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State regulations be at least as stringent as the federal requirements) a description of how the State will accomplish the following program requirements:

(1) Sections 141.82(d), 141.82(f), 141.82(h)—Designating optimal corrosion control treatment methods, optimal water quality parameters and modifications thereto.

(2) Sections 141.83(b)(2) and 141.83(b)(4)—Designating source water treatment methods, maximum permissible source water levels for lead and copper and modifications thereto.

(3) Section 141.90(e)—Verifying compliance with lead service line replacement schedules and of PWS demonstrations of limited control over lead service lines.

(e) An application for approval of a State program revision which adopts the requirements specified in §§ 141.11, 141.23, 141.24, 141.32, 141.40, 141.61 and 141.62 must contain the following (in addition to the general primacy requirements enumerated elsewhere in this Part, including the requirement that State regulations be at least as stringent as the federal requirements):

(1) If a State chooses to issue waivers from the monitoring requirements in §§ 141.23, 141.24, and 141.40, the State shall describe the procedures and criteria which it will use to review waiver applications and issue waiver determinations.

(i) The procedures for each contaminant or class of contaminants shall include a description of:

(A) The waiver application requirements;

(B) The State review process for ''use'' waivers and for ''susceptibility'' waivers; and

(C) The State decision criteria, including the factors that will be considered in deciding to grant or deny waivers. The decision criteria must include the factors specified in §§ 141.24(f)(8), 141.24(h)(6), and 141.40(n)(4).

(ii) The State must specify the monitoring data and other documentation required to demonstrate

that the contaminant is eligible for a ''use'' and/or ''susceptibility'' waiver.

(2) A monitoring plan for the initial monitoring period by which the State will assure all systems complete the required initial monitoring within the regulatory deadlines.

NOTE: States may update their monitoring plan submitted under the Phase II Rule or simply note in their application that they will use the same monitoring plan for the Phase V Rule.

(i) The initial monitoring plan must describe how systems will be scheduled during the initial monitoring period and demonstrate that the analytical workload on certified laboratories for each of the three years has been taken into account, to assure that the State's plan will result in a high degree of monitoring compliance and that as a result there is a high probability of compliance and will be updated as necessary.

(ii) The State must demonstrate that the initial monitoring plan is enforceable under State law.

[54 FR 15188, Apr. 17, 1989, as amended at 54 FR 27539, June 29, 1989; 55 FR 25065, June 19, 1990; 56 FR 3595, Jan. 30, 1991; 56 FR 26563, June 7, 1991; 57 FR 31847, July 17, 1992; 59 FR 33864, June 30, 1994]

§ 142.17 Review of State programs and procedures for withdrawal of approved primacy programs.

(a)(1) At least annually the Administrator shall review, with respect to each State determined to have primary enforcement responsibility, the compliance of the State with the requirements set forth in 40 CFR part 142, subpart B, and the approved State primacy program. At the time of this review, the State shall notify the Administrator of any State-initiated program changes (i.e., changes other than those to adopt new or revised EPA regulations), and of any transfer of all or part of its program from the approved State agency to any other State agency.

(2) When, on the basis of the Administrator's review or other available information, the Administrator determines that a State no longer meets the requirements set forth in 40 CFR part 142, subpart B, the Administrator shall initiate proceedings to withdraw primacy approval. Among the factors the Administrator intends to consider as relevant to this determination are the following, where appropriate: whether the State has requested and has been granted, or is awaiting EPA's decision on, an extension under § 142.12(b)(2) of the deadlines for meeting those requirements; and whether the State is taking corrective actions that may have been required by the Administrator. The Administrator shall notify the State in writing that EPA is initiating primacy withdrawal proceedings and shall summarize in the notice the information available that indicates that the State no longer meets such requirements.

(3) The State notified pursuant to paragraph (a)(2) of this section may, within 30 days of receiving the Administrator's notice, submit to the Administrator evidence demonstrating that the State continues to meet the requirements for primary enforcement responsibility.

(4) After reviewing the submission of the State, if any, made pursuant to paragraph (a)(3) of this section, the Administrator shall make a final determination either that the State no longer meets the requirements of 40 CFR part 142, subpart B, or that the State continues to meet those requirements, and shall notify the State of his or her determination. Any final determination that the State no longer meets the requirements of 40 CFR part 142, subpart B, shall not become effective except as provided in § 142.13.

(b) If a State which has primary enforcement responsibility decides to relinquish that authority, it may do so by notifying the Administrator in writing of the State's decision at least 90 days before the effective date of the decision.

[54 FR 52140, Dec. 20, 1989, as amended at 60 FR 33661, June 28, 1995]

EFFECTIVE DATE NOTE: At 60 FR 33661, June 28, 1995, § 142.17 was amended by revising the word ''§ 142.10'' in paragraph (a)(1) to read ''40 CFR part 142, subpart B,'' and by revising paragraphs (a)(2) and (a)(4), effective July 28, 1995. For the convenience of the user the superseded text appears as follows:

§ 142.17 Review of State programs and procedures for withdrawal of approved primacy programs.

(a) * * *

(2) When, on the basis of the Administrator's review or other available information, the Administrator determines that a State no longer meets the requirements set forth in § 142.10, and the State has failed to request or has been denied an extension under § 142.12(b)(2) of the deadlines for meeting those requirements, or has failed to take other corrective actions required by the Administrator, the Administrator may initiate proceedings to withdraw program approval. The Administrator shall notify the State in writing of EPA's intention to initiate withdrawal proceedings and shall summarize in the notice the information available that indicates that the State no longer meets such requirements.

* * * * *

(4) After reviewing the submission of the State, if any, made pursuant to paragraph (a)(3) of this section the Administrator shall either determine that the State no longer meets the requirements of § 142.10 or that the State continues to meet those requirements, and shall notify the State of his or her determination. Any determination that

the State no longer meets the requirements of § 142.10 shall not become effective except as provided in § 142.13.

* * * * *

§ 142.18 EPA review of State monitoring determinations.

(a) A Regional Administrator may annul a State monitoring determination for the types of determinations identified in §§ 141.23(b), 141.23(c), 141.24(f), 141.24(h), and 141.40(n) in accordance with the procedures in paragraph (b) of this section.

(b) When information available to a Regional Administrator, such as the results of an annual review, indicate a State determination fails to apply the standards of the approved State program, he may propose to annul the State monitoring determination by sending the State and the affected PWS a draft Rescission Order. The draft order shall:

(1) Identify the PWS, the State determination, and the provisions at issue;

(2) Explain why the State determination is not in compliance with the State program and must be changed; and

(3) Describe the actions and terms of operation the PWS will be required to implement.

(c) The State and PWS shall have 60 days to comment on the draft Rescission Order.

(d) The Regional Administrator may not issue a Rescission Order to impose conditions less stringent than those imposed by the State.

(e) The Regional Administrator shall also provide an opportunity for comment upon the draft Rescission Order, by

(1) Publishing a notice in a newspaper in general circulation in communities served by the affected system; and

(2) Providing 30 days for public comment on the draft order.

(f) The State shall demonstrate that the determination is reasonable, based on its approved State program.

(g) The Regional Administrator shall decide within 120 days after issuance of the draft Rescission Order to:

(1) Issue the Rescission Order as drafted;

(2) Issue a modified Rescission Order; or

(3) Cancel the Rescission Order.

(h) The Regional Administrator shall set forth the reasons for his decision, including a responsiveness summary addressing significant comments from the State, the PWS and the public.

(i) The Regional Administrator shall send a notice of his final decision to the State, the PWS and all parties who commented upon the draft Rescission Order.

(j) The Rescission Order shall remain in effect until cancelled by the Regional Administrator. The Regional Administrator may cancel a Rescission Order at any time, so long as he notifies those who commented on the draft order.

(k) The Regional Administrator may not delegate the signature authority for a final Rescission Order or the cancellation of an order.

(l) Violation of the actions, or terms of operation, required by a Rescission Order is a violation of the Safe Drinking Water Act.

[56 FR 3595, Jan. 30, 1991]

§ 142.19 EPA review of State implementation of national primary drinking water regulations for lead and copper.

(a) Pursuant to the procedures in this section, the Regional Administrator may review state determinations establishing corrosion control or source water treatment requirements for lead or copper and may issue an order establishing federal treatment requirements for a public water system pursuant to § 141.82 (d) and (f) and § 141.83(b)(2) and (4) where the Regional Administrator finds that:

(1) A State has failed to issue a treatment determination by the applicable deadline;

(2) A State has abused its discretion in making corrosion control or source water treatment determinations in a substantial number of cases or in cases affecting a substantial population, or

(3) The technical aspects of State's determination would be indefensible in an expected federal enforcement action taken against a system.

(b) If the Regional Administrator determines that review of state determination(s) under this section may be appropriate, he shall request the State to forward to EPA the state determination and all information that was considered by the State in making its determination, including public comments, if any, within 60 days of the Regional Adminstrator's request.

(c) Proposed review of state determinations:

(1) Where the Regional Administrator finds that review of a state determination under paragraph (a) of this section is appropriate, he shall issue a proposed review order which shall:

(i) Identify the public water system(s) affected, the State determination being reviewed and the provisions of state and/or federal law at issue;

(ii) Identify the determination that the State failed to carry out by the applicable deadline, or identify the particular provisions of the State determination which, in the Regional Administrator's judgment, fail to carry out properly applicable treatment requirements, and explain the basis for the Regional Administrator's conclusion;

(iii) Identify the treatment requirements which the Regional Administrator proposes to apply to the affected system(s), and explain the basis for the proposed requirements;

(iv) Request public comment on the proposed order and the supporting record.

(2) The Regional Administrator shall provide notice of the proposed review order by:

(i) Mailing the proposed order to the affected public water system(s), the state agency whose order is being reviewed, and any other parties of interest known to the Regional Administrator; and

(ii) Publishing a copy of the proposed order in a newspaper of general circulation in the affected communities.

(3) The Regional Administrator shall make available for public inspection during the comment period the record supporting the proposed order, which shall include all of the information submitted by the State to EPA under paragraph (b) of this section, all other studies, monitoring data and other information considered by the Agency in developing the proposed order.

(d) Final review order

(1) Based upon review of all information obtained regarding the proposed review order, including public comments, the Regional Administrator shall issue a final review order within 120 days after issuance of the proposed order which affirms, modifies, or withdraws the proposed order. The Regional Administrator may extend the time period for issuing the final order for good cause. If the final order modifies or withdraws the proposed order, the final order shall explain the reasons supporting the change.

(2) The record of the final order shall consist of the record supporting the proposed order, all public comments, all other information considered by the Regional Administrator in issuing the final order and a document responding to all significant public comments submitted on the proposed order. If new points are raised or new material supplied during the public comment period, the Regional Administrator may support the responses on those matters by adding new materials to the record. The record shall be complete when the final order is issued.

(3) Notice of the final order shall be provided by mailing the final order to the affected system(s), the State, and all parties who commented on the proposed order.

(4) Upon issuance of the final order, its terms constitute requirements of the national primary drinking water regulation for lead and/or copper until such time as the Regional Administrator issues a new order (which may include recision of the previous order) pursuant to the procedures in this section. Such requirements shall supersede any inconsistent treatment requirements established by the State pursuant to the national primary drinking water regulations for lead and copper.

(5) The Regional Administrator may not issue a final order to impose conditions less stringent than those imposed by the State.

(e) The Regional Administrator may not delegate authority to sign the final order under this section.

(f) Final action of the Regional Administrator under paragraph (d) of this section shall constitute action of the Administrator for purposes of 42 U.S.C. § 300j–7(a)(2).

[56 FR 26563, June 7, 1991]

Subpart C—Review of State-Issued Variances and Exemptions

§ 142.20 State-issued variances and exemptions.

States with primary enforcement responsibility may issue variances and exemptions from the requirements of primary drinking water regulations under conditions and in a manner which are not less stringent than the conditions under which, and the manner in which, variances and exemptions may be granted under sections 1415 and 1416 of the Act. In States that do not have primary enforcement responsibility, variances and exemptions from the requirements of applicable national primary drinking water regulations may be granted by the Administrator pursuant to subparts E and F.

§ 142.21 State consideration of a variance or exemption request.

A State with primary enforcement responsibility shall act on any variance or exemption request submitted to it, within 90 days of receipt of the request.

§ 142.22 Review of State variances, exemptions and schedules.

(a) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the variances and exemptions granted (and schedules prescribed pursuant thereto) by the States with primary enforcement responsibility during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of exemptions and schedules as he deems necessary to carry out the purposes of this title, but at least one review shall be completed within each 3–year period following the completion of the first review under this paragraph.

(b) Notice of a proposed review shall be published in the FEDERAL REGISTER. Such notice shall

(1) provide information respecting the location of data and other information respecting the variances and exemptions to be reviewed (including data and other information concerning new scientific matters bearing on such variances and exemptions), and (2) advise of the opportunity to submit comments on the variances and exemptions reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the FEDERAL REGISTER the results of his review, together with findings responsive to any comments submitted in connection with such review.

§ 142.23 Notice to State.

(a) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting variances or exemptions under section 1415(a) or section 1416(a) of the Act or failed to prescribe schedules in accordance with section 1415(a) or section 1416(b) of the Act, he shall notify the State of his findings. Such notice shall:

(1) Identify each public water system for which the finding was made;

(2) Specify the reasons for the finding; and

(3) As appropriate, propose revocation of specific variances or exemptions, or propose revised schedules for specific public water systems.

(b) The Administrator shall also notify the State of a public hearing to be held on the provisions of the notice required by paragraph (a) of this section. Such notice shall specify the time and location for the hearing. If, upon notification of a finding by the Administrator, the State takes adequate corrective action, the Administrator shall rescind his notice to the State of a public hearing, provided that the Administrator is notified of the corrective action prior to the hearing.

(c) The Administrator shall publish notice of the public hearing in the FEDERAL REGISTER and in a newspaper or newspapers of general circulation in the involved State including a summary of the findings made pursuant to paragraph (a) of this section, a statement of the time and location for the hearing, and the address and telephone number of an office at which interested persons may obtain further information concerning the hearing.

(d) Hearings convened pursuant to paragraphs (b) and (c) of this section shall be conducted before a hearing officer to be designated by the Administrator. The hearing shall be conducted by the hearing officer in an informal, orderly and expeditious manner. The hearing officer shall have authority to call witnesses, receive oral and written testimony and take such other action as may be necessary to assure the fair and efficient conduct of the hearing. Following the conclusion of the hearing, the hearing officer shall forward the record of the hearing to the Administrator.

(e) Within 180 days after the date notice is given pursuant to paragraph (b) of this section, the Administrator shall:

(1) Rescind the finding for which the notice was given and promptly notify the State of such rescission, or

(2) Promulgate with any modifications as appropriate such revocation and revised schedules proposed in such notice and promptly notify the State of such action.

(f) A revocation or revised schedule shall take effect 90 days after the State is notified under paragraph (e)(2) of this section.

§ 142.24 Administrator's rescission.

If, upon notification of a finding by the Administrator under § 142.23, the State takes adequate corrective action before the effective date of the revocation or revised schedule, the Administrator shall rescind the application of his finding to that variance, exemption or schedule.

Subpart D—Federal Enforcement

§ 142.30 Failure by State to assure enforcement.

(a) The Administrator shall notify a State and the appropriate supplier of water whenever he finds during a period in which the State has primary enforcement responsibility for public water systems that a public water system within such State is not in compliance with any primary drinking water regulation contained in part 141 of this chapter or with any schedule or other requirements imposed pursuant to a variance or exemption granted under section 1415 or 1416 of the Act: *Provided,* That the State will be deemed to have been notified of a violation referred to in a report submitted by the State.

(b) The Administrator shall provide advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance by the earliest feasible time.

[41 FR 2918, Jan. 20, 1976, as amended at 52 FR 20675, June 2, 1987]

§ 142.31 [Reserved]

§ 142.32 Petition for public hearing.

(a) If the Administrator makes a finding of noncompliance pursuant to § 142.30 with respect to a public water system in a State which has primary enforcement responsibility, the Administrator may, for the purpose of assisting that State in carrying

out such responsibility and upon the petition of such State or public water system or persons served by such system, hold, after appropriate notice, public hearings for the purpose of gathering information as described in § 142.33.

(b) A petition for a public hearing pursuant to paragraph (a) of this section shall be filed with the Administrator and shall include the following information:

(1) The name, address and telephone number of the individual or other entity requesting a hearing.

(2) If the petition is filed by a person other than the State or public water system, a statement that the person is served by the system.

(3) A brief statement of information that the requesting person intends to submit at the requested hearing.

(4) The signature of the individual submitting the petition; or, if the petition is filed on behalf of a State, public water system or other entity, the signature of a responsible official of the State or other entity.

§ 142.33 Public hearing.

(a) If the Administrator grants the petition for public hearing, he shall give appropriate public notice of such hearing. Such notice shall be by publication in the FEDERAL REGISTER and in a newspaper of general circulation or by other appropriate communications media covering the area served by such public water system.

(b) A hearing officer designated by the Administrator shall gather during the public hearing information from technical or other experts, Federal, State, or other public officials, representatives of the public water system, persons served by the system, and other interested persons on:

(1) The ways in which the system can within the earliest feasible time be brought into compliance, and

(2) The means for the maximum feasible protection of the public health during any period in which such system is not in compliance.

(c) On the basis of the hearing and other available information the Administrator shall issue recommendations which shall be sent to the State and public water system and shall be made available to the public and communications media.

§ 142.34 Entry and inspection of public water systems.

(a) Any supplier of water or other person subject to a national primary drinking water regulation shall, at any time, allow the Administrator, or a designated representative of the Administrator, upon presenting appropriate credentials and a written notice of inspection, to enter any establishment, facility or other property of such supplier or other person to determine whether such supplier or other person has acted or is acting in compliance with the requirements of the Act or subchapter D of this chapter. Such inspection may include inspection, at reasonable times, of records, files, papers, processes, controls and facilities, or testing of any feature of a public water system, including its raw water source.

(b) Prior to entry into any establishment, facility or other property within a State which has primary enforcement responsibility, the Administrator shall notify, in writing, the State agency charged with responsibility for safe drinking water of his intention to make such entry and shall include in his notification a statement of reasons for such entry. The Administrator shall, upon a showing by the State agency that such an entry will be detrimental to the administration of the State's program of primary enforcement responsibility, take such showing into consideration in determining whether to make such entry. The Administrator shall in any event offer the State agency the opportunity of having a representative accompany the Administrator or his representative on such entry.

(c) No State agency which receives notice under paragraph (b) of this section may use the information contained in the notice to inform the person whose property is proposed to be entered of the proposed entry; if a State so uses such information, notice to the agency under paragraph (b) of this section is not required for subsequent inspections of public water systems until such time as the Administrator determines that the agency has provided him satisfactory assurances that it will no longer so use information contained in a notice received under paragraph (b) of this section.

Subpart E—Variances Issued by the Administrator

§ 142.40 Requirements for a variance.

(a) The Administrator may grant one or more variances to any public water system within a State that does not have primary enforcement responsibility from any requirement respecting a maximum contaminant level of an applicable national primary drinking water regulation upon a finding that:

(1) Because of characteristics of the raw water sources which are reasonably available to the system, the system cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulations despite application of the best technology, treatment techniques, or other means, which the Administrator finds are generally available (taking costs into consideration); and

(2) The granting of a variance will not result in an unreasonable risk to the health of persons served by the system.

(b) The Administrator may grant one or more variances to any public water system within a State that does not have primary enforcement responsibility from any requirement of a specified treatment technique of an applicable national primary drinking water regulation upon a finding that the public water system applying for the variance has demonstrated that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system.

§ 142.41 Variance request.

A supplier of water may request the granting of a variance pursuant to this subpart for a public water system within a State that does not have primary enforcement responsibility by submitting a request for a variance in writing to the Administrator. Suppliers of water may submit a joint request for variances when they seek similar variances under similar circumstances. Any written request for a variance or variances shall include the following information:

(a) The nature and duration of variance requested.

(b) Relevant analytical results of water quality sampling of the system, including results of relevant tests conducted pursuant to the requirements of the national primary drinking water regulations.

(c) For any request made under § 142.40(a):

(1) Explanation in full and evidence of the best available treatment technology and techniques.

(2) Economic and legal factors relevant to ability to comply.

(3) Analytical results of raw water quality relevant to the variance request.

(4) A proposed compliance schedule, including the date each step toward compliance will be achieved. Such schedule shall include as a minimum the following dates:

(i) Date by which arrangement for alternative raw water source or improvement of existing raw water source will be completed.

(ii) Date of initiation of the connection of the alternative raw water source or improvement of existing raw water source.

(iii) Date by which final compliance is to be achieved.

(5) A plan for the provision of safe drinking water in the case of an excessive rise in the contaminant level for which the variance is requested.

(6) A plan for additional interim control measures during the effective period of variance.

(d) For any request made under § 142.40(b), a statement that the system will perform monitoring and other reasonable requirements prescribed by the Administrator as a condition to the variance.

(e) Other information, if any, believed to be pertinent by the applicant.

(f) Such other information as the Administrator may require.

[41 FR 2918, Jan. 20, 1976, as amended at 52 FR 20675, June 2, 1987]

§ 142.42 Consideration of a variance request.

(a) The Administrator shall act on any variance request submitted pursuant to § 142.41 within 90 days of receipt of the request.

(b) In his consideration of whether the public water system is unable to comply with a contaminant level required by the national primary drinking water regulations because of the nature of the raw water source, the Administrator shall consider such factors as the following:

(1) The availability and effectiveness of treatment methods for the contaminant for which the variance is requested.

(2) Cost and other economic considerations such as implementing treatment, improving the quality of the source water or using an alternate source.

(c) A variance may only be issued to a system after the system's application of the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration).

(d) In his consideration of whether a public water system should be granted a variance to a required treatment technique because such treatment is unnecessary to protect the public health, the Administrator shall consider such factors as the following:

(1) Quality of the water source including water quality data and pertinent sources of pollution.

(2) Source protection measures employed by the public water system.

[41 FR 2918, Jan. 20, 1976, as amended at 52 FR 20675, June 2, 1987]

§ 142.43 Disposition of a variance request.

(a) If the Administrator decides to deny the application for a variance, he shall notify the applicant of his intention to issue a denial. Such notice shall include a statement of reasons for the proposed denial, and shall offer the applicant an opportunity to present, within 30 days of receipt of the notice, additional information or argument to the Administrator. The Administrator shall make a final determination on the request within 30 days after receiving any such additional information or argument. If no additional information or argument

is submitted by the applicant the application shall be denied.

(b) If the Administrator proposes to grant a variance request submitted pursuant to § 142.41, he shall notify the applicant of his decision in writing. Such notice shall identify the variance, the facility covered, and shall specify the period of time for which the variance will be effective.

(1) For the type of variance specified in § 142.40(a) such notice shall provide that the variance will be terminated when the system comes into compliance with the applicable regulation, and may be terminated upon a finding by the Administrator that the system has failed to comply with any requirements of a final schedule issued pursuant to § 142.44.

(2) For the type of variance specified in § 142.40(b) such notice shall provide that the variance may be terminated at any time upon a finding that the nature of the raw water source is such that the specified treatment technique for which the variance was granted is necessary to protect the health of persons or upon a finding that the public water system has failed to comply with monitoring and other requirements prescribed by the Administrator as a condition to the granting of the variance.

(c) For a variance specified in § 142.40(a)(1) the Administrator shall propose a schedule for:

(1) Compliance (including increments of progress) by the public water system with each contaminant level requirement covered by the variance; and,

(2) Implementation by the public water system of such additional control measures as the Administrator may require for each contaminant covered by the variance.

(d) The proposed schedule for compliance shall specify dates by which steps towards compliance are to be taken, including at the minimum, where applicable:

(1) Date by which arrangement for an alternative raw water source or improvement of existing raw water source will be completed.

(2) Date of initiation of the connection for the alternative raw water source or improvement of the existing raw water source.

(3) Date by which final compliance is to be achieved.

(e) The proposed schedule may, if the public water system has no access to an alternative raw water source, and can effect or anticipate no adequate improvement of the existing raw water source, specify an indefinite time period for compliance until a new and effective treatment technology is developed at which time a new compliance schedule shall be prescribed by the Administrator.

(f) The proposed schedule for implementation of additional interim control measures during the period of variance shall specify interim treatment techniques, methods and equipment, and dates by which steps toward meeting the additional interim control measures are to be met.

(g) The schedule shall be prescribed by the Administrator at the time of granting of the variance, subsequent to provision of opportunity for hearing pursuant to § 142.44.

[41 FR 2918, Jan. 20, 1976, as amended at 52 FR 20675, June 2, 1987]

§ 142.44 Public hearings on variances and schedules.

(a) Before a variance and schedule proposed by the Administrator pursuant to § 142.43 may take effect, the Administrator shall provide notice and opportunity for public hearing on the variance and schedule. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice.

(b) Public notice of an opportunity for hearing on a variance and schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed variance and schedule, and shall include at least the following:

(1) Posting of a notice in the principal post office of each municipality or area served by the public water system, and publishing of a notice in a newspaper or newspapers of general circulation in the area served by the public water system; and

(2) Mailing of a notice to the agency of the State in which the system is located which is responsible for the State's water supply program, and to other appropriate State or local agencies at the Administrator's discretion.

(3) Such notice shall include a summary of the proposed variance and schedule and shall inform interested persons that they may request a public hearing on the proposed variance and schedule.

(c) Requests for hearing may be submitted by any interested person other than a Federal agency. Frivolous or insubstantial requests for hearing may be denied by the Administrator. Requests must be submitted to the Administrator within 30 days after issuance of the public notices provided for in paragraph (b) of this section. Such requests shall include the following information:

(1) The name, address and telephone number of the individual, organization or other entity requesting a hearing;

(2) A brief statement of the interest of the person making the request in the proposed variance

and schedule, and of information that the requester intends to submit at such hearing;

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

(d) The Administrator shall give notice in the manner set forth in paragraph (b) of this section of any hearing to be held pursuant to a request submitted by an interested person or on his own motion. Notice of the hearing shall also be sent to the persons requesting the hearing, if any. Notice of the hearing shall include a statement of the purpose of the hearing, information regarding the time and location for the hearing, and the address and telephone number of an office at which interested persons may obtain further information concerning the hearing. At least one hearing location specified in the public notice shall be within the involved State. Notice of hearing shall be given not less than 15 days prior to the time scheduled for the hearing.

(e) A hearing convened pursuant to paragraph (d) of this section shall be conducted before a hearing officer to be designated by the Administrator. The hearing shall be conducted by the hearing officer in an informal, orderly and expeditious manner. The hearing officer shall have authority to call witnesses, receive oral and written testimony and take such other action as may be necessary to assure the fair and efficient conduct of the hearing. Following the conclusion of the hearing, the hearing officer shall forward the record of the hearing to the Administrator.

(f) The variance and schedule shall become effective 30 days after notice of opportunity for hearing is given pursuant to paragraph (b) of this section if no timely request for hearing is submitted and the Administrator does not determine to hold a public hearing on his own motion.

[41 FR 2918, Jan. 20, 1976, as amended at 52 FR 20675, June 2, 1987]

§ 142.45 Action after hearing.

Within 30 days after the termination of the public hearing held pursuant to § 142.44, the Administrator shall, taking into consideration information obtained during such hearing and relevant information, confirm, revise or rescind the proposed variance and schedule.

[52 FR 20675, June 2, 1987]

§ 142.46 Alternative treatment techniques.

The Administrator may grant a variance from any treatment technique requirement of a national primary drinking water regulation to a supplier of water, whether or not the public water system for which the variance is requested is located in a State which has primary enforcement responsibility, upon a showing from any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of the contaminant with respect to which such requirements was prescribed. A variance under this paragraph shall be conditioned on the use of the alternative treatment technique which is the basis of the variance.

Subpart F—Exemptions Issued by the Administrator

§ 142.50 Requirements for an exemption.

The Administrator may exempt any public water system within a State that does not have primary enforcement responsibility from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable national primary drinking water regulation upon a finding that:

(a) Due to compelling factors (which may include economic factors), the public water system is unable to comply with such contaminant level or treatment technique requirement;

(b) The public water system was in operation on the effective date of such contaminant level or treatment technique requirement; and

(c) The granting of the exemption will not result in an unreasonable risk to health.

§ 142.51 Exemption request.

A supplier of water may request the granting of an exemption pursuant to this subpart for a public water system within a State that does not have primary enforcement responsibility by submitting a request for exemption in writing to the Administrator. Suppliers of water may submit a joint request for exemptions when they seek similar exemptions under similar circumstances. Any written request for an exemption or exemptions shall include the following information:

(a) The nature and duration of exemption requested.

(b) Relevant analytical results of water quality sampling of the system, including results of relevant tests conducted pursuant to the requirements of the national primary drinking water regulations.

(c) Explanation of the compelling factors such as time or economic factors which prevent such system from achieving compliance.

(d) Other information, if any, believed by the applicant to be pertinent to the application.

(e) A proposed compliance schedule, including the date when each step toward compliance will be achieved.

(f) Such other information as the Administrator may require.

§ 142.52 Consideration of an exemption request.

(a) The Administrator shall act on any exemption request submitted pursuant to § 142.51 within 90 days of receipt of the request.

(b) In his consideration of whether the public water system is unable to comply due to compelling factors, the Administrator shall consider such factors as the following:

(1) Construction, installation, or modification of the treatment equipment or systems.

(2) The time needed to put into operation a new treatment facility to replace an existing system which is not in compliance.

(3) Economic feasibility of compliance.

§ 142.53 Disposition of an exemption request.

(a) If the Administrator decides to deny the application for an exemption, he shall notify the applicant of his intention to issue a denial. Such notice shall include a statement of reasons for the proposed denial, and shall offer the applicant an opportunity to present, within 30 days of receipt of the notice, additional information or argument to the Administrator. The Administrator shall make a final determination on the request within 30 days after receiving any such additional information or argument. If no additional information or argument is submitted by the applicant, the application shall be denied.

(b) If the Administrator grants an exemption request submitted pursuant to § 142.51, he shall notify the applicant of his decision in writing. Such notice shall identify the facility covered, and shall specify the termination date of the exemption. Such notice shall provide that the exemption will be terminated when the system comes into compliance with the applicable regulation, and may be terminated upon a finding by the Administrator that the system has failed to comply with any requirements of a final schedule issued pursuant to § 142.55.

(c) The Administrator shall propose a schedule for:

(1) Compliance (including increments of progress) by the public water system with each contaminant level requirement and treatment technique requirement covered by the exemption; and

(2) Implementation by the public water system of such control measures as the Administrator may require for each contaminant covered by the exemption.

(d) The schedule shall be prescribed by the Administrator at the time the exemption is granted, subsequent to provision of opportunity for hearing pursuant to § 142.54.

[41 FR 2918, Jan. 20, 1976, as amended at 52 FR 20675, June 2, 1987]

§ 142.54 Public hearings on exemption schedules.

(a) Before a schedule proposed by the Administrator pursuant to § 142.53 may take effect, the Administrator shall provide notice and opportunity for public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the proposal of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

(b) Public notice of an opportunity for hearing on an exemption schedule shall be circulated in a manner designed to inform interested and potentially interested persons of the proposed schedule, and shall include at least the following:

(1) Posting of a notice in the principal post office of each municipality or area served by the public water system, and publishing of a notice in a newspaper or newspapers of general circulation in the area served by the public water system.

(2) Mailing of a notice to the agency of the State in which the system is located which is responsible for the State's water supply program and to other appropriate State or local agencies at the Administrator's discretion.

(3) Such notices shall include a summary of the proposed schedule and shall inform interested persons that they may request a public hearing on the proposed schedule.

(c) Requests for hearing may be submitted by any interested person other than a Federal agency. Frivolous or insubstantial requests for hearing may be denied by the Administrator. Requests must be submitted to the Administrator within 30 days after issuance of the public notices provided for in paragraph (b) of this section. Such requests shall include the following information:

(1) The name, address and telephone number of the individual, organization or other entity requesting a hearing;

(2) A brief statement of the interest of the person making the request in the proposed schedule and of information that the requesting person intends to submit at such hearing; and

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsibile official of the organization or other entity.

(d) The Administrator shall give notice in the manner set forth in paragraph (b) of this section

of any hearing to be held pursuant to a request submitted by an interested person or on his own motion. Notice of the hearing shall also be sent to the person requesting the hearing, if any. Notice of the hearing shall include a statement of the purpose of the hearing, information regarding the time and location of the hearing, and the address and telephone number of an office at which interested persons may obtain further information concerning the hearing. At least one hearing location specified in the public notice shall be within the involved State. Notice of the hearing shall be given not less than 15 days prior to the time scheduled for the hearing.

(e) A hearing convened pursuant to paragraph (d) of this section shall be conducted before a hearing officer to be designated by the Administrator. The hearing shall be conducted by the hearing officer in an informal, orderly and expeditious manner. The hearing officer shall have authority to call witnesses, receive oral and written testimony and take such action as may be necessary to assure the fair and efficient conduct of the hearing. Following the conclusion of the hearing, the hearing officer shall forward the record of the hearing to the Administrator.

[41 FR 2918, Jan. 20, 1976, as amended at 52 FR 20675, June 2, 1987]

§ 142.55 Final schedule.

(a) Within 30 days after the termination of the public hearing pursuant to § 142.54, the Administrator shall, taking into consideration information obtained during such hearing, revise the proposed schedule as necessary and prescribe the final schedule for compliance and interim measures for the public water system granted an exemption under § 142.52.

(b) Such schedule must require compliance as follows:

(1) In the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the national primary drinking water regulations promulgated under section 1421(a) of the Safe Drinking Water Act, not later than June 19, 1987, and

(2) In the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by national primary drinking water regulations, other than a regulation referred to in section 1412(a), 12 months after the issuance of the exemption.

(c) If the public water system has entered into an enforceable agreement to become a part of a regional public water system, as determined by the Administrator, such schedule shall require compliance by the public water system with each contaminant level and treatment technique requirement prescribed by:

(1) Interim national primary drinking water regulations pursuant to part 141 of this chapter, by no later than January 1, 1983; and

(2) Revised national primary drinking water regulations pursuant to part 141 of this chapter, by no later than nine years after the effective date of such regulations.

[41 FR 2918, Jan. 20, 1976, as amended at 52 FR 20675, June 2, 1987]

§ 142.56 Extension of date for compliance.

(a) The final date for compliance provided in any schedule in the case of any exemption may be extended by the State (in the case of a State which has primary enforcement responsibility) or by the Administrator (in any other case) for a period not to exceed 3 years after the date of the issuance of the exemption if the public water system establishes that:

(1) The system cannot meet the standard without capital improvements which cannot be completed within the period of such exemption;

(2) In the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance; or

(3) The system has entered into an enforceable agreement to become a part of a regional public water system; and the system is taking all practicable steps to meet the standard.

(b) In the case of a system which does not serve more than 500 service connections and which needs financial assistance for the necessary improvements, an exemption granted under paragraph (a) (1) or (2) may be renewed for one or more additional 2-year periods if the system establishes that it is taking all practicable steps to meet the requirements of paragraph (a) of this section.

[52 FR 20676, June 2, 1987]

§ 142.57 Bottled water, point-of-use, and point-of-entry devices.

(a) A State may require a public water system to use bottled water, point-of-use devices, or point-of-entry devices as a condition of granting an exemption from the requirements of §§ 141.61 (a) and (c), and § 141.62 of this chapter.

(b) Public water systems using bottled water as a condition of obtaining an exemption from the requirements of §§ 141.61 (a) and (c) and § 141.62(b) must meet the requirements in § 142.62(g).

(c) Public water systems that use point-of-use or point-of-entry devices as a condition for receiving

an exemption must meet the requirements in § 141.62(h).

[56 FR 3596, Jan. 30, 1991, as amended at 56 FR 30280, July 1, 1991]

Subpart G—Identification of Best Technology, Treatment Techniques or Other Means Generally Available

§ 142.60 Variances from the maximum contaminant level for total trihalomethanes.

(a) The Administrator, pursuant to section 1415(a)(1)(A) of the Act, hereby identifies the following as the best technology, treatment techiques or other means generally available for achieving compliance with the maximum contaminant level for total trihalomethanes (§ 141.12(c)):

(1) Use of chloramines as an alternate or supplemental disinfectant or oxidant.

(2) Use of chlorine dioxide as an alternate or supplemental disinfectant or oxidant.

(3) Improved existing clarification for THM precursor reduction.

(4) Moving the point of chlorination to reduce TTHM formation and, where necessary, substituting for the use of chlorine as a pre-oxidant chloramines, chlorine dioxide or potassium permanganate.

(5) Use of powdered activated carbon for THM precursor or TTHM reduction seasonally or intermittently at dosages not to exceed 10 mg/L on an annual average basis.

(b) The Administrator in a state that does not have primary enforcement responsibility or a state with primary enforcement responsibility (primacy state) that issues variances shall require a community water system to install and/or use any treatment method identified in § 142.60(a) as a condition for granting a variance unless the Administrator or primacy state determines that such treatment method identified in § 142.60(a) is not available and effective for TTHM control for the system. A treatment method shall not be considered to be ''available and effective'' for an individual system if the treatment method would not be technically appropriate and technically feasible for that system or would only result in a marginal reduction in TTHM for the system. If, upon application by a system for a variance, the Administrator or primacy state that issues variances determines that none of the treatment methods identified in § 142.60(a) is available and effective for the system, that system shall be entitled to a variance under the provisions of section 1415(a)(1)(A) of the Act. The Administrator's or primacy state's determination as to the availability and effectiveness of such treatment methods shall be based upon studies by the system and other relevant information. If a system submits information intending to demonstrate that a treatment method is not available and effective for TTHM control for that system, the Administrator or primacy state shall make a finding whether this information supports a decision that such treatment method is not available and effective for that system before requiring installation and/or use of such treatment method.

(c) Pursuant to § 142.43 (c) through (g) or corresponding state regulations, the Administrator or primacy state that issues variances shall issue a schedule of compliance that may require the system being granted the variance to examine the following treatment methods (1) to determine the probability that any of these methods will significantly reduce the level of TTHM for that system, and (2) if such probability exists, to determine whether any of these methods are technically feasible and economically reasonable, and that the TTHM reductions obtained will be commensurate with the costs incurred with the installation and use of such treatment methods for that system:

Introduction of off-line water storage for THM precursor reduction.

Aeration for TTHM reduction, where geographically and environmentally appropriate.

Introduction of clarification where not currently practiced.

Consideration of alternative sources of raw water.

Use of ozone as an alternate or supplemental disinfectant or oxidant.

(d) If the Administrator or primacy state that issues variances determines that a treatment method identified in § 142.60(c) is technically feasible, economically reasonable and will achieve TTHM reductions commensurate with the costs incurred with the installation and/or use of such treatment method for the system, the Administrator or primacy state shall require the system to install and/or use that treatment method in connection with a compliance schedule issued under the provisions of section 1415(a)(1)(A) of the Act. The Administrator's or primacy state's determination shall be based upon studies by the system and other relevant information. In no event shall the Administrator require a system to install and/or use a treatment method not described in § 142.60 (a) or (c) to obtain or maintain a variance from the TTHM Rule or in connection with any variance compliance schedule.

[48 FR 8414, Feb. 28, 1983]

§ 142.61 Variances from the maximum contaminant level for fluoride.

(a) The Administrator, pursuant to section 1415(a)(1)(A) of the Act, hereby identifies the following as the best technology, treatment tech-

niques or other means generally available for achieving compliance with the Maximum Contaminant Level for fluoride.

(1) Activated alumina absorption, centrally applied

(2) Reverse osmosis, centrally applied

(b) The Administrator in a state that does not have primary enforcement responsibility or a state with primary enforcement responsibility (primacy state) that issues variances shall require a community water system to install and/or use any treatment method identified in § 142.61(a) as a condition for granting a variance unless the Administrator or the primacy state determines that such treatment method identified in § 142.61(a) as a condition for granting a variance is not available and effective for fluoride control for the system. A treatment method shall not be considered to be ''available and effective'' for an individual system if the treatment method would not be technically appropriate and technically feasible for that system. If, upon application by a system for a variance, the Administrator or primacy state that issues variances determines that none of the treatment methods identified in § 142.61(a) are available and effective for the system, that system shall be entitled to a variance under the provisions of section 1415(a)(1)(A) of the Act. The Administrator's or primacy state's determination as to the availability and effectiveness of such treatment methods shall be based upon studies by the system and other relevant information. If a system submits information to demonstrate that a treatment method is not available and effective for fluoride control for that system, the Administrator or primacy state shall make a finding whether this information supports a decision that such treatment method is not available and effective for that system before requiring installation and/or use of such treatment method.

(c) Pursuant to § 142.43(c)–(g) or corresponding state regulations, the Administrator or primacy state that issues variances shall issue a schedule of compliance that may require the system being granted the variance to examine the following treatment methods (1) to determine the probability that any of these methods will significantly reduce the level of fluoride for that system, and (2) if such probability exists, to determine whether any of these methods are technically feasible and economically reasonable, and that the fluoride reductions obtained will be commensurate with the costs incurred with the installation and use of such treatment methods for that system:

(1) Modification of lime softening;

(2) Alum coagulation;

(3) Electrodialysis;

(4) Anion exchange resins;

(5) Well field management;

(6) Alternate source;

(7) Regionalization.

(d) If the Administrator or primary state that issues variances determines that a treatment method identified in § 142.61(c) or other treatment method is technically feasible, economically reasonable, and will achieve fluoride reductions commensurate with the costs incurred with the installation and/or use of such treatment method for the system, the Administrator or primacy state shall require the system to install and/or use that treatment method in connection with a compliance schedule issued under the provisions of section 1415(a)(1)(A) of the Act. The Administrator's or primacy state's determination shall be based upon studies by the system and other relevant information.

[51 FR 11411, Apr. 2, 1986]

§ 142.62 Variances and exemptions from the maximum contaminant levels for organic and inorganic chemicals.

(a) The Administrator, pursuant to section 1415(a)(1)(A) of the Act hereby identifies the technologies listed in paragraphs (a)(1) through (a)(54) of this section as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for organic chemicals listed in §§ 141.61 (a) and (c):

Contaminant	Best available technologies		
	PTA [1]	GAC [2]	OX [3]
(1) Benzene	X	X	
(2) Carbon tetrachloride	X	X	
(3) 1,2-Dichloroethane	X	X	
(4) Trichloroethylene	X	X	
(5) para-Dichlorobenzene	X	X	
(6) 1,1-Dichloroethylene	X	X	
(7) 1,1,1-Trichloroethane	X	X	
(8) Vinyl chloride	X		
(9) cis-1,2-Dichloroethylene	X	X	
(10) 1,2-Dichloropropane	X	X	
(11) Ethylbenzene	X	X	
(12) Monochlorobenzene	X	X	
(13) o-Dichlorobenzene	X	X	
(14) Styrene	X	X	

Contaminant	Best available technologies		
	PTA [1]	GAC [2]	OX [3]
(15) Tetrachloroethylene	X	X	
(16) Toluene	X	X	
(17) trans-1,2-Dichloroethylene	X	X	
(18) Xylense (total)	X	X	
(19) Alachlor		X	
(20) Aldicarb		X	
(21) Aldicarb sulfoxide		X	
(22) Aldicarb sulfone		X	
(23) Atrazine		X	
(24) Carbofuran		X	
(25) Chlordane		X	
(26) Dibromochloropropane	X	X	
(27) 2,4-D		X	
(28) Ethylene dibromide	X	X	
(29) Heptachlor		X	
(30) Heptachlor epoxide		X	
(31) Lindane		X	
(32) Methoxychlor		X	
(33) PCBs		X	
(34) Pentachlorophenol		X	
(35) Toxaphene		X	
(36) 2,4,5-TP		X	
(37) Benzo[a]pyrene		X	
(38) Dalapon		X	
(39) Dichloromethane	X		
(40) Di(2-ethylhexyl)adipate	X	X	
(41) Di(2-ethylhexyl)phthalate		X	
(42) Dinoseb		X	
(43) Diquat		X	
(44) Endothall		X	
(45) Endrin		X	
(46) Glyphosate			X
(47) Hexachlorobenzene		X	
(48) Hexachlorocyclopentadiene	X	X	
(49) Oxamyl (Vydate)		X	
(50) Picloram		X	
(51) Simazine		X	
(52) 1,2,4-Trichlorobenzene	X	X	
(53) 1,1,2-Trichloroethane	X	X	
(54) 2,3,7,8-TCDD (Dioxin)		X	

[1] Packed Tower Aeration
[2] Granular Activated Carbon
[3] Oxidation (Chlorination or Ozonation)

(b) The Administrator, pursuant to section 1415(a)(1)(A) of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for the inorganic chemicals listed in § 141.62:

BAT FOR INORGANIC COMPOUNDS LISTED IN § 141.62(B)

Chemical name	BAT(s)
Antimony	2,7
Asbestos	2,3,8
Barium	5,6,7,9
Beryllium	1,2,5,6,7
Cadmium	2,5,6,7
Chromium	2,5,6 [2],7
Cyanide	5,7,10
Mercury	2 [1],4,6 [1],7 [1]
Nickel	5,6,7
Nitrite	5,7,9
Nitrate	5,7
Selenium	1,2 [3],6,7,9

BAT FOR INORGANIC COMPOUNDS LISTED IN § 141.62(B)—Continued

Chemical name	BAT(s)
Thallium	1,5

[1] BAT only if influent Hg concentrations ≤10µg/1.
[2] BAT for Chromium III only.
[3] BAT for Selenium IV only.

Key to BATS in Table

1=Activated Alumina
2=Coagulation/Filtration (not BAT for systems less than 500 service connections)
3=Direct and Diatomite Filtration
4=Granular Activated Carbon
5=Ion Exchange
6=Lime Softening (not BAT for systems less than 500 service connections)
7=Reverse Osmosis
8=Corrosion Control
9=Electrodialysis
10=Chlorine
11=Ultraviolet

(c) A State shall require community water systems and non-transient, non-community water systems to install and/or use any treatment method identified in § 142.62 (a) and (b) as a condition for granting a variance except as provided in paragraph (d) of this section. If, after the system's installation of the treatment method, the system cannot meet the MCL, that system shall be eligible for a variance under the provisions of section 1415(a)(1)(A) of the Act.

(d) If a system can demonstrate through comprehensive engineering assessments, which may include pilot plant studies, that the treament methods identified in § 142.62 (a) and (b) would only achieve a *de minimis* reduction in contaminants, the State may issue a schedule of compliance that requires the system being granted the variance to examine other treatment methods as a condition of obtaining the variance.

(e) If the State determines that a treatment method identified in paragraph (d) of this section is technically feasible, the Administrator or primacy State may require the system to install and/or use that treatment method in connection with a compliance schedule issued under the provisions of section 1415(a)(1)(A) of the Act. The State's determination shall be based upon studies by the system and other relevant information.

(f) The State may require a public water system to use bottled water, point-of-use devices, point-of-entry devices or other means as a condition of granting a variance or an exemption from the requirements of § 141.61 (a) and (c) and § 141.62, to avoid an unreasonable risk to health. The State may require a public water system to use bottled water and point-of-use devices or other means, *but not point-of-entry devices,* as a condition for granting an exemption from corrosion control treatment requirements for lead and copper in §§ 141.81 and 141.82 to avoid an unreasonable risk to health. The State may require a public water system to use point-of-entry devices as a condition for granting an exemption from the source water and lead service line replacement requirements for lead and copper under §§ 141.83 or 141.84 to avoid an unreasonable risk to health.

(g) Public water systems that use bottled water as a condition for receiving a variance or an exemption from the requirements of § 141.61 (a) and (c) and § 141.62, or an exemption from the requirements of §§ 141.81–141.84 must meet the requirements specified in either paragraph (g)(1) or (g)(2) and paragraph (g)(3) of this section:

(1) The Administrator or primacy State must require and approve a monitoring program for bottled water. The public water system must develop and put in place a monitoring program that provides reasonable assurances that the bottled water meets all MCLs. The public water system must monitor a representative sample of the bottled water for all contaminants regulated under § 141.61 (a) and (c) and § 141.62 during the first three-month period that it supplies the bottled water to the public, and annually thereafter. Results of the monitoring program shall be provided to the State annually.

(2) The public water system must receive a certification from the bottled water company that the bottled water supplied has been taken from an ''approved source'' as defined in 21 CFR 129.3(a); the bottled water company has conducted monitoring in accordance with 21 CFR 129.80(g)(1) through (3); and the bottled water does not exceed any MCLs or quality limits as set out in 21 CFR 103.35, part 110, and part 129. The public water system shall provide the certification to the State the first quarter after it supplies bottled water and annually thereafter. At the State's option a public water system may satisfy the requirements of this subsection if an approved monitoring program is already in place in another State.

(3) The public water system is fully responsible for the provision of sufficient quantities of bottled water to every person supplied by the public water system via door-to-door bottled water delivery.

(h) Public water systems that use point-of-use or point-of-entry devices as a condition for obtaining a variance or an exemption from NPDWRs must meet the following requirements:

(1) It is the responsibility of the public water system to operate and maintain the point-of-use and/or point-of-entry treatment system.

(2) Before point-of-use or point-of-entry devices are installed, the public water system must obtain the approval of a monitoring plan which ensures that the devices provide health protection equivalent to that provided by central water treatment.

(3) The public water system must apply effective technology under a State-approved plan. The microbiological safety of the water must be maintained at all times.

(4) The State must require adequate certification of performance, field testing, and, if not included in the certification process, a rigorous engineering design review of the point-of-use and/or point-of-entry devices.

(5) The design and application of the point-of-use and/or point-of-entry devices must consider the potential for increasing concentrations of heterotrophic bacteria in water treated with activated carbon. It may be necessary to use frequent backwashing, post-contactor disinfection, and Heterotrophic Plate Count monitoring to ensure that the microbiological safety of the water is not compromised.

(6) The State must be assured that buildings connected to the system have sufficient point-of-use or point-of-entry devices that are properly in-

stalled, maintained, and monitored such that all consumers will be protected.

(7) In requiring the use of a point-of-entry device as a condition for granting an exemption from the treatment requirements for lead and copper under § 141.83 or § 141.84, the State must be assured that use of the device will not cause increased corrosion of lead and copper bearing materials located between the device and the tap that could increase contaminant levels at the tap.

[56 FR 3596, Jan. 30, 1991, as amended at 56 FR 26563, June 7, 1991; 57 FR 31848, July 17, 1992; 59 FR 33864, June 30, 1994; 59 FR 34325, July 1, 1994]

§ 142.63 Variances and exemptions from the maximum contaminant level for total coliforms.

(a) No variances or exemptions from the maximum contaminant level in § 141.63 of this chapter are permitted.

(b) EPA has stayed the effective date of this section relating to the total coliform MCL of § 141.63(a) of this chapter for systems that demonstrate to the State that the violation of the total coliform MCL is due to a persistent growth of total coliforms in the distribution system rather than fecal or pathogenic contamination, a treatment lapse or deficiency, or a problem in the operation or maintenance of the distribution system.

[54 FR 27568, June 29, 1989, as amended at 56 FR 1557, Jan. 15, 1991]

§ 142.64 Variances and exemptions from the requirements of part 141, subpart H—Filtration and Disinfection.

(a) No variances from the requirements in part 141, subpart H are permitted.

(b) No exemptions from the requirements in § 141.72(a)(3) and (b)(2) to provide disinfection are permitted.

[54 FR 27540, June 29, 1989]

Subpart H—Indian Tribes

SOURCE: 53 FR 37411, Sept. 26, 1988, unless otherwise noted.

§ 142.72 Requirements for Tribal eligibility.

The Administrator is authorized to treat an Indian Tribe as eligible to apply for primary enforcement responsibility for the Public Water System Program if it meets the following criteria:

(a) The Indian Tribe is recognized by the Secretary of the Interior.

(b) The Indian Tribe has a tribal governing body which is currently ''carrying out substantial governmental duties and powers'' over a defined area, (*i.e.,* is currently performing governmental functions to promote the health, safety, and welfare of the affected population within a defined geographic area).

(c) The Indian Tribe demonstrates that the functions to be performed in regulating the public water systems that the applicant intends to regulate are within the area of the Indian Tribal government's jurisdiction.

(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of administering (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Public Water System program.

[53 FR 37411, Sept. 26, 1988, as amended at 59 FR 64344, Dec. 14, 1994]

§ 142.76 Request by an Indian Tribe for a determination of eligibility.

An Indian Tribe may apply to the Administrator for a determination that it meets the criteria of section 1451 of the Act. The application shall be concise and describe how the Indian Tribe will meet each of the requirements of § 142.72. The application shall consist of the following information:

(a) A statement that the Tribe is recognized by the Secretary of the Interior.

(b) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. The statement should:

(1) Describe the form of the Tribal government;

(2) Describe the types of governmental functions currently performed by the Tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(3) Identify the sources of the Tribal government's authority to carry out the governmental functions currently being performed.

(c) A map or legal description of the area over which the Indian Tribe asserts jurisdiction; a statement by the Tribal Attorney General (or equivalent official) which describes the basis for the Tribe's jurisdictional assertion (including the nature or subject matter of the asserted jurisdiction); a copy of those documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which the Tribe believes are relevant to its assertions regarding jurisdiction; and a description of the locations of the public water systems the Tribe proposes to regulate.

(d) A narrative statement describing the capability of the Indian Tribe to administer an effective Public Water System program. The narrative statement should include:

(1) A description of the Indian Tribe's previous management experience which may include, the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian Sanitation Facilities Construction Activity Act (42 U.S.C. 2004a).

(2) A list of existing environmental or public health programs administered by the Tribal governing body and a copy of related Tribal laws, regulations and policies.

(3) A description of the Indian Tribe's accounting and procurement systems.

(4) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government.

(5) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary enforcement responsibility, including a description of the relationship between owners/operators of the public water systems and the agency.

(6) A description of the technical and administrative capabilities of the staff to administer and manage an effective Public Water System Program or a plan which proposes how the Tribe will acquire additional administrative and/or technical expertise. The plan must address how the Tribe will obtain the funds to acquire the additional administrative and technical expertise.

(e) The Administrator may, in his discretion, request further documentation necessary to support a Tribe's eligibility.

(f) If the Administrator has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a state as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the Public Water System program (paragraph (c), (d)(5) and (6) of this section).

[53 FR 37411, Sept. 26, 1988, as amended at 59 FR 64344, Dec. 14, 1994]

§ 142.78 Procedure for processing an Indian Tribe's application.

(a) The Administrator shall process a completed application of an Indian Tribe in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(b) A tribe that meets the requirements of § 142.72 is eligible to apply for development grants and primary enforcement responsibility for a Public Water System Program and associated funding under section 1443(a) of the Act and for primary enforcement responsibility for public water systems under section 1413 of the Act.

[53 FR 37411 Sept. 26, 1988, as amended at 59 FR 64345, Dec. 14, 1994]

Subpart I—Administrator's Review of State Decisions that Implement Criteria Under Which Filtration Is Required

SOURCE: 54 FR 27540, June 29, 1989, unless otherwise noted.

§ 142.80 Review procedures.

(a) The Administrator may initiate a comprehensive review of the decisions made by States with primary enforcement responsibility to determine, in accordance with § 141.71 of this chapter, if public water systems using surface water sources must provide filtration treatment. The Administrator shall complete this review within one year of its initiation and shall schedule subsequent reviews as (s)he deems necessary.

(b) EPA shall publish notice of a proposed review in the FEDERAL REGISTER. Such notice must:

(1) Provide information regarding the location of data and other information pertaining to the review to be conducted and other information including new scientific matter bearing on the application of the criteria for avoiding filtration; and

(2) Advise the public of the opportunity to submit comments.

(c) Upon completion of any such review, the Administrator shall notify each State affected by the results of the review and shall make the results available to the public.

§ 142.81 Notice to the State.

(a) If the Administrator finds through periodic review or other available information that a State (1) has abused its discretion in applying the criteria for avoiding filtration under § 141.71 of this chapter in determining that a system does not have to provide filtration treatment, or (2) has failed to prescribe compliance schedules for those systems which must provide filtration in accordance with section 1412(b)(7)(C)(ii) of the Act, (s)he shall notify the State of these findings. Such notice shall:

(1) Identify each public water system for which the Administrator finds the State has abused its discretion;

(2) Specify the reasons for the finding;

(3) As appropriate, propose that the criteria of § 141.71 of this chapter be applied properly to determine the need for a public water system to provide filtration treatment or propose a revised

schedule for compliance by the public water system with the filtration treatment requirements;

(b) The Administrator shall also notify the State that a public hearing is to be held on the provisions of the notice required by paragraph (a) of this section. Such notice shall specify the time and location of the hearing. If, upon notification of a finding by the Administrator that the State has abused its discretion under § 141.71 of this chapter, the State takes corrective action satisfactory to the Administrator, the Administrator may rescind the notice to the State of a public hearing.

(c) The Administrator shall publish notice of the public hearing in the FEDERAL REGISTER and in a newspaper of general circulation in the involved State, including a summary of the findings made pursuant to paragraph (a) of this section, a statement of the time and location for the hearing, and the address and telephone number of an office at which interested persons may obtain further information concerning the hearing.

(d) Hearings convened pursuant to paragraphs (b) and (c) of this section shall be conducted before a hearing officer to be designated by the Administrator. The hearing shall be conducted by the hearing officer in an informal, orderly, and expeditious manner. The hearing officer shall have the authority to call witnesses, receive oral and written testimony, and take such other action as may be necessary to ensure the fair and efficient conduct of the hearing. Following the conclusion of the hearing, the hearing officer may make a recommendation to the Administrator based on the testimony presented at the hearing and shall forward any such recommendation and the record of the hearing to the Administrator.

(e) Within 180 days after the date notice is given pursuant to paragraph (b) of this section, the Administrator shall:

(1) Rescind the notice to the State of a public hearing if the State takes corrective action satisfactory to the Administrator; or

(2) Rescind the finding for which the notice was given and promptly notify the State of such rescission; or

(3) Uphold the finding for which the notice was given. In this event, the Administrator shall revoke the State's decision that filtration was not required or revoke the compliance schedule approved by the State, and promulgate, as appropriate, with any appropriate modifications, a revised filtration decision or compliance schedule and promptly notify the State of such action.

(f) Revocation of a State's filtration decision or compliance schedule and/or promulgation of a revised filtration decision or compliance schedule shall take effect 90 days after the State is notified under paragraph (e)(3) of this section.

Subpart J—Procedures for PWS Administrative Compliance Orders

SOURCE: 56 FR 3755, Jan. 30, 1991, unless otherwise noted.

§ 142.201 Purpose.

This part prescribes procedures for notice and opportunity for public hearings, conferences with primary States and issuance of administrative compliance orders under section 1414(g) of the Safe Drinking Water Act, 42 U.S.C. 300g–3(g).

§ 142.202 Definitions.

(a) The term *Hearing Officer* means an Environmental Protection Agency employee who has been delegated by the Administrator the authority to preside over a public hearing held pursuant to section 1414(g)(2) of the Safe Drinking Water Act, 42 U.S.C. 300g–3(g)(2).

(b) The term *party* means any ''person'' or ''supplier of water'' as defined in section 1401 of the SDWA, 42 U.S.C. 300f, alleged to have violated any regulation implementation section 1412 of the SDWA, 42 U.S.C. 300g–1, any schedule or other requirement imposed pursuant to section 1415 or section 1416 of the SDWA, 42 U.S.C. 300g–4 and 300g–5, or section 1445 of the SDWA, 42 U.S.C. 300j–4, or any regulation implementing section 1445.

§ 142.203 Proposed administrative compliance orders.

If the Administrator finds that a party has violated a regulation, schedule, or other requirement of the SDWA referenced in § 142.202(b), the Administrator may prepare a proposed administrative compliance order that would require the party to comply with the regulation, schedule, or other requirement that is alleged to have been violated. Any such proposed administrative order shall state with reasonable specificity the nature of the violation, and may, if appropriate, specify a reasonable time for compliance.

§ 142.204 Notice of proposed administrative compliance orders.

The Administrator shall simultaneously provide a copy of any proposed administrative compliance order to:

(a) *The party.* The Administrator shall provide a copy of a proposed compliance order to the party personally or by sending it to the party by certified mail, return receipt requested. The Administrator shall provide a copy of a proposed administrative compliance order to an appropriate person, such as the affected location or facility manager, or any other appropriate employee or agent of the party who in the ordinary course of

business is authorized to sign for certified mail on behalf of the party. If the party is a federal agency, State or State agency, or a local unit of government, the Administrator shall provide a copy of a proposed administrative order to its chief executive officer, or its authorized agent for receipt of certified mail. Notification of the party is complete upon acceptance of personal service or when the return receipt is signed. If personal service is ineffective and if certified mail is refused or unclaimed, the Administrator shall notify the party by another appropriate means. In such case, notification is complete upon the execution of substituted service.

(b) *The public.* The Administrator shall make publicly available each proposed administrative compliance order at the time of its proposal.

(c) *The State.* In the case of a State with primary enforcement responsibility for public water systems pursuant to section 1413(a) of the SDWA, 42 U.S.C. 300g–2(a), the Administrator shall provide notice under this subsection by sending a copy of each proposed administrative compliance order by certified mail, return receipt requested to the appropriate State agency of the State involved.

§ 142.205 Opportunity for public hearings; opportunity for State conferences.

(a) The Administrator shall provide the party, the public and the State an opportunity for a public hearing on any proposed administrative compliance order by stating in a letter accompanying each proposed administrative compliance order (or its copy) that a public hearing shall be convened if the party or the State sends written notice of such request to the Administrator within fourteen days of receipt of the proposed administrative compliance order noticed under § 142.204, or if the Administrator determines that within fourteen days of the date of notice the public has expressed a significant interest in the convening of a public hearing. Hearings will be held only for the purposes specified in § 142.206(a). All requests for hearings shall identify which of the purposes specified in § 142.206(a) is the basis for the request. The Administrator may extend the time allowed for submitting requests for good cause.

(b) In the case of a State with primary enforcement responsibility under section 1413(a) of the SDWA, the Administrator shall provide the State with an opportunity to confer regarding any proposed administrative compliance order to a public water supplier by stating in a letter accompanying each mailing of the proposed administrative compliance order sent to the State that such a conference shall be held between the State and the Administrator, if the State requests such a conference within ten days of the dates of receipt of proposed administrative compliance order noticed under § 142.204.

(c) For purposes of this subsection, receipt occurs at the time of personal service or three days after the date of mailing or other means of substituted service, except that if receipt is provided by certified mail, return receipt requested, notice occurs when the return receipt is signed. For the purpose of computation of time, the day of the mailing, Saturdays, Sundays, and federal holidays are excluded.

§ 142.206 Conduct of public hearings.

(a) The purpose of the public hearing shall be to determine whether a proposed administrative order:

(1) Has correctly stated the extent and nature of a party's violation of any regulation, schedule, or other requirement of the SDWA referenced in § 142.202(b) and

(2) Has provided, where appropriate, a reasonable time for the party to comply with applicable requirements of the SDWA and its implementing regulations.

(b) Prior to convening a public hearing under this subsection, the Administrator shall appoint a Hearing Officer. The Hearing Officer shall preside over any public hearing convened under this section. The Hearing Officer shall determine the form and procedures of the public hearing, and shall maintain complete and accurate record of the proceedings in written or other permanent form. The Hearing Officer shall provide the Administrator with the record of any public hearing conducted under this subsection.

(c) The party, any member of the public, or the State may present information to the Hearing Officer at the public hearing (or to the Administrator in writing before the date set for the public hearing) relevant to whether:

(1) The party has violated the applicable regulation, schedule, or other requirement referenced in the proposed administrative compliance order;

(2) The party has violated any other applicable regulation, schedule, or other requirement of the SDWA referenced in § 142.202(b); and

(3) The proposed order, where appropriate, provides a reasonable time for the party to comply with applicable requirements of the SDWA and its implementing regulations.

§ 142.207 Issuance, amendment or withdrawal of administrative compliance order.

(a) Based on the administrative record, the Administrator shall either issue the order as proposed, amend the proposed order or withdraw the proposed order.

(b) Any order issued shall require the party to comply with any applicable regulation, schedule, or other requirement of the SDWA referenced in § 142.202(b) and may establish a time or date for compliance which the Administrator determines is reasonable, based on the administrative record.

(c) The Administrator shall determine within a reasonable time whether to issue, amend or withdraw the proposed order and shall promptly notify in writing the party, all members of the public participating under § 142.206(c) and the State, in the case of a State with primary enforcement authority over public water systems pursuant to section 1413(a) of the SDWA, or in the case of a State participating under § 142.206(c).

§ 142.208 Administrative assessment of civil penalty for violation of administrative compliance order.

In the event the Administrator decides to seek a penalty under the authority provided in section 1414(g)(3)(B) of the SDWA, 42 U.S.C. 300g–3(g)(3)(B), for violation of, or failure or refusal to comply with, an order, the procedures provided in 40 CFR part 22 shall govern the assessment of such a penalty.

PART 143—NATIONAL SECONDARY DRINKING WATER REGULATIONS

Sec.

AUTHORITY: 42 U.S.C. 300f *et seq.*

SOURCE: 44 FR 42198, July 19, 1979, unless otherwise noted.

§ 143.1 Purpose.

This part establishes National Secondary Drinking Water Regulations pursuant to section 1412 of the Safe Drinking Water Act, as amended (42 U.S.C. 300g–1). These regulations control contaminants in drinking water that primarily affect the aesthetic qualities relating to the public acceptance of drinking water. At considerably higher concentrations of these contaminants, health implications may also exist as well as aesthetic degradation. The regulations are not Federally enforceable but are intended as guidelines for the States.

§ 143.2 Definitions.

(a) *Act* means the Safe Drinking Water Act as amended (42 U.S.C. 300f *et seq.).*

(b) *Contaminant* means any physical, chemical, biological, or radiological substance or matter in water.

(c) *Public water system* means a system for the provision to the public of piped water for human consumption, if such a system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system is either a ''community water system'' or a ''non-community water system.''

(d) *State* means the agency of the State or Tribal government which has jurisdiction over public water systems. During any period when a State does not have responsibi1ity pursuant to section 1443 of the Act, the term ''State'' means the Regional Administrator, U.S. Environmental Protection Agency.

(e) *Supplier of water* means any person who owns or operates a public water system.

(f) *Secondary maximum contaminant levels* means SMCLs which apply to public water systems and which, in the judgement of the Administrator, are requisite to protect the public welfare. The SMCL means the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of public water system. Contamimants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.

[44 FR 42198, July 19, 1979, as amended at 53 FR 37412, Sept. 26, 1988]

§ 143.3 Secondary maximum contaminant levels.

The secondary maximum contaminant levels for public water systems are as follows:

Contaminant	Level
Aluminum	0.05 to 0.2 mg/l.
Chloride	250 mg/l.
Color	15 color units.
Copper	1.0 mg/l.
Corrosivity	Non-corrosive.
Fluoride	2.0 mg/l.
Foaming agents	0.5 mg/l.
Iron	0.3 mg/l.
Manganese	0.05 mg/l.
Odor	3 threshold odor number.
pH	6.5–8.5.
Silver	0.1 mg/l.
Sulfate	250 mg/l.
Total dissolved solids (TDS)	500 mg/l.
Zinc	5 mg/l.

These levels represent reasonable goals for drinking water quality. The States may establish higher or lower levels which may be appropriate dependent upon local conditions such as unavailability of alternate source waters or other compelling factors, provided that public health and welfare are not adversely affected.

[44 FR 42198, July 19, 1979, as amended at 51 FR 11412, Apr. 2, 1986; 56 FR 3597, Jan. 30, 1991]

§ 143.4 Monitoring.

(a) It is recommended that the parameters in these regulations should be monitored at intervals no less frequent than the monitoring performed for inorganic chemical contaminants listed in the National Interim Primary Drinking Water Regulations as applicable to community water systems. More frequent monitoring would be appropriate for specific parameters such as pH, color, odor or others under certain circumstances as directed by the State.

(b) Measurement of pH, copper and fluoride to determine compliance under § 143.3 may be conducted with one of the methods in § 141.23(k)(1). Analyses of aluminum, chloride, foaming agents, iron, manganese, odor, silver, sulfate, total dissolved solids (TDS) and zinc to determine compli-

ance under § 143.3 may be conducted with the methods in the following Table. Criteria for analyzing aluminum, copper, iron, manganese, silver and zinc samples with digestion or directly without digestion, and other analytical test procedures are contained in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994, which is available at NTIS PB95–104766.

Contaminant	EPA	ASTM [3]	SM4	Other
Aluminum	[2] 200.7		3120B.	
	[2] 200.8		3113B.	
	[2] 200.9		3111D.	
Chloride	[1] 300.0	D4327–91	4110	
			4500–Cl—D.	
Color			2120B.	
Foaming Agents			5540C.	
Iron	[2] 200.7		3120B.	
	[2] 200.9		3111B	
			3113B.	
Manganese	[2] 200.7		3120B.	
	[2] 200.8		3111B.	
	[2] 200.9		3113B.	
Odor			2150B.	
Silver	[2] 200.7		3120B	I–3720–85 [5]
	[2] 200.8		3111B.	
	[2] 200.9		3113B.	
Sulfate	[1] 300.0	D4327–91	4110.	
	[1] 375.2		4500–SO_4–F	
			4500–SO_4–C,D.	
TDS			2540C.	
Zinc	[2] 200.7		3120B.	
	[2] 200.8		3111B.	

FOOTNOTES:

[1] "Methods for the Determination of Inorganic Substances in Environmental Samples", EPA–600/R–93–100, August 1993. Available at NTIS, PB94–121811.

[2] "Methods for the Determination of Metals in Environmental Samples—Supplement I", EPA–600/R–94–111, May 1994. Available at NTIS, PB94–184942.

[3] The procedures shall be done in accordance with the *Annual Book of ASTM Standards,* 1994, Vols. 11.01 and 11.02, American Society for Testing and Materials. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[4] The procedures shall be done in accordance with the 18th edition of *Standard Methods for the Examination of Water and Wastewater,* 1992, American Public Health Association. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW., Washington, DC 20005. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW., Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

[5] Available from Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225–0425.

[44 FR 42198, July 19, 1979, as amended at 53 FR 5147, Feb. 19, 1988; 56 FR 30281, July 1, 1991; 59 FR 62470, Dec. 5, 1994]

§ 143.5 Compliance with secondary maximum contaminant level and public notification for fluoride.

(a) Community water systems, as defined in 40 CFR 141.2(e)(i) of this title, that exceed the secondary maximum contaminant level for fluoride as determined by the last single sample taken in accordance with the requirements of § 141.23 of this title or any equivalent state law, but do not exceed the maximum contaminant level for flouride as specified by § 141.62 of thid title or any equivalent state law, shall provivde the notice described in paragraph (b) of all billing units annually, all new billing units at the time service begins, and the state public health officer.

(b) The notice required by paragraph (a) shall contain the following language including the language necessary to replace the superscripts:

PUBLIC NOTICE

Dear User,

The U.S. Environmental Protection Agency requires that we send you this notice on the level of fluoride in your drinking water. The drinking water in your community has a fluoride concentration of [1] milligrams per liter (mg/l).

Federal regulations require that fluoride, which occurs naturally in your water supply, not exceed a concentration of 4.0 mg/l in drinking water. This is an enforceable standard called a Maximum Contaminant Level (MCL), and it has been established to protect the public health. Exposure to drinking water levels above 4.0 mg/l for many years may result in some cases of crippling skeletal fluorosis, which is a serious bone disorder.

Federal law also requires that we notify you when monitoring indicates that the fluoride in your drinking water exceeds 2.0 mg/l. This is intended to alert families about dental problems that might affect children under

nine years of age. The fluoride concentration of your water exceeds this federal guideline.

Fluoride in children's drinking water at levels of approximately 1 mg/l reduces the number of dental cavities. However, some children exposed to levels of fluoride greater than about 2.0 mg/l may develop dental fluorosis. Dental fluorosis, in its moderate and severe forms, is a brown staining and/or pitting of the *permanent* teeth.

Because dental fluorosis occurs only when *developing* teeth (before they erupt from the gums) are exposed to elevated fluoride levels, households without children are not expected to be affected by this level of fluoride. Families with children under the age of nine are encouraged to seek other sources of drinking water for their children to avoid the possibility of staining and pitting.

Your water supplier can lower the concentration of fluoride in your water so that you will still receive the benefits of cavity prevention while the possibility of stained and pitted teeth is minimized. Removal of fluoride may increase your water costs. Treatment systems are also commercially available for home use. Information on such systems is available at the address given below. Low fluoride bottled drinking water that would meet all standards is also commercially available.

For further information, contact [2] at your water system.

[1] PWS shall insert the compliance result which triggered notification under this part.

[2] PWS shall insert the name, address, and telephone number of a contact person at the PWS.

(c) The effective date of this section is May 2, 1986.

[51 FR 11412, Apr. 2, 1986; 51 FR 24329, July 3, 1986, as amended at 52 FR 41550, Oct. 28, 1987]

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

Subpart A—General Provisions

Subpart B—General Program Requirements

Subpart C—Authorization of Underground Injection by Rule

Subpart D—Authorization by Permit

Subpart E—Permit Conditions

Subpart F—Financial Responsibility: Class I Hazardous Waste Injection Wells

AUTHORITY: Safe Drinking Water Act, 42 U.S.C. 300f *et seq;* Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

SOURCE: 48 FR 14189, Apr. 1, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 144.1 Purpose and scope of part 144.

(a) *Contents of part 144.* The regulations in this part set forth requirements for the Underground Injection Control (UIC) program promulgated under Part C of the Safe Drinking Water Act (SDWA) (Pub. L. 93–523, as amended; 42 U.S.C. 300f *et seq.*) and, to the extent that they deal with hazardous waste, the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 as amended; 42 U.S.C. 6901 *et seq.).*

(b) *Applicability.* (1) The regulations in this part establish minimum requirements for UIC programs. To the extent set forth in part 145, each State must meet these requirements in order to obtain primary enforcement authority for the UIC program in that State.

(2) In addition to serving as minimum requirements for UIC programs, the regulations in this part constitute a part of the UIC program for States listed in part 147 to be administered directly by EPA.

(c) The information requirements located in the following sections have been cleared by the Office of Management and Budget: Sections 144.11, 144.28(c)(d)(i), 144.31, 14.33, 144.51(j)(m) (n), 144.52(a), 144.54, 144.55, 144.15, 144.23, 144.26, 144.27, 144.28(i)(k), 144.51(o), 146.52. The OMB clearance number is 2040–0042.

(d) *Authority.* (1) Section 1421 of SDWA requires the Administrator to promulgate regulations establishing minimum requirements for effective UIC programs.

(2) Section 1422 of SDWA requires the Administrator to list in the FEDERAL REGISTER ''each State for which in his judgment a State under-

ground injection control program may be necessary to assure that underground injection will not endanger drinking water sources'' and to establish by regulation a program for EPA administration of UIC programs in the absence of an approved State program in a listed State.

(3) Section 1423 of SDWA provides procedures for EPA enforcement of UIC requirements.

(4) Section 1431 authorizes the Administrator to take action to protect the health of persons when a contaminant which is present in or may enter a public water system or underground source of drinking water may present an imminent and substantial endangerment to the health of persons.

(5) Section 1445 of SDWA authorizes the promulgation of regulations for such recordkeeping, reporting, and monitoring requirements ''as the Administrator may reasonably require * * * to assist him in establishing regulations under this title,'' and a ''right of entry and inspection to determine compliance with this title, including for this purpose, inspection, at reasonable time, or records, files, papers, processes, controls, and facilities * * *.''

(6) Section 1450 of SDWA authorizes the Administrator ''to prescribe such regulations as are necessary or appropriate to carry out his functions'' under SDWA.

(e) *Overview of the UIC program.* An UIC program is necessary in any State listed by EPA under section 1422 of the SDWA. Because all States have been listed, the SDWA requires all States to submit an UIC program within 270 days after July 24, 1980, the effective date of 40 CFR part 146, which was the final element of the UIC minimum requirements to be originally promulgated, unless the Administrator grants an extension, which can be for a period not to exceed an additional 270 days. If a State fails to submit an approvable program, EPA will establish a program for that State. Once a program is established, SDWA provides that all underground injections in listed States are unlawful and subject to penalties unless authorized by a permit or a rule. This part sets forth the requirements governing all UIC programs, authorizations by permit or rule and prohibits certain types of injection. The technical regulations governing these authorizations appear in 40 CFR part 146.

(f) *Structure of the UIC program*—(1) *Part 144.* This part sets forth the permitting and other program requirements that must be met by UIC Programs, whether run by a State or by EPA. It is divided into the following subparts:

(i) Subpart A describes general elements of the program, including definitions and classifications.

(ii) Subpart B sets forth the general program requirements, including the performance standards applicable to all injection activities, basic elements that all UIC programs must contain, and provisions for waiving permit of rule requirements under certain circumstances.

(iii) Subpart C sets forth requirements for wells authorized by rule.

(iv) Subpart D sets forth permitting procedures.

(v) Subpart E sets forth specific conditions, or types of conditions, that must at a minimum be included in all permits.

(vi) Subpart F sets forth the financial responsibility requirements for owners and operators of all existing and new Class I hazardous waste injection wells.

(2) *Part 145.* While part 144 sets forth minimum requirements for all UIC Programs, these requirements are specifically identified as elements of a State application for primacy to administer an UIC Program in part 145. Part 145 also sets forth the necessary elements of a State submission and the procedural requirements for approval of State programs.

(3) *Part 124.* The public participation requirements that must be met by UIC Programs, whether administered by the State or by EPA, are set forth in part 124. EPA must comply with all part 124 requirements; State administered programs must comply with part 124 as required by part 145. These requirements carry out the purposes of the public participation requirement of 40 CFR part 25 (Public Participation), and supersede the requirements of that part as they apply to the UIC Program.

(4) *Part 146.* This part sets forth the technical criteria and standards that must be met in permits and authorizations by rule as required by part 144.

(g) *Scope of the permit or rule requirement.* The UIC Permit Program regulates underground injections by five classes of wells (see definition of ''well injection,'' § 144.3). The five classes of wells are set forth in § 144.6. All owners or operators of these injection wells must be authorized either by permit or rule by the Director. In carrying out the mandate of the SDWA, this subpart provides that no injection shall be authorized by permit or rule if it results in the movement of fluid containing any contaminant into Underground Sources of Drinking Water (USDWs—see § 144.3 for definition), if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may adversely affect the health of persons (§ 144.12). Existing Class IV wells which inject hazardous waste directly into an underground source of drinking water are to be eliminated over a period of six months and new such Class IV wells are to be prohibited (§ 144.13). Class V wells will be inventoried and assessed and regulatory action will be established at a later date.

In the meantime, if remedial action appears necessary, an individual permit may be required (§ 144.25) or the Director must require remedial action or closure by order (§ 144.12(c)). During UIC program development, the Director may identify aquifers and portions of aquifers which are actual or potential sources of drinking water. This will provide an aid to the Director in carrying out his or her duty to protect all USDWs. An aquifer is a USDW if it fits the definition, even if it has not been ''identified.'' The Director may also designate ''exempted aquifers'' using criteria in § 146.04. Such aquifers are those which would otherwise qualify as ''underground sources of drinking water'' to be protected, but which have no real potential to be used as drinking water sources. Therefore, they are not USDWs. No aquifer is an ''exempted aquifer'' until it has been affirmatively designated under the procedures in § 144.7. Aquifers which do not fit the definition of ''underground sources of drinking water'' are not ''exempted aquifers.'' They are simply not subject to the special protection afforded USDWs.

(1) *Specific inclusions.* The following wells are included among those types by injection activities which are covered by the UIC regulations. (This list is not intended to be exclusive but is for clarification only.)

(i) Any injection well located on a drilling platform inside the State's territorial waters.

(ii) Any dug hole or well that is deeper than its largest surface dimension, where the principal function of the hole is emplacement of fluids.

(iii) Any septic tank or cesspool used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste.

(iv) Any septic tank, cesspool, or other well used by a multiple dwelling, community, or Regional system for the injection of wastes.

(2) *Specific exclusions.* The following are not covered by these regulations:

(i) Injection wells located on a drilling platform or other site that is beyond the State's territorial waters.

(ii) Individual or single family residential waste disposal systems such as domestic cesspools or septic systems.

(iii) Non-residential cesspools, septic systems or similar waste disposal systems if such systems (A) Are used solely for the disposal of sanitary waste, and (B) have the capacity to serve fewer than 20 persons a day.

(iv) Injection wells used for injection of hydrocarbons which are of pipeline quality and are gases at standard temperature and pressure for the purpose of storage.

(v) Any dug hole which is not used for emplacement of fluids underground.

(3) The prohibition applicable to Class IV wells under § 144.13 does not apply to injections of hazardous wastes into aquifers or portions thereof which have been exempted pursuant to § 146.04.

(h) *Interim Status under RCRA for Class I Hazardous Waste Injection Wells.* The minimum national standards which define acceptable injection of hazardous waste during the period of interim status under RCRA are set out in the applicable provisions of this part, parts 146 and 147, and § 265.430 of this chapter. The issuance of a UIC permit does not automatically terminate RCRA interim status. A Class I well's interim status does, however, automatically terminate upon issuance to that well of a RCRA permit, or upon the well's receiving a RCRA permit-by-rule under § 270.60(b) of this chapter. Thus, until a Class I well injecting hazardous waste receives a RCRA permit or RCRA permit-by-rule, the well's interim status requirements are the applicable requirements imposed pursuant to this part and parts 146, 147, and 265 of this chapter, including any requirements imposed in the UIC permit.

[48 FR 14189, Apr. 1, 1983, as amended at 49 FR 20181, May 11, 1984; 52 FR 20676, June 2, 1987; 52 FR 45797, Dec. 1, 1987; 53 FR 28147, July 26, 1988]

§ 144.2 Promulgation of Class II programs for Indian lands.

Notwithstanding the requirements of this part or parts 124 and 146 of this chapter, the Administrator may promulgate an alternate UIC Program for Class II wells on any Indian reservation or Indian lands. In promulgating such a program the Administrator shall consider the following factors:

(a) The interest and preferences of the tribal government having responsibility for the given reservation or Indian lands;

(b) The consistency between the alternate program and any program in effect in an adjoining jurisdiction; and

(c) Such other factors as are necessary and appropriate to carry out the Safe Drinking Water Act.

§ 144.3 Definitions.

Terms not defined in this section have the meaning given by the appropriate Act. When a defined term appears in a definition, the defined term is sometimes placed within quotation marks as an aid to readers.

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

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

States, including any approved modifications or revisions.

Appropriate Act and regulations means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA); or Safe Drinking Water Act (SDWA), whichever is applicable; and applicable regulations promulgated under those statutes.

Approved State Program means a UIC program administered by the State or Indian Tribe that has been approved by EPA according to SDWA sections 1422 and/or 1425.

Aquifer means a geological ''formation,'' group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

Area of review means the area surrounding an injection well described according to the criteria set forth in § 146.06 or in the case of an area permit, the project area plus a circumscribing area the width of which is either ¼ of a mile or a number calculated according to the criteria set forth in § 146.06.

Contaminant means any physical, chemical, biological, or radiological substance or matter in water.

Director means the Regional Administrator, the State director or the Tribal director as the context requires, or an authorized representative. When there is no approved State or Tribal program, and there is an EPA administered program, ''Director'' means the Regional Administrator. When there is an approved State or Tribal program, ''Director'' normally means the State or Tribal director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State or Tribal program. In such cases, the term ''Director'' means the Regional Administrator and not the State or Tribal director.

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

Drilling mud means a heavy suspension used in drilling an ''injection well,'' introduced down the drill pipe and through the drill bit.

Eligible Indian Tribe is a Tribe that meets the statutory requirements established at 42 U.S.C. 300j-11(b)(1).

Emergency permit means a UIC ''permit'' issued in accordance with § 144.34.

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

EPA means the United States ''Environmental Protection Agency.''

Exempted aquifer means an ''aquifer'' or its portion that meets the criteria in the definition of ''underground source of drinking water'' but which has been exempted according to the procedures in § 144.7.

Existing injection well means an ''injection well'' other than a ''new injection well.''

Facility or activity means any UIC ''injection well,'' or an other facility or activity that is subject to regulation under the UIC program.

Fluid means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

Formation means a body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

Formation fluid means ''fluid'' present in a ''formation'' under natural conditions as opposed to introduced fluids, such as ''drilling mud.''

Generator means any person, by site location, whose act or process produces hazardous waste identified or listed in 40 CFR part 261.

Ground water means water below the land surface in a zone of saturation.

Hazardous waste means a hazardous waste as defined in 40 CFR 261.3.

Hazardous waste management facility (''HWM facility'') means all contiguous land, and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them).

HWM facility means ''Hazardous Waste Management facility''

Indian lands means ''Indian country'' as defined in 18 U.S.C. 1151. That section defines Indian country as:

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

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

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

Indian Tribe means any Indian Tribe having a Federally recognized governing body carrying out

substantial governmental duties and powers over a defined area.

Injection well means a ''well'' into which ''fluids'' are being injected.

Injection zone means a geological ''formation'' group of formations, or part of a formation receiving fluids through a ''well.''

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

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

Manifest means the shipping document originated and signed by the ''generator'' which contains the information required by subpart B of 40 CFR part 262.

New injection wells means an ''injection well'' which began injection after a UIC program for the State applicable to the well is approved or prescribed.

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

Permit means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of this part, parts 145, 146 and 124. ''Permit'' includes an area permit (§ 144.33) and an emergency permit (§ 144.34). Permit does not include UIC authorization by rule (§ 144.21), or any permit which has not yet been the subject of final agency action, such as a ''draft permit.''

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

Plugging means the act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation.

Project means a group of wells in a single operation.

Radioactive Waste means any waste which contains radioactive material in concentrations which exceed those listed in 10 CFR part 20, appendix B, table II, column 2.

RCRA means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580, as amended by Pub. L. 95–609, Pub. L. 96–510, 42 U.S.C. 6901 *et seq.*).

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

Schedule of compliance means a schedule of remedial measures included in a ''permit,'' including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the ''appropriate Act and regulations.''

SDWA means the Safe Drinking Water Act (Pub. L. 93–523, as amended; 42 U.S.C. 300f *et seq.*).

Site means the land or water area where any ''facility or activity'' is physically located or conducted, including adjacent land used in connection with the facility or activity.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or an Indian Tribe treated as a State.

State Director means the chief administrative officer of any State, interstate, or Tribal agency operating an ''approved program,'' or the delegated representative of the State director. If the responsibility is divided among two or more States, interstate, or Tribal agencies, ''State Director'' means the chief administrative officer of the State, interstate, or Tribal agency authorized to perform the particular procedure or function to which reference is made.

State/EPA agreement means an agreement between the Regional Administrator and the State which coordinates EPA and State activities, responsibilities and programs.

Stratum (plural strata) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

Total dissolved solids means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR part 136.

Transferee means the owner or operator receiving ownership and/or operational control of the well.

Transferor means the owner or operator transferring ownership and/or operational control of the well.

UIC means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an ''approved State program.''

Underground injection means a ''well injection.''

Underground source of drinking water (USDW) means an aquifer or its portion:

(a)(1) Which supplies any public water system; or

(2) Which contains a sufficient quantity of ground water to supply a public water system; and

(i) Currently supplies drinking water for human consumption; or

(ii) Contains fewer than 10,000 mg/l total dissolved solids; and

(b) Which is not an exempted aquifer.

USDW means ''underground source of drinking water.''

Well means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

Well injection means the subsurface emplacement of ''fluids'' through a bored, drilled, or driven ''well;'' or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

[48 FR 14189, Apr. 1, 1983, as amended at 49 FR 45305, Nov. 15, 1984; 52 FR 20676, June 2, 1987; 53 FR 37412, Sept. 26, 1988; 58 FR 63895, Dec. 3, 1993; 59 FR 64345, Dec. 14, 1994]

§ 144.4 Considerations under Federal law.

The following is a list of Federal laws that may apply to the issuance of permits under these rules. When any of these laws is applicable, its procedures must be followed. When the applicable law requires consideration or adoption of particular permit conditions or requires the denial of a permit, those requirements also must be followed.

(a) The *Wild and Scenic Rivers Act,* 16 U.S.C. 1273 *et seq.* Section 7 of the Act prohibits the Regional Administrator from assisting by license or otherwise the construction of any water resources project that would have a direct, adverse effect on the values for which a national wild and scenic river was established.

(b) *The National Historic Preservation Act of 1966,* 16 U.S.C. 470 *et seq.* Section 106 of the Act and implementing regulations (36 CFR part 800) require the Regional Administrator, before issuing a license, to adopt measures when feasible to mitigate potential adverse effects of the licensed activity and properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with State Historic Preservation Officers and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation.

(c) The *Endangered Species Act,* 16 U.S.C. 1531 *et seq.* Section 7 of the Act and implementing regulations (50 CFR part 402) require the Regional Administrator to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

(d) *The Coastal Zone Management Act,* 16 U.S.C. 1451 *et seq.* Section 307(c) of the Act and implementing regulations (15 CFR part 930) prohibit EPA from issuing a permit for an activity affecting land or water use in the coastal zone until the applicant certifies that the proposed activity complies with the State Coastal Zone Management program, and the State or its designated agency concurs with the certification (or the Secretary of Commerce overrides the States nonconcurrence).

(e) The *Fish and Wildlife Coordination Act,* 16 U.S.C. 661 *et seq.,* requires the Regional Administrator, before issuing a permit proposing or authorizing the impoundment (with certain exemptions), diversion, or other control or modification of any body of water, consult with the appropriate State agency exercising jurisdiction over wildlife resources to conserve these resources.

(f) *Executive orders.* [Reserved]

(Clean Water Act (33 U.S.C. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*))

[48 FR 14189, Apr. 1, 1983, as amended at 48 FR 39621, Sept. 1, 1983]

§ 144.5 Confidentiality of information.

(a) In accordance with 40 CFR part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words ''confidential business information'' on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2 (Public Information).

(b) Claims of confidentiality for the following information will be denied:

(1) The name and address of any permit applicant or permittee;

(2) Information which deals with the existence, absence, or level of contaminants in drinking water.

§ 144.6 Classification of wells.

Injection wells are classified as follows:

(a) *Class I.* (1) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing,

within one-quarter mile of the well bore, an underground source of drinking water.

(2) Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water.

(b) *Class II.* Wells which inject fluids:

(1) Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an intergral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

(2) For enhanced recovery of oil or natural gas; and

(3) For storage of hydrocarbons which are liquid at standard temperature and pressure.

(c) *Class III.* Wells which inject for extraction of minerals including:

(1) Mining of sulfur by the Frasch process;

(2) In situ production of uranium or other metals; this category includes only in-situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V.

(3) Solution mining of salts or potash.

(d) *Class IV.* (1) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which within one-quarter (¼) mile of the well contains an underground source of drinking water.

(2) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one-quarter (¼) mile of the well contains an underground source of drinking water.

(3) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to dispose of hazardous waste, which cannot be classified under paragraph (a)(1) or (d) (1) and (2) of this section (e.g., wells used to dispose of hazardous waste into or above a formation which contains an aquifer which has been exempted pursuant to § 146.04).

(e) *Class V.* Injection wells not included in Classes I, II, III, or IV.

[48 FR 14189, Apr. 1, 1983, as amended at 52 FR 20676, June 2, 1987]

§ 144.7 Identification of underground sources of drinking water and exempted aquifers.

(a) The Director may identify (by narrative description, illustrations, maps, or other means) and shall protect, except where exempted under paragraph (b) of this section, as an underground source of drinking water, all aquifers or parts of aquifers which meet the definition of an ''underground source of drinking water'' in § 144.3. Even if an aquifer has not been specifically identified by the Director, it is an underground source of drinking water if it meets the definition in § 144.3.

(b)(1) The Director may identify (by narrative description, illustrations, maps, or other means) and describe in geographic and/or geometric terms (such as vertical and lateral limits and gradient) which are clear and definite, all aquifers or parts thereof which the Director proposes to designate as exempted aquifers using the criteria in 40 CFR 146.04.

(2) No designation of an exempted aquifer submitted as part of a UIC Program shall be final until approved by the Administrator as part of a UIC program.

(3) Subsequent to program approval or promulgation, the Director may, after notice and opportunity for a public hearing, identify additional exempted aquifers. For approved State programs exemption of aquifers identifed (i) under § 146.04(b) shall be treated as a program revision under § 145.32; (ii) under § 146.04(c) shall become final if the State Director submits the exemption in writing to the Administrator and the Administrator has not disapproved the designation within 45 days. Any disapproval by the Administrator shall state the reasons and shall constitute final Agency action for purposes of judicial review.

(c)(1) For Class III wells, the Director shall require an applicant for a permit which necessitates an aquifer exemption under § 146.04(b)(1) to furnish the data necessary to demonstrate that the aquifer is expected to be mineral or hydrocarbon producing. Information contained in the mining plan for the proposed project, such as a map and general description of the mining zone, general information on the mineralogy and geochemistry of the mining zone, analysis of the amenability of the mining zone to the proposed mining method, and a time-table of planned development of the mining zone shall be considered by the Director in addition to the information required by § 144.31(g).

(2) For Class II wells, a demonstration of commercial producibility shall be made as follows:

(i) For a Class II well to be used for enhanced oil recovery processes in a field or project containing aquifers from which hydrocarbons were previously produced, commercial producibility shall be presumed by the Director upon a demonstration

by the applicant of historical production having occurred in the project area or field.

(ii) For Class II wells not located in a field or project containing aquifers from which hydrocarbons were previously produced, information such as logs, core data, formation description, formation depth, formation thickness and formation parameters such as permeability and porosity shall be considered by the Director, to the extent such information is available.

§ 144.8 Noncompliance and program reporting by the Director.

The Director shall prepare quarterly and annual reports as detailed below. When the State is the permit-issuing authority, the State Director shall submit any reports required under this section to the Regional Administrator. When EPA is the permit-issuing authority, the Regional Administrator shall submit any report required under this section to EPA Headquarters.

(a) *Quarterly reports.* The Director shall submit quarterly narrative reports for major facilities as follows:

(1) *Format.* The report shall use the following format:

(i) Provide an alphabetized list of permittees. When two or more permittees have the same name, the lowest permit number shall be entered first.

(ii) For each entry on the list, include the following information in the following order:

(A) Name, location, and permit number of the noncomplying permittees.

(B) A brief description and date of each instance of noncompliance for that permittee. Instances of noncompliance may include one or more the kinds set forth in paragraph (a)(2) of this section. When a permittee has noncompliance of more than one kind, combine the information into a single entry for each such permittee.

(C) The date(s) and a brief description of the action(s) taken by the Director to ensure compliance.

(D) Status of the instance(s) of noncompliance with the date of the review of the status or the date of resolution.

(E) Any details which tend to explain or mitigate the instance(s) of noncompliance.

(2) *Instances of noncompliance to be reported.* Any instances of noncompliance within the following categories shall be reported in successive reports until the noncompliance is reported as resolved. Once noncompliance is reported as resolved it need not appear in subsequent reports.

(i) *Failure to complete construction elements.* When the permittee has failed to complete, by the date specified in the permit, an element of a compliance schedule involving either planning for construction or a construction step (for example, begin construction, attain operation level); and the permittee has not returned to compliance by accomplishing the required elements of the schedule within 30 days from the date a compliance schedule report is due under the permit.

(ii) *Modifications to schedules of compliance.* When a schedule of compliance in the permit has been modified under § 144.39 or § 144.41 because of the permittee's noncompliance.

(iii) *Failure to complete or provide compliance schedule or monitoring reports.* When the permittee has failed to complete or provide a report required in a permit compliance schedule (for example, progress report or notice of noncompliance or compliance) or a monitoring report; and the permittee has not submitted the complete report within 30 days from the date it is due under the permit for compliance schedules, or from the date specified in the permit for monitoring reports.

(iv) *Deficient reports.* When the required reports provided by the permittee are so deficient as to cause misunderstanding by the Director and thus impede the review of the status of compliance.

(v) *Noncompliance with other permit requirements.* Noncompliance shall be reported in the following circumstances:

(A) Whenever the permittee has violated a permit requirement (other than reported under paragraph (a)(2) (i) or (ii) of this section), and has not returned to compliance within 45 days from the date reporting of noncompliance was due under the permit; or

(B) When the Director determines that a pattern of noncompliance exists for a major facility permittee over the most recent four consecutive reporting periods. This pattern includes any violation of the same requirement in two consecutive reporting periods, and any violation of one or more requirements in each of four consecutive reporting periods; or

(C) When the Director determines significant permit noncompliance or other significant event has occurred, such as a migration of fluids into a USDW.

(vi) *All other.* Statistical information shall be reported quarterly on all other instances of noncompliance by major facilities with permit requirements not otherwise reported under paragraph (a) of this section.

(b) *Annual reports*—(1) *Annual noncompliance report.* Statistical reports shall be submitted by the Director on nonmajor UIC permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the

types of noncompliance listed in paragraph (a) of this section.

(2) *For State-administered UIC Programs only.* In addition to the annual noncompliance report, the State Director shall:

(i) Submit each year a program report to the Administrator (in a manner and form prescribed by the Administrator) consisting of:

(A) A detailed description of the State's implementation of its program;

(B) Suggested changes, if any to the program description (see § 145.23(f)) which are necessary to reflect more accurately the State's progress in issuing permits;

(C) An updated inventory of active underground injection operations in the State.

(ii) In addition to complying with the requirements of paragraph (b)(2)(i) of this section, the Director shall provide the Administrator, on February 28th and August 31st of each of the first two years of program operation, the information required in 40 CFR 146.15, 146.25, and 146.35.

(c) *Schedule.* (1) For all quarterly reports. On the last working day of May, August, November, and February, the State Director shall submit to the Regional Administrator information concerning noncompliance with permit requirements by major facilities in the State in accordance with the following schedule. The Regional Administrator shall prepare and submit information for EPA-issued permits to EPA Headquarters in accordance with the same schedule.

QUARTERS COVERED BY REPORTS ON NONCOMPLIANCE BY MAJOR FACILITIES

[Date for completion of reports]

January, February, and March	[1] May 31
April, May, and June	[1] Aug. 31
July, August, and September	[1] Nov. 30
October, November, and December	[1] Feb. 28

[1] Reports must be made available to the public for inspection and copying on this date.

(2) *For all annual reports.* The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later.

Subpart B—General Program Requirements

§ 144.11 Prohibition of unauthorized injection.

Any underground injection, except into a well authorized by rule or except as authorized by permit issued under the UIC program, is prohibited. The construction of any well required to have a permit is prohibited until the permit has been issued.

[48 FR 14189, Apr. 1, 1983, as amended at 58 FR 63895, Dec. 3, 1993]

§ 144.12 Prohibition of movement of fluid into underground sources of drinking water.

(a) No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

(b) For Class I, II and III wells, if any water quality monitoring of an underground source of drinking water indicates the movement of any contaminant into the underground source of drinking water, except as authorized under part 146, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with § 144.39, or the permit may be terminated under § 144.40 if cause exists, or appropriate enforcement action may be taken if the permit has been violated. In the case of wells authorized by rule, see §§ 144.21 through 144.24. For EPA administered programs, such enforcement action shall be taken in accordance with appropriate sections of the SDWA.

(c) For Class V wells, if at any time the Director learns that a Class V well may cause a violation of primary drinking water regulations under 40 CFR part 142, he or she shall:

(1) Require the injector to obtain an individual permit;

(2) Order the injector to take such actions (including, where required, closure of the injection well) as may be necessary to prevent the violation. For EPA administered programs, such orders shall be issued in accordance with the appropriate provisions of the SDWA; or

(3) Take enforcement action.

(d) Whenever the Director learns that a Class V well may be otherwise adversely affecting the health of persons, he or she may prescribe such actions as may be necessary to prevent the adverse effect, including any action authorized under paragraph (c) of this section.

(e) Notwithstanding any other provision of this section, the Director may take emergency action upon receipt of information that a contaminant

which is present in or likely to enter a public water system or underground source of drinking water may present an imminent and substantial endangerment to the health of persons. If the Director is an EPA official, he must first determine that the appropriate State and local authorities have not taken appropriate action to protect the health of such persons, before taking emergency action.

[48 FR 14189, Apr. 1, 1983, as amended at 52 FR 20676, June 2, 1987]

§ 144.13 Prohibition of Class IV wells.

(a) The following are prohibited, except as provided in paragraph (c) of this section:

(1) The construction of any Class IV well.

(2) The operation or maintenance of any Class IV well not in operation prior to July 18, 1980.

(3) The operation or maintenance of any Class IV well that was in operation prior to July 18, 1980, after six months following the effective date of a UIC program approved or promulgated for the state.

(4) Any increase in the amount of hazardous waste or change in the type of hazardous waste injected into a Class IV well.

(b) The owner or operator of a Class IV well shall comply with the requirements of § 144.14, and with the requirements of § 144.23 regarding closure of Class IV wells.

(c) Wells used to inject contaminated ground water that has been treated and is being reinjected into the same formation from which it was drawn are not prohibited by this section if such injection is approved by EPA pursuant to provisions for cleanup of releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601–9657, or pursuant to requirements and provisions under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 through 6987.

(d) *Clarification.* The following wells are not prohibited by this action:

(1) Wells used to inject hazardous waste into aquifers or portions thereof that have been exempted pursuant to § 146.4, if the exempted aquifer into which waste is injected underlies the lowermost formation containing a USDW. Such wells are Class I wells as specified in § 144.6(a)(1), and the owner or operator must comply with the requirements applicable to Class I wells.

(2) Wells used to inject hazardous waste where no USDW exists within one quarter mile of the well bore in any underground formation, provided that the Director determines that such injection is into a formation sufficiently isolated to ensure that injected fluids do not migrate from the injection zone. Such wells are Class I wells as specified in § 144.6(a)(1), and the owner or operator must comply with the requirements applicable to Class I wells.

[49 FR 20181, May 11, 1984]

§ 144.14 Requirements for wells injecting hazardous waste.

(a) *Applicability.* The regulations in this section apply to all generators of hazardous waste, and to the owners or operators of all hazardous waste management facilities, using any class of well to inject hazardous wastes accompanied by a manifest. (See also § 144.13.)

(b) *Authorization.* The owner or operator of any well that is used to inject hazardous waste required to be accompanied by a manifest or delivery document shall apply for authorization to inject as specified in § 144.31 within 6 months after the approval or promulgation of the State UIC program.

(c) *Requirements.* In addition to complying with the applicable requirements of this part and 40 CFR part 146, the owner or operator of each facility meeting the requirements of paragraph (b) of this section, shall comply with the following:

(1) *Notification.* The owner or operator shall comply with the notification requirements of section 3010 of Public Law 94–580.

(2) *Identification number.* The owner or operator shall comply with the requirements of 40 CFR 264.11.

(3) *Manifest system.* The owner or operator shall comply with the applicable recordkeeping and reporting requirements for manifested wastes in 40 CFR 264.71.

(4) *Manifest discrepancies.* The owner or operator shall comply with 40 CFR 264.72.

(5) *Operating record.* The owner or operator shall comply with 40 CFR 264.73(a), (b)(1), and (b)(2).

(6) *Annual report.* The owner or operator shall comply with 40 CFR 264.75.

(7) *Unmanifested waste report.* The owner or operator shall comply with 40 CFR 264.75.

(8) *Personnel training.* The owner or operator shall comply with the applicable personnel training requirements of 40 CFR 264.16.

(9) *Certification of closure.* When abandonment is completed, the owner or operator must submit to the Director certification by the owner or operator and certification by an independent registered professional engineer that the facility has been closed in accordance with the specifications in § 144.52(a)(6).

(d) *Additional requirements for Class IV wells.* [Reserved]

§ 144.15 [Reserved]

§ 144.16 Waiver of requirement by Director.

(a) *When injection does not occur into, through or above an underground source of drinking water,* the Director may authorize a well or project with less stringent requirements for area of review, construction, mechanical integrity, operation, monitoring, and reporting than required in 40 CFR part 146 or § 144.52 to the extent that the reduction in requirements will not result in an increased risk of movement of fluids into an underground source of drinking water.

(b) When injection occurs through or above an underground source of drinking water, but the radius of endangering influence when computed under § 146.06(a) is smaller or equal to the radius of the well, the Director may authorize a well or project with less stringent requirements for operation, monitoring, and reporting than required in 40 CFR part 146 or § 144.52 to the extent that the reduction in requirements will not result in an increased risk of movement of fluids into an underground source of drinking water.

(c) When reducing requirements under paragraph (a) or (b) of this section, the Director shall prepare a fact sheet under § 124.8 explaining the reasons for the action.

§ 144.17 Records.

The Director or the Administrator may require, by written notice on a selective well-by-well basis, an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with Part C of the SDWA or its implementing regulations.

[58 FR 63895, Dec. 3, 1993]

Subpart C—Authorization of Underground Injection by Rule

§ 144.21 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells.

(a) An existing Class I, II (except enhanced recovery and hydrocarbon storage) and III injection well is authorized by rule if the owner or operator injects into the existing well within one year after the date at which a UIC program authorized under the SDWA becomes effective for the first time or inventories the well pursuant to the requirements of § 144.26. An owner or operator of a well which is authorized by rule pursuant to this section shall rework, operate, maintain, convert, plug, abandon or inject into the well in compliance with applicable regulations.

(b) *Duration of well authorization by rule.* Well authorization under this section expires upon the effective date of a permit issued pursuant to §§ 144.25, 144.31, 144.33 or § 144.34; after plugging and abandonment in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10, and upon submission of a plugging and abandonment report pursuant to § 144.28(k); or upon conversion in compliance with § 144.28(j).

(c) *Prohibitions on injection.* An owner or operator of a well authorized by rule pursuant to this section is prohibited from injecting into the well:

(1) Upon the effective date of an applicable permit denial;

(2) Upon failure to submit a permit application in a timely manner pursuant to § 144.25 or § 144.31;

(3) Upon failure to submit inventory information in a timely manner pursuant to § 144.26;

(4) Upon failure to comply with a request for information in a timely manner pursuant to § 144.27;

(5) Upon failure to provide alternative financial assurance pursuant to § 144.28(d)(7);

(6) Forty-eight hours after receipt of a determination by the Director pursuant to § 144.28(f)(3) that the well lacks mechanical integrity, unless the Director requires immediate cessation;

(7) Upon receipt of notification from the Director pursuant to § 144.28(l) that the transferee has not demonstrated financial responsibility pursuant to § 144.28(d);

(8) For Class I and III wells:

(i) In States with approved programs, five years after the effective date of the UIC program unless a timely and complete permit application is pending the Director's decision; or

(ii) In States with programs administered by EPA, one year after the effective date of the UIC program unless a timely and complete permit application is pending the Director's decision; or

(9) For Class II wells (except enhanced recovery and hydrocarbon storage), five years after the effective date of the UIC program unless a timely and complete permit application is pending the Director's decision.

(d) *Class II and III wells in existing fields or projects.* Notwithstanding the prohibition in § 144.11, this section authorizes Class II and Class III wells or projects in existing fields or projects to continue normal operations until permitted, including construction, operation, and plugging and abandonment of wells as part of the operation, provided the owner or operator maintains compliance with all applicable requirements.

(e) *Requirements.* The owner or operator of a well authorized under this section shall comply with the applicable requirements of § 144.28 and part 147 of this chapter no later than one year after authorization.

[48 FR 14189, Apr. 1, 1983, as amended at 49 FR 20181, May 11, 1984; 58 FR 63895, Dec. 3, 1993]

§ 144.22 Existing Class II enhanced recovery and hydrocarbon storage wells.

(a) An existing Class II enhanced recovery or hydrocarbon storage injection well is authorized by rule for the life of the well or project, if the owner or operator injects into the existing well within one year after the date which a UIC program authorized under the SDWA becomes effective for the first time or inventories the well pursuant to the requirements of § 144.26. An owner or operator of a well which is authorized by rule pursuant to this section shall rework, operate, maintain, convert, plug, abandon or inject into the well in compliance with applicable regulations.

(b) *Duration of well authorization by rule.* Well authorization under this section expires upon the effective date of a permit issued pursuant to §§ 144.25, 144.31, 144.33 or § 144.34; after plugging and abandonment in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10 of this chapter, and upon submission of a plugging and abandonment report pursuant to § 144.28(k); or upon conversion in compliance with § 144.28(j).

(c) *Prohibitions on injection.* An owner or operator of a well authorized by rule pursuant to this section is prohibited from injecting into the well:

(1) Upon the effective date of an applicable permit denial;

(2) Upon failure to submit a permit application in a timely manner pursuant to § 144.25 or § 144.31;

(3) Upon failure to submit inventory information in a timely manner pursuant to § 144.26;

(4) Upon failure to comply with a request for information in a timely manner pursuant to § 144.27;

(5) Upon failure to provide alternative financial assurance pursuant to § 144.28(d)(7);

(6) Forty-eight hours after receipt of a determination by the Director pursuant to § 144.28(f)(3) that the well lacks mechanical integrity, unless the Director requires immediate cessation; or

(7) Upon receipt of notification from the Director pursuant to § 144.28(l) that the transferee has not demonstrated financial responsibility pursuant to § 144.28(d).

(d) *Requirements.* The owner or operator of a well authorized under this section shall comply with the applicable requirements of § 144.28 and part 147 of this chapter. Such owner or operator shall comply with the casing and cementing requirements no later than 3 years and other requirements no later than 1 year after authorization.

[49 FR 20181, May 11, 1984, as amended at 58 FR 63896, Dec. 3, 1993]

§ 144.23 Class IV wells.

(a) Injection into existing Class IV wells is authorized for up to six months after approval or promulgation of the UIC Program. Such wells are subject to the requirements of § 144.13 and § 144.14(c).

(b) *Closure.* For EPA administered programs only,

(1) Prior to abandoning any Class IV well, the owner or operator shall plug or otherwise close the well in a manner acceptable to the Regional Administrator.

(2) [Reserved]

(3) The owner or operator of a Class IV well must notify the Regional Administrator of intent to abandon the well at least thirty days prior to abandonment.

[49 FR 20181, May 11, 1984, as amended at 60 FR 33932, June 29, 1995]

§ 144.24 Class V wells.

(a) A Class V injection well is authorized by rule until further requirements under future regulations become applicable.

(b) *Duration of well authorization by rule.* Well authorization under this section expires upon the effective date of a permit issued pursuant to §§ 144.25, 144.31, 144.33 or § 144.34, or upon proper closure of the well.

(c) *Prohibition of injection.* An owner or operator of a well which is authorized by rule pursuant to this section is prohibited from injecting into the well:

(1) Upon the effective date of an applicable permit denial;

(2) Upon failure to submit a permit application in a timely manner pursuant to § 144.25 or § 144.31;

(3) Upon failure to submit inventory information in a timely manner pursuant to § 144.26; or

(4) Upon failure to comply with a request for information in a timely manner pursuant to § 144.27.

[58 FR 63896, Dec. 3, 1993]

§ 144.25 Requiring a permit.

(a) The Director may require the owner or operator of any Class I, II, III or V injection well which is authorized by rule under this subpart to apply for and obtain an individual or area UIC

permit. Cases where individual or area UIC permits may be required include:

(1) The injection well is not in compliance with any requirement of the rule;

NOTE: Any underground injection which violates any authorization by rule is subject to appropriate enforcement action.

(2) The injection well is not or no longer is within the category of wells and types of well operations authorized in the rule;

(3) The protection of USDWs requires that the injection operation be regulated by requirements, such as for corrective action, monitoring and reporting, or operation, which are not contained in the rule.

(4) When the injection well is a Class I, II (except existing enhanced recovery and hydrocarbon storage) or III well, in accordance with a schedule established by the Director pursuant to § 144.31(c).

(b) For EPA-administered programs, the Regional Administrator may require an owner or operator of any well which is authorized by rule under this subpart to apply for an individual or area UIC permit under this paragraph only if the owner or operator has been notified in writing that a permit application is required. The owner or operator of a well which is authorized by rule under this subpart is prohibited from injecting into the well upon the effective date of permit denial, or upon failure by the owner or operator to submit an application in a timely manner as specified in the notice. The notice shall include: a brief statement of the reasons for requiring a permit; an application form; a statement setting a time for the owner or operator to file the application; and a statement of the consequences of denial or issuance of the permit, or failure to submit an application, as described in this paragraph.

(c) An owner or operator of a well authorized by rule may request to be excluded from the coverage of this subpart by applying for an individual or area UIC permit. The owner or operator shall submit an application under § 144.31 with reasons supporting the request, to the Director. The Director may grant any such requests.

[48 FR 14189, Apr. 1, 1983, as amended at 49 FR 20182, May 11, 1984; 58 FR 63896, Dec. 3, 1993]

§ 144.26 Inventory requirements.

The owner or operator of an injection well which is authorized by rule under this subpart shall submit inventory information to the Director. Such an owner or operator is prohibited from injecting into the well upon failure to submit inventory information for the well within the time specified in paragraph (d) or (e) of this section.

(a) *Contents.* As part of the inventory, the Director shall require and the owner/operator shall provide at least the following information:

(1) Facility name and location;

(2) Name and address of legal contact;

(3) Ownership of facility;

(4) Nature and type of injection wells; and

(5) Operating status of injection wells.

NOTE: This information is requested on national form ''Inventory of Injection Wells,'' OMB No. 158–R0170.

(b) *Additional contents.* For EPA administered programs only, the owner or operator of a well listed in paragraph (b)(1) of this section shall provide the information listed in paragraph (b)(2) of this section.

(1) This section applies to the following wells:

(i) Class II enhanced recovery wells;

(ii) Class IV wells;

(iii) The following Class V wells:

(A) Sand or other backfill wells [§ 146.5(e)(8)];

(B) Radioactive waste disposal wells [§ 146.5(e)(11)];

(C) Geothermal energy recovery wells [§ 146.5(e)(12)];

(D) Brine return flow wells [§ 146.5(e)(14)];

(E) Wells used in experimental technologies [§ 146.5(e)(15)];

(F) Municipal and industrial disposal wells other than Class I; and

(G) Any other Class V wells at the discretion of the Regional Administrator.

(2) The owner or operator of a well listed in paragraph (b)(1) shall provide a listing of all wells owned or operated setting forth the following information for each well. (A single description of wells at a single facility with substantially the same characteristics is acceptable).

(i) For Class II only, the field name(s);

(ii) Location of each well or project given by Township, Range, Section, and Quarter-Section, or by latitude and longitude to the nearest second, according to the conventional practice in the State;

(iii) Date of completion of each well;

(iv) Identification and depth of the formation(s) into which each well is injecting;

(v) Total depth of each well;

(vi) Casing and cementing record, tubing size, and depth of packer;

(vii) Nature of the injected fluids;

(viii) Average and maximum injection pressure at the wellhead;

(ix) Average and maximum injection rate; and

(x) Date of the last mechanical integrity test, if any.

(c) *Notice.* Upon approval of the UIC Program in a State, the Director shall notify owners or operators of injection wells of their duty to submit inventory information. The method of notification selected by the Director must assure that the owners or operators will be made aware of the inventory requirement.

(d) *Deadlines.* Except as provided in paragraph (e) of this section. (1) The owner or operator of an injection well shall submit inventory information no later than one year after the date of approval or effective date of the UIC program for the State. The Director need not require inventory information from any facility with interim status under RCRA.

(2) For EPA administered programs the information need not be submitted if a complete permit application is submitted within one year of the effective data of the UIC program. The owner or operator of Class IV well shall submit inventory information no later than 60 days after the effective date of the program.

(e) *Deadlines for Class V Wells (EPA-administered programs only).* (1) The owner or operator of a Class V well in which injection took place within one year after the date at which a UIC program authorized under the SDWA first became effective, and who failed to submit inventory for the well within the time specified in paragraph (d) of this section may resume injection 90 days after submittal of the inventory information to the Director unless the owner or operator receives notice that injection may not resume or may resume sooner.

(2) The owner or operator of a Class V well in which injection started after the first anniversary date at which a UIC program authorized under the SDWA became effective, shall submit inventory information no later than one year after May 2, 1994.

(3) The owner or operator of a Class V well in which injection will start after May 2, 1994, shall submit inventory information prior to starting injection.

(4) The owner or operator of a Class V injection well prohibited from injecting for failure to submit inventory information for the well within the time specified in paragraphs (e) (2) and (3) of this section, may resume injection 90 days after submittal of the inventory information to the Director unless the owner or operator receives notice from the Director that injection may not resume or may resume sooner.

[48 FR 14189, Apr. 1, 1983, as amended at 49 FR 20182, May 11, 1984; 58 FR 63896, Dec. 3, 1993]

§ 144.27 Requiring other information.

(a) For EPA administered programs only, in addition to the inventory requirements of § 144.26, the Regional Administrator may require the owner or operator of any well authorized by rule under this subpart to submit information as deemed necessary by the Regional Administrator to determine whether a well may be endangering an underground source of drinking water in violation of § 144.12 of this part.

(b) Such information requirements may include, but are not limited to:

(1) Performance of ground-water monitoring and the periodic submission of reports of such monitoring;

(2) An analysis of injected fluids, including periodic submission of such analyses; and

(3) A description of the geologic strata through and into which injection is taking place.

(c) Any request for information under this section shall be made in writing, and include a brief statement of the reasons for requiring the information. An owner or operator shall submit the information within the time period(s) provided in the notice.

(d) An owner or operator of an injection well authorized by rule under this subpart is prohibited from injecting into the well upon failure of the owner or operator to comply with a request for information within the time period(s) specified by the Director pursuant to paragraph (c) of this section. An owner or operator of a well prohibited from injection under this section shall not resume injection except under a permit issued pursuant to §§ 144.25, 144.31, 144.33 or 144.34.

[49 FR 20182, May 11, 1984, as amended at 58 FR 63896, Dec. 3, 1993]

§ 144.28 Requirements for Class I, II, and III wells authorized by rule.

The following requirements apply to the owner or operator of a Class I, II or III well authorized by rule under this subpart, as provided by §§ 144.21(e) and 144.22(d).

(a) The owner or operator shall comply with all applicable requirements of this subpart and subpart B of this part. Any noncompliance with these requirements constitutes a violation of the Safe Drinking Water Act and is grounds for enforcement action, except that the owner or operator need not comply with these requirements to the extent and for the duration such noncompliance is authorized by an emergency permit under § 144.34.

(b) *Twenty-four hour reporting.* The owner or operator shall report any noncompliance which may endanger health or the environment, including:

(1) Any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW; or

(2) Any noncompliance or malfunction of the injection system which may cause fluid migration into or between USDWs.

Any information shall be provided orally within 24 hours from the time the owner or operator becomes aware of the circumstances. A written submission shall also be provided within five days of the time the owner or operator becomes aware of

the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(c) *Plugging and abandonment plan.* (1) The owner or operator shall prepare, maintain, and comply with a plan for plugging and abandonment of the well or project that meets the requirements of § 146.10 of this chapter and is acceptable to the Director. For purposes of this paragraph, temporary intermittent cessation of injection operations is not abandonment.

(2) For EPA administered programs:

(i) The owner or operator shall submit the plan, on a form provided by the Regional Administrator, no later than one year after the effective date of the UIC program in the state.

(ii) The owner or operator shall submit any proposed significant revision to the method of plugging reflected in the plan no later than the notice of plugging required by § 144.28(j)(2) (i.e., 45 days prior to plugging unless shorter notice is approved).

(iii) The plan shall include the following information:

(A) The nature and quantity and material to be used in plugging;

(B) The location and extent (by depth) of the plugs;

(C) Any proposed test or measurement to be made;

(D) The amount, size, and location (by depth) of casing to be left in the well;

(E) The method and location where casing is to be parted; and

(F) [Reserved]

(G) The estimated cost of plugging the well.

(iv) After a cessation of operations of two years the owner or operator shall plug and abandon the well in accordance with the plan unless he:

(A) Provides notice to the Regional Administrator;

(B) Describe actions or procedures, satisfactory to the Regional Administrator, that the owner or operator will take to ensure that the well will not endanger USDWs during the period of temporary abandonment. These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the Regional Administrator.

(v) The owner or operator of any well that has been temporarily abandoned [ceased operations for more than two years and has met the requirements of paragraphs (c)(2) (A) and (B) of this section] shall notify the Regional Administrator prior to resuming operation of the well.

(d) *Financial responsibility.* (1) The owner, operator and/or, for EPA-administered programs, the transferor of a Class I, II or III well, is required to demonstrate and maintain financial responsibility and resources to close, plug and abandon the underground injection operation in a manner prescribed by the Director until:

(i) The well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10 and submission of a plugging and abandonment report has been made pursuant to § 144.28(k);

(ii) The well has been converted in compliance with the requirements of § 144.28(j); or

(iii) For EPA-administered programs, the transferor has received notice from the Director that the transferee has demonstrated financial responsibility for the well. The owner or operator shall show evidence of such financial responsibility to the Director by the submission of a surety bond, or other adequate assurance, such as a financial statement.

(2) For EPA-administered programs, the owner or operator shall submit such evidence no later than one year after the effective date of the UIC program in the State. Where the ownership or operational control of the well is transferred more than one year after the effective date of the UIC program, the transferee shall submit such evidence no later than the date specified in the notice required pursuant to § 144.28(l)(2).

(3) For EPA administered programs the Regional Administrator may require the owner or operator to submit a revised demonstration of financial responsibility if the Regional Administrator has reason to believe that the original demonstration is no longer adequate to cover the cost of closing, plugging and abandoning the well.

(4) For EPA administered programs the owner or operator of a well injecting hazardous waste must comply with the financial responsibility requirements of subpart F of this part.

(5) For EPA-administered programs, an owner or operator must notify the Regional Administrator by certified mail of the commencement of any voluntary or involuntary proceeding under Title 11 (Bankruptcy) of the United States Code which names the owner or operator as debtor, within 10 business days after the commencement of the proceeding. Any party acting as guarantor for the owner or operator for the purpose of financial responsibility must so notify the Regional Administrator, if the guarantor is named as debtor in any such proceeding.

(6) In the event of commencement of a proceeding specified in paragraph (d)(5) of this section, an owner or operator who has furnished a financial statement for the purpose of demonstrating finan-

cial responsibility under this section shall be deemed to be in violation of this paragraph until an alternative financial assurance demonstration acceptable to the Regional Administrator is provided either by the owner or operator or by its trustee in bankruptcy, receiver, or other authorized party. All parties shall be prohibited from injecting into the well until such alternate financial assurance is provided.

(e) *Casing and cementing requirements*. For enhanced recovery and hydrocarbon storage wells:

(1) The owner or operator shall case and cement the well to prevent movement of fluids into or between underground sources of drinking water. In determining and specifying casing and cementing requirements, the following factors shall be considered:

(i) Depth to the injection zone;

(ii) Depth to the bottom of all USDWs; and

(iii) Estimated maximum and average injection pressures.

(2) In addition, in determining and specifying casing and cementing requirements the Director may consider information on:

(i) Nature of formation fluids;

(ii) Lithology of injection and confining zones;

(iii) External pressure, internal pressure, and axial loading;

(iv) Hole size;

(v) Size and grade of all casing strings; and

(vi) Class of cement.

(3) The requirements in paragraphs (e) (1) and (2) of this section need not apply if:

(i) Regulatory controls for casing and cementing existed at the time of drilling of the well and the well is in compliance with those controls; and

(ii) Well injection will not result in the movement of fluids into an underground source of drinking water so as to create a significant risk to the health of persons.

(4) When a State did not have regulatory controls for casing and cementing prior to the time of the submission of the State program to the Administrator, the Director need not apply the casing and cementing requirements in paragraph (e)(1) of this section if he submits as a part of his application for primacy, an appropriate plan for casing and cementing of existing, newly converted, and newly drilled wells in existing fields, and the Administrator approves the plan.

(f) *Operating requirements.* (1) Injection between the outermost casing protecting underground sources of drinking water and the well bore is prohibited.

(2) The owner or operator of a Class I, II or III injection well authorized by rule shall establish and maintain mechanical integrity as defined in § 146.8 of this chapter until the well is properly plugged in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10, and a plugging and abandonment report pursuant to § 144.28(k) is submitted, or until the well is converted in compliance with § 144.28(j). For EPA-administered programs, the Regional Administrator may require by written notice that the owner or operator comply with a schedule describing when mechanical integrity demonstrations shall be made.

(3) When the Director determines that a Class I (non-hazardous), II or III injection well lacks mechanical integrity pursuant to § 146.8 of this chapter, the Director shall give written notice of his determination to the owner or operator. Unless the Director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the Director's determination. The Director may allow plugging of the well in accordance with the requirements of § 146.10 of this chapter, or require the owner or operator to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The owner or operator may resume injection upon receipt of written notification from the Director that the owner or operator has demonstrated mechanical integrity pursuant to § 146.8 of this chapter.

(4) The Director may allow the owner or operator of a well which lacks mechanical integrity pursuant to § 146.8(a)(1) of this chapter to continue or resume injection if the owner or operator has made a satisfactory demonstration that there is no movement of fluid into or between USDWs.

(5) For Class I wells, unless an alternative to a packer has been approved under § 146.12(c) of this chapter, the owner or operator shall fill the annulus between the tubing and the long string of casings with a fluid approved by the Director and maintain a pressure, also approved by the Director, on the annulus. For EPA administered programs, the owner or operator of a Class I well completed with tubing and packer shall fill the annulus between tubing and casing with a noncorrosive fluid and maintain a positive pressure on the annulus. For other Class I wells, the owner or operator shall insure that the alternative completion method will reliably provide a comparable level of protection to underground sources of drinking water.

(6) Injection pressure.

(i) For Class I and III wells:

(A) Except during stimulation, the owner or operator shall not exceed an injection pressure at the wellhead which shall be calculated so as to assure that the pressure during injection does not initiate new fractures or propagate existing fractures in the injection zone; and

(B) The owner or operator shall not inject at a pressure which will initiate fractures in the confining zone or cause the movement of injection or formation fluids into an underground source of drinking water.

(ii) For Class II wells:

(A) The owner or operator shall not exceed a maximum injection pressure at the wellhead which shall be calculated so as to assure that the pressure during injection does not initiate new fractures of propagate existing fractures in the confining zone adjacent to the USDWs; and

(B) The owner or operator shall not inject at a pressure which will cause the movement of injection or formation fluids into an underground source of drinking water.

(g) *Monitoring requirements.* The owner or operator shall perform the monitoring as described in this paragraph. For EPA administered programs, monitoring of the nature of the injected fluids shall comply with applicable analytical methods cited and described in table I of 40 CFR 136.3 or in appendix III of 40 CFR part 261 or by other methods that have been approved by the Regional Administrator.

(1) The owner or operator of a Class I well shall:

(i) Analyze the nature of the injected fluids with sufficient frequency to yield data representative of their characteristics;

(ii) Install and use continuous recording devices to monitor injection pressure, flow rate and volume, and the pressure on the annulus between the tubing and the long string of casing;

(iii) Install and use monitoring wells within the area of review if required by the Director, to monitor any migration of fluids into and pressure in the underground sources of drinking water. The type, number and location of the wells, the parameters to be measured, and the frequency of monitoring must be approved by the Director.

(2) For Class II wells:

(i) The owner or operator shall monitor the nature of the injected fluids with sufficient frequency to yield data representative of their characteristics. For EPA administered programs, this frequency shall be at least once within the first year of the authorization and thereafter when changes are made to the fluid.

(ii) The owner or operator shall observe the injection pressure, flow rate, and cumulative volume at least with the following frequencies:

(A) Weekly for produced fluid disposal operations;

(B) Monthly for enhanced recovery operations;

(C) Daily during the injection of liquid hydrocarbons and injection for withdrawal of stored hydrocarbons; and

(D) Daily during the injection phase of cyclic steam operations.

(iii) The owner or operator shall record one observation of injection pressure, flow rate and cumulative volume at reasonable intervals no greater than thirty days.

(iv) For enhanced recovery and hydrocarbon storage wells:

(A) The owner or operator shall demonstrate mechanical integrity pursuant to § 146.8 of this chapter at least once every five years during the life of the injection well.

(B) For EPA administered programs, the Regional Administrator by written notice may require the owner or operator to comply with a schedule describing when such demonstrations shall be made.

(C) For EPA administered programs, the owner or operator of any well required to be tested for mechanical integrity shall notify the Regional Administrator at least 30 days prior to any required mechanical integrity test. The Regional Administrator may allow a shorter notification period if it would be sufficient to enable EPA to witness the mechanical integrity testing if it chose. Notification may be in the form of a yearly or quarterly schedule of planned mechanical integrity tests, or it may be on an individual basis.

(v) The owner or operator of a hydrocarbon storage or enhanced recovery wells may monitor them by manifold monitoring on a field or project basis rather than on an individual well basis if such facilities consist of more than one injection well, operate with a common manifold, and provided the owner or operator demonstrates to the Director that manifold monitoring is comparable to individual well monitoring.

(3)(i) For Class III wells the owner or operator shall provide to the Director a qualitative analysis and ranges in concentrations of all constituents of injected fluids at least once within the first year of authorization and thereafter whenever the injection fluid is modified to the extent that the initial data are incorrect or incomplete. The owner or operator may request Federal confidentiality as specified in 40 CFR part 2. If the information is proprietary the owner or operator may in lieu of the ranges in concentrations choose to submit maximum concentrations which shall not be exceeded. In such a case the owner or operator shall retain records of the undisclosed concentrations and provide them upon request to the Regional Administrator as part of any enforcement investigation; and

(ii) Monitor injection pressure and either flow rate or volume semi-monthly, or meter and record daily injected and produced fluid volumes as appropriate;

(iii) Monitor the fluid level in the injection zone semi-monthly, where appropriate;

(iv) All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner or operator demonstrates to the Director that manifold monitoring is comparable to individual well monitoring.

(h) *Reporting requirements.* The owner or operator shall submit reports to the Director as follows:

(1) For Class I wells, quarterly reports on:

(i) The physical, chemical, and other relevant characteristics of the injection fluids;

(ii) Monthly average, maximum, and minimum values for injection pressure, flow rate and volume, and annular pressure;

(iii) The results from ground-water monitoring wells prescribed in paragraph (g)(1)(iii) of this section;

(iv) The results of any test of the injection well conducted by the owner or operator during the reported quarter if required by the Director; and

(v) Any well work over performed during the reported quarter.

(2) For Class II wells:

(i) An annual report to the Director summarizing the results of all monitoring, as required in paragraph (g)(2) of this section. Such summary shall include monthly records of injected fluids, and any major changes in characteristics or sources of injected fluids. Previously submitted information may be included by reference.

(ii) The owner or operator of hydrocarbon storage and enhanced recovery projects may report on a field or project basis rather than on an individual well basis where manifold monitoring is used.

(3) For Class III wells:

(i) Quarterly reporting on all monitoring, as required in paragraph (g)(3) of this section;

(ii) Quarterly reporting of the results of any periodic tests required by the Director that are performed during the reported quarter;

(iii) Monitoring may be reported on a project or field basis rather than an individual well basis where manifold monitoring is used.

(i) *Retention of records*. The owner or operator shall retain records of all monitoring information, including the following:

(1) Calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by this section, for a period of at least three years from the date of the sample, measurement, or report. This period may be extended by request of the Director at any time; and

(2) The nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under § 144.52(l)(6). The Director may require the owner or operator to deliver the records to the Director at the conclusion of the retention period. For EPA administered programs, the owner or operator shall continue to retain the records after the three year retention period unless he delivers the records to the Regional Administrator or obtains written approval from the Regional Administrator to discard the records.

(j) *Notice of abandonment*. (1) The owner or operator shall notify the Director, according to a time period required by the Director, before conversion or abandonment of the well.

(2) For EPA-administered programs, the owner or operator shall notify the Regional Administrator at least 45 days before plugging and abandonment. The Regional Administrator, at his discretion, may allow a shorter notice period.

(k) *Plugging and abandonment report*. For EPA-administered programs, within 60 days after plugging a well or at the time of the next quarterly report (whichever is less) the owner or operator shall submit a report to the Regional Administrator. If the quarterly report is due less than 15 days before completion of plugging, then the report shall be submitted within 60 days. The report shall be certified as accurate by the person who performed the plugging operation. Such report shall consist of either:

(1) A statement that the well was plugged in accordance with the plan previously submitted to the Regional Administrator; or

(2) Where actual plugging differed from the plan previously submitted, an updated version of the plan, on the form supplied by the Regional Administrator, specifying the different procedures used.

(l) *Change of ownership or operational control.* For EPA-administered programs:

(1) The transferor of a Class I, II or III well authorized by rule shall notify the Regional Administrator of a transfer of ownership or operational control of the well at least 30 days in advance of the proposed transfer.

(2) The notice shall include a written agreement between the transferor and the transferee containing a specific date for transfer of ownership or operational control of the well; and a specific date when the financial responsibility demonstration of § 144.28(d) will be met by the transferee.

(3) The transferee is authorized to inject unless he receives notification from the Director that the transferee has not demonstrated financial responsibility pursuant to § 144.28(d).

(m) *Requirements for Class I hazardous waste wells*. The owner or operator of any Class I well

injecting hazardous waste shall comply with § 144.14(c). In addition, for EPA-administered programs the owner or operator shall properly dispose of, or decontaminate by removing all hazardous waste residues, all injection well equipment.

[49 FR 20182, May 11, 1984, as amended at 58 FR 63897, Dec. 3, 1993]

Subpart D—Authorization by Permit

§ 144.31 Application for a permit; authorization by permit.

(a) *Permit application.* Unless an underground injection well is authorized by rule under subpart C of this part, all injection activities including construction of an injection well are prohibited until the owner or operator is authorized by permit. An owner or operator of a well currently authorized by rule must apply for a permit under this section unless well authorization by rule was for the life of the well or project. Authorization by rule for a well or project for which a permit application has been submitted terminates for the well or project upon the effective date of the permit. Procedures for applications, issuance and administration of emergency permits are found exclusively in § 144.34. A RCRA permit applying the standards of part 264, subpart C of this chapter will constitute a UIC permit for hazardous waste injection wells for which the technical standards in part 146 of this chapter are not generally appropriate.

(b) *Who applies?* When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

(c) *Time to apply.* Any person who performs or proposes an underground injection for which a permit is or will be required shall submit an application to the Director in accordance with the UIC program as follows:

(1) For existing wells, as expeditiously as practicable and in accordance with the schedule in any program description under § 145.23(f) or (for EPA administered programs) on a schedule established by the Regional Administrator, but no later than 4 years from the approval or promulgation of the UIC program, or as required under § 144.14(b) for wells injecting hazardous waste. For EPA administered programs the owner or operator of Class I or III wells shall submit a complete permit application no later than 1 year after the effective date of the program.

(2) For new injection wells, except new wells in projects authorized under § 144.21(d) or authorized by an existing area permit under § 144.33(c), a reasonable time before construction is expected to begin.

(d) *Completeness.* The Director shall not issue a permit before receiving a complete application for a permit except for emergency permits. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. For EPA-administered programs, an application which is reviewed under § 124.3 is complete when the Director receives either a complete application or the information listed in a notice of deficiency.

(e) *Information requirements.* All applicants for permits shall provide the following information to the Director, using the application form provided by the Director.

(1) The activities conducted by the applicant which require it to obtain permits under RCRA, UIC, the National Pollution Discharge Elimination system (NPDES) program under the Clean Water Act, or the Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(2) Name, mailing address, and location of the facility for which the application is submitted.

(3) Up to four SIC codes which best reflect the principal products or services provided by the facility.

(4) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(5) Whether the facility is located on Indian lands.

(6) A listing of all permits or construction approvals received or applied for under any of the following programs:

(i) Hazardous Waste Management program under RCRA.

(ii) UIC program under SDWA.

(iii) NPDES program under CWA.

(iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(v) Nonattainment program under the Clean Air Act.

(vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.

(viii) Dredge and fill permits under section 404 of CWA.

(ix) Other relevant environmental permits, including State permits.

(7) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source depicting the facility and each of its intake and discharge structures; each of its hazardous waste

treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, and other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within a quarter mile of the facility property boundary.

(8) A brief description of the nature of the business.

(9) For EPA-administered programs, the applicant shall identify and submit on a list with the permit application the names and addresses of all owners of record of land within one-quarter mile of the facility boundary. This requirement may be waived by the Regional Administrator where the site is located in a populous area and the Regional Administrator determines that the requirement would be impracticable.

(10) A plugging and abandonment plan that meets the requirements of § 146.10 of this chapter and is acceptable to the Director.

(f) *Recordkeeping.* Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under § 144.31 for a period of at least 3 years from the date the application is signed.

(g) *Information Requirements for Class I Hazardous Waste Injection Wells Permits.* (1) The following information is required for each active Class I hazardous waste injection well at a facility seeking a UIC permit:

(i) Dates well was operated.

(ii) Specification of all wastes which have been injected in the well, if available.

(2) The owner or operator of any facility containing one or more active hazardous waste injection wells must submit all available information pertaining to any release of hazardous waste or constituents from any active hazardous waste injection well at the facility.

(3) The owner or operator of any facility containing one or more active Class I hazardous waste injection wells must conduct such preliminary site investigations as are necessary to determine whether a release is occurring, has occurred, or is likely to have occurred.

[48 FR 14189, Apr. 1, 1983, as amended at 49 FR 20185, May 11, 1984; 52 FR 45797, Dec. 1, 1987; 52 FR 46963, Dec. 10, 1987; 58 FR 63897, Dec. 3, 1993]

§ 144.32 Signatories to permit applications and reports.

(a) *Applications.* All permit applications, except those submitted for Class II wells (see paragraph (b) of this section), shall be signed as follows:

(1) *For a corporation:* by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means; (i) A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decisionmaking functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

NOTE: EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in § 144.32(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under § 144.32(a)(1)(ii) rather than to specific individuals.

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

(b) *Reports.* All reports required by permits, other information requested by the Director, and all permit applications submitted for Class II wells under § 144.31 shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(3) The written authorization is submitted to the Director.

(c) *Changes to authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with

any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(Clean Water Act (33 U.S.C. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*))

[48 FR 14189, Apr. 1, 1983, as amended at 48 FR 39621, Sept. 1, 1983]

§ 144.33 Area permits.

(a) The Director may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells:

(1) Described and identified by location in permit application(s) if they are existing wells, except that the Director may accept a single description of wells with substantially the same characteristics;

(2) Within the same well field, facility site, reservoir, project, or similar unit in the same State;

(3) Operated by a single owner or operator; and

(4) Used to inject other than hazardous waste.

(b) Area permits shall specify:

(1) The area within which underground injections are authorized, and

(2) The requirements for construction, monitoring, reporting, operation, and abandonment, for all wells authorized by the permit.

(c) The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area provided:

(1) The permittee notifies the Director at such time as the permit requires;

(2) The additional well satisfies the criteria in paragraph (a) of this section and meets the requirements specified in the permit under paragraph (b) of this section; and

(3) The cumulative effects of drilling and operation of additional injection wells are considered by the Director during evaluation of the area permit application and are acceptable to the Director.

(d) If the Director determines that any well constructed pursuant to paragraph (c) of this section does not satisfy any of the requirements of paragraphs (c) (1) and (2) of this section the Director may modify the permit under § 144.39, terminate under § 144.40, or take enforcement action. If the Director determines that cumulative effects are unacceptable, the permit may be modified under § 144.39.

§ 144.34 Emergency permits.

(a) *Coverage*. Notwithstanding any other provision of this part or part 124, the Director may temporarily permit a specific underground injection if:

(1) An imminent and substantial endangerment to the health of persons will result unless a temporary emergency permit is granted; or

(2) A substantial and irretrievable loss of oil or gas resources will occur unless a temporary emergency permit is granted to a Class II well; and

(i) Timely application for a permit could not practicably have been made; and

(ii) The injection will not result in the movement of fluids into underground sources of drinking water; or

(3) A substantial delay in production of oil or gas resources will occur unless a temporary emergency permit is granted to a new Class II well and the temporary authorization will not result in the movement of fluids into an underground source of drinking water.

(b) *Requirements for issuance.* (1) Any temporary permit under paragraph (a)(1) of this section shall be for no longer term than required to prevent the hazard.

(2) Any temporary permit under paragraph (a)(2) of this section shall be for no longer than 90 days, except that if a permit application has been submitted prior to the expiration of the 90-day period, the Director may extend the temporary permit until final action on the application.

(3) Any temporary permit under paragraph (a)(3) of this section shall be issued only after a complete permit application has been submitted and shall be effective until final action on the application.

(4) Notice of any temporary permit under this paragraph shall be published in accordance with § 124.11 within 10 days of the issuance of the permit.

(5) The temporary permit under this section may be either oral or written. If oral, it must be followed within 5 calendar days by a written temporary emergency permit.

(6) The Director shall condition the temporary permit in any manner he or she determines is necessary to ensure that the injection will not result in the movement of fluids into an underground source of drinking water.

[48 FR 14189, Apr. 1, 1983, as amended at 49 FR 20185, May 11, 1984]

§ 144.35 Effect of a permit.

(a) Except for Class II and III wells, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Part C of the SDWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 144.39 and 144.40.

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

§ 144.36 Duration of permits.

(a) Permits for Class I and Class V wells shall be effective for a fixed term not to exceed 10 years. UIC permits for Class II and III wells shall be issued for a period up to the operating life of the facility. The Director shall review each issued Class II or III well UIC permit at least once every 5 years to determine whether it should be modified, revoked and reissued, terminated, or a minor modification made as provided in §§ 144.39, 144.40, and 144.41.

(b) Except as provided in § 144.37, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(c) The Director may issue any permit for a duration that is less than the full allowable term under this section.

§ 144.37 Continuation of expiring permits.

(a) *EPA permits.* When EPA is the permit-issuing authority, the conditions of an expired permit continue in force under 5 U.S.C. 558(c) until the effective date of a new permit if:

(1) The permittee has submitted a timely application which is a complete application for a new permit; and

(2) The Regional Administrator, through no fault of the permittee does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(b) *Effect.* Permits continued under this section remain fully effective and enforceable.

(c) *Enforcement.* When the permittee is not in compliance with the conditions of the expiring or expired permit the Regional Administrator may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under part 124 with appropriate conditions; or

(4) Take other actions authorized by these regulations.

(d) *State continuation.* An EPA issued permit does not continue in force beyond its time expiration date under Federal law if at that time a State is the permitting authority. A State authorized to administer the UIC program may continue either EPA or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit.

§ 144.38 Transfer of permits.

(a) *Transfers by modification.* Except as provided in paragraph (b) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under § 144.39(b)(2)), or a minor modification made (under § 144.41(d)), to identify the new permittee and incorporate such other requirements as may be necessary under the Safe Drinking Water Act.

(b) *Automatic transfers.* As an alternative to transfers under paragraph (a) of this section, any UIC permit for a well not injecting hazardous waste may be automatically transferred to a new permittee if:

(1) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date referred to in paragraph (b)(2) of this section;

(2) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer or permit responsibility, coverage, and liability between them, and the notice demonstrates that the financial responsibility requirements of § 144.52(a)(7) will be met by the new permittee; and

(3) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this paragraph may also be a minor modification under § 144.41. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b)(2) of this section.

§ 144.39 Modification or revocation and reisssuance of permits.

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 144.51 of this chapter), receives a re-

quest for modification or revocation and reissuance under § 124.5, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in paragraphs (a) and (b) of this section for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See § 124.5(c)(2) of this chapter. If cause does not exist under this section or § 144.41 of this chapter, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in § 144.41 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 must be followed.

(a) *Causes for modification.* The following are causes for modification. For Class I hazardous waste injection wells, Class II, or Class III wells the following may be causes for revocation and reissuance as well as modification; and for all other wells the following may be cause for revocation or reissuance as well as modification when the permittee requests or agrees.

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) *Information.* The Director has received information. Permits other than for Class II and III wells 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 UIC area permits (§ 144.33), this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(3) *New regulations.* The standards or regulations on which the permit was based have been changed by promulgation of new or amended standards or regulations or by judicial decision after the permit was issued. Permits other than for Class I hazardous waste injection wells, Class II, or Class III wells may be modified during their terms for this cause only as follows:

(i) For promulgation of amended standards or regulations, when:

(A) The permit condition requested to be modified was based on a promulgated part 146 regulation; and

(B) EPA has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based, and

(C) A permittee requests modification in accordance with § 124.5 within ninety (90) days after FEDERAL REGISTER notice of the action on which the request is based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations if the remand and stay concern that portion of the regulations 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.

(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. See also § 144.41(c) (minor modifications).

(b) *Causes for modification or revocation and reissuance.* The following are causes to modify or, alternatively, revoke and reissue a permit:

(1) Cause exists for termination under § 144.40, and the Director determines that modification or revocation and reissuance is appropriate.

(2) The Director has received notification (as required in the permit, see § 144.41(d)) 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 (§ 144.38(b)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(3) A determination that the waste being injected is a hazardous waste as defined in § 261.3 either because the definition has been revised, or because a previous determination has been changed.

(c) *Facility siting.* Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

[48 FR 14189, Apr. 1, 1983, as amended at 53 FR 28147, July 26, 1988]

§ 144.40 Termination of permits.

(a) The Director may terminate a permit during its term, or deny a permit renewal application for the following causes:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination;

(b) The Director shall follow the applicable procedures in part 124 in terminating any permit under this section.

§ 144.41 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 § 144.39. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

(d) Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.

(e) Change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the Director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification.

(f) Change construction requirements approved by the Director pursuant to § 144.52(a)(1) (establishing UIC permit conditions), provided that any such alteration shall comply with the requirements of this part and part 146.

(g) Amend a plugging and abandonment plan which has been updated under § 144.52(a)(6).

Subpart E—Permit Conditions

§ 144.51 Conditions applicable to all permits.

The following conditions apply to all UIC permits. All conditions applicable to all permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

(a) *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Safe Drinking Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application; except that the permittee need not comply with the provisions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit under § 144.34.

(b) *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

(e) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned

changes or anticipated noncompliance, does not stay any permit condition.

(g) *Property rights.* This permit does not convey any property rights of any sort, or any exclusive privilege.

(h) *Duty to provide information.* The permittee shall furnish to the Director, within a time specified, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

(i) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the SDWA, any substances or parameters at any location.

(j) *Monitoring and records.* (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including the following:

(i) Calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time; and

(ii) The nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under § 144.52(a)(6), or under part 146 subpart G as appropriate. The Director may require the owner or operator to deliver the records to the Director at the conclusion of the retention period. For EPA administered programs, the owner or operator shall continue to retain the records after the three year retention period unless he delivers the records to the Regional Administrator or obtains written approval from the Regional Administrator to discard the records.

(3) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(k) *Signatory requirement.* All applications, reports, or information submitted to the Administrator shall be signed and certified. (See § 144.32.)

(l) *Reporting requirements.* (1) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

(2) *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(3) *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Safe Drinking Water Act. (See § 144.38; in some cases, modification or revocation and reissuance is mandatory.)

(4) *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(5) *Compliance schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 30 days following each schedule date.

(6) *Twenty-four hour reporting.* The permittee shall report any noncompliance which may endanger health or the environment, including:

(i) Any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW; or

(ii) Any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between USDWs.

Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description

of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(7) *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs (l) (4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6) of this section.

(8) *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

(m) *Requirements prior to commencing injection.* Except for all new wells authorized by an area permit under § 144.33(c), a new injection well may not commence injection until construction is complete, and

(1) The permittee has submitted notice of completion of construction to the Director; and

(2)(i) The Director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or

(ii) The permittee has not received notice form the Director of his or her intent to inspect or otherwise review the new injection well within 13 days of the date of the notice in paragraph (m)(1) of this section, in which case prior inspection or review is waived and the permittee may commence injection. The Director shall include in his notice a reasonable time period in which he shall inspect the well.

(n) The permittee shall notify the Director at such times as the permit requires before conversion or abandonment of the well or in the case of area permits before closure of the project.

(o) A Class I, II or III permit shall include and a Class V permit may include, conditions which meet the applicable requirements of § 146.10 of this chapter to insure that plugging and abandonment of the well will not allow the movement of fluids into or between USDWs. Where the plan meets the requirements of § 146.10 of this chapter, the Director shall incorporate it into the permit as a permit condition. Where the Director's review of an application indicates that the permittee's plan is inadequate, the Director may require the applicant to revise the plan, prescribe conditions meeting the requirements of this paragraph, or deny the permit. For purposes of this paragraph, temporary or intermittent cessation of injection operations is not abandonment.

(p) *Plugging and abandonment report*. For EPA-administered programs, within 60 days after plugging a well or at the time of the next quarterly report (whichever is less) the owner or operator shall submit a report to the Regional Administrator. If the quarterly report is due less than 15 days before completion of plugging, then the report shall be submitted within 60 days. The report shall be certified as accurate by the person who performed the plugging operation. Such report shall consist of either:

(1) A statement that the well was plugged in accordance with the plan previously submitted to the Regional Administrator; or

(2) Where actual plugging differed from the plan previously submitted, and updated version of the plan on the form supplied by the regional administrator, specifying the differences.

(q) *Duty to establish and maintain mechanical integrity.* (1) The owner or operator of a Class I, II or III well permitted under this part shall establish prior to commencing injection or on a schedule determined by the Director, and thereafter maintain mechanical integrity as defined in § 146.8 of this chapter. For EPA-administered programs, the Regional Administrator may require by written notice that the owner or operator comply with a schedule describing when mechanical integrity demonstrations shall be made.

(2) When the Director determines that a Class I, II, or III well lacks mechanical integrity pursuant to § 146.8 of this chapter, he shall give written notice of his determination to the owner or operator. Unless the Director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the Director's determination. The Director may allow plugging of the well pursuant to the requirements of § 146.10 of this chapter or require the permittee to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The owner or operator may resume injection upon written notification from the Director that the owner or operator has demonstrated mechanical integrity pursuant to § 146.8 of this chapter.

(3) The Director may allow the owner or operator of a well which lacks mechanical integrity pursuant to § 146.8(a)(1) of this chapter to continue or resume injection, if the owner or operator has made a satisfactory demonstration that there is no movement of fluid into or between USDWs.

[48 FR 14189, Apr. 1, 1983, as amended at 49 FR 20185, May 11, 1984; 53 FR 28147, July 26, 1988; 58 FR 63898, Dec. 3, 1993]

§ 144.52 Establishing permit conditions.

(a) In addition to conditions required in § 144.51, the Director shall establish conditions, as required on a case-by-case basis under § 144.36 (duration of permits), § 144.53(a) (schedules of compliance), §144.54 (monitoring), and for EPA permits only § 144.53(b) (alternate schedules of compliance), and § 144.4 (considerations under Federal law). Permits for owners or operators of hazardous waste injection wells shall include conditions meeting the requirements of § 144.14 (requirements for wells injecting hazardous waste), §§ 144.52(a)(7) and (a)(9), and subpart G of part 146. Permits for other wells shall contain the following requirements, when applicable.

(1) *Construction requirements* as set forth in part 146. Existing wells shall achieve compliance with such requirements according to a compliance schedule established as a permit condition. The owner or operator of a proposed new injection well shall submit plans for testing, drilling, and construction as part of the permit application. Except as authorized by an area permit, no constuction may commence until a permit has been issued containing construction requirements (see § 144.11). New wells shall be in compliance with these requirements prior to commencing injection operations. Changes in construction plans during construction may be approved by the Administrator as minor modifications (§ 144.41). No such changes may be physically incorporated into construction of the well prior to approval of the modification by the Director.

(2) *Corrective action* as set forth in § 144.55 and § 146.7

(3) *Operation requirements* as set forth in 40 CFR part 146; the permit shall establish any maximum injection volumes and/or pressures necessary to assure that fractures are not initiated in the confining zone, that injected fluids do not migrate into any underground source of drinking water, that formation fluids are not displaced into any underground source of drinking water, and to assure compliance with the part 146 operating requirements.

(4) *Requirements for wells managing hazardous waste*, as set forth in § 144.14.

(5) Monitoring and reporting requirements as set forth in 40 CFR part 146. The permittee shall be required to identify types of tests and methods used to generate the monitoring data. For EPA administered programs, monitoring of the nature of injected fluids shall comply with applicable analytical methods cited and described in table I of 40 CFR 136.3 or in appendix III of 40 CFR part 261 or in certain circumstances by other methods that have been approved by the Regional Administrator.

(6) After a cessation of operations of two years the owner or operator shall plug and abandon the well in accordance with the plan unless he:

(i) Provides notice to the Regional Administrator;

(ii) Describes actions or procedures, satisfactory to the Regional Administrator, that the owner or operator will take to ensure that the well will not endanger USDWs during the period of temporary abandonment. These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the Regional Administrator.

(7) *Financial responsibility.* (i) The permittee, including the transferor of a permit, is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the Director until:

(A) The well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to §§ 144.51(o) and 146.10 of this chapter, and submitted a plugging and abandonment report pursuant to § 144.51(p); or

(B) The well has been converted in compliance with the requirements of § 144.51(n); or

(C) The transferor of a permit has received notice from the Director that the owner or operator receiving transfer of the permit, the new permittee, has demonstrated financial responsibility for the well.

(ii) The permittee shall show evidence of such financial responsibility to the Director by the submission of a surety bond, or other adequate assurance, such as a financial statement or other materials acceptable to the Director. For EPA administered programs, the Regional Administrator may on a periodic basis require the holder of a lifetime permit to submit an estimate of the resources needed to plug and abandon the well revised to reflect inflation of such costs, and a revised demonstration of financial responsibility, if necessary. The owner or operator of a well injecting hazardous waste must comply with the financial responsibility requirements of subpart F of this part.

(8) *Mechanical integrity.* A permit for any Class I, II or III well or injection project which lacks mechanical integrity shall include, and for any Class V well may include, a condition prohibiting injection operations until the permittee shows to the satisfaction of the Director under § 146.08 that the well has mechanical integrity.

(9) *Additional conditions.* The Director shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into underground sources of drinking water.

(b)(1) In addition to conditions required in all permits the Director shall establish conditions in permits as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the SDWA and parts 144, 145, 146 and 124.

(2) For a State issued permit, an applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of the permit. For a permit issued by EPA, an applicable requirement is a statutory or regulatory requirement (including any interim final regulation) which takes effect prior to the issuance of the permit (except as provided in § 124.86(c) for UIC permits being processed under subpart E or F of part 124). Section 124.14 (reopening of comment period) provides a means for reopening EPA permit proceedings at the discretion of the Director where new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. For State and EPA administered programs, an applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in § 144.39.

(3) New or reissued permits, and to the extent allowed under § 144.39 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in § 144.52.

(c) *Incorporation.* All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

[48 FR 14189, Apr. 1, 1983, as amended at 49 FR 20185, May 11, 1984; 53 FR 28147, July 26, 1988; 58 FR 63898; Dec. 3, 1993]

§ 144.53 Schedule of compliance.

(a) *General.* The permit may, when appropriate, specify a schedule of compliance leading to compliance with the SDWA and parts 144, 145, 146, and 124.

(1) *Time for compliance.* Any schedules of compliance shall require compliance as soon as possible, and in no case later than 3 years after the effective date of the permit.

(2) *Interim dates.* Except as provided in paragraph (b)(1)(ii) of this section, if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 1 year.

(ii) If the time necessary for completion of any interim requirement is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(3) *Reporting.* The permit shall be written to require that if paragraph (a)(1) of this section is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

(b) *Alternative schedules of compliance.* A permit applicant or permittee may cease conducting regulated activities (by plugging and abandonment) rather than continue to operate and meet permit requirements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirements;

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under paragraph (b)(3)(i) of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the board of directors of a corporation.

§ 144.54 Requirements for recording and reporting of monitoring results.

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in part 146. Reporting shall be no less frequent than specified in the above regulations.

§ 144.55 Corrective action.

(a) *Coverage.* Applicants for Class I, II, (other than existing), or III injection well permits shall identify the location of all known wells within the injection well's area of review which penetrate the injection zone, or in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review penetrating formations affected by the increase in pressure. For such wells which are improperly sealed, completed, or abandoned, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into underground sources of drinking water (''corrective action''). Where the plan is adequate, the Director shall incorporate it into the permit as a condition. Where the Director's review of an application indicates that the permittee's plan is inadequate (based on the factors in § 146.07), the Director shall require the applicant to revise the plan, prescribe a plan for corrective action as a condition of the permit under paragraph (b) of this section, or deny the application. The Director may disregard the provisions of § 146.06 (Area of Review) and § 146.07 (Corrective Action) when reviewing an application to permit an existing Class II well.

(b) *Requirements*—(1) *Existing injection wells.* Any permit issued for an existing injection well (other than Class II) requiring corrective action shall include a compliance schedule requiring any corrective action accepted or prescribed under paragraph (a) of this section to be completed as soon as possible.

(2) *New injection wells.* No owner or operator of a new injection well may begin injection until all required corrective action has been taken.

(3) *Injection pressure limitation.* The Director may require as a permit condition that injection pressure be so limited that pressure in the injection zone does not exceed hydrostatic pressure at the site of any improperly completed or abandoned well within the area of review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be part of a compliance schedule and last until all other required corrective action has been taken.

(4) *Class III wells only.* When setting corrective action requirements the Director shall consider the overall effect of the project on the hydraulic gradient in potentially affected USDWs, and the corresponding changes in potentiometric surface(s) and flow direction(s) rather than the discrete effect of each well. If a decision is made that corrective action is not necessary based on the determinations above, the monitoring program required in § 146.33(b) shall be designed to verify the validity of such determinations.

Subpart F—Financial Responsibility: Class I Hazardous Waste Injection Wells

SOURCE: 49 FR 20186, May 11, 1984, unless otherwise noted.

§ 144.60 Applicability.

(a) The requirements of §§ 144.62, 144.63, and 144.70 apply to owners and operators of all existing and new Class I Hazardous waste injection wells, except as provided otherwise in this section.

§ 144.61 Definitions of terms as used in this subpart.

(a) *Plugging and abandonment plan* means the plan for plugging and abandonment prepared in accordance with the requirements of § 144.28 and § 144.51.

(b) *Current plugging cost estimate* means the most recent of the estimates prepared in accordance with § 144.62 (a), (b) and (c).

(c) *Parent corporation* means a corporation which directly owns at least 50 percent of the voting stock of the corporation which is the injection well owner or operator; the latter corporation is deemed a *subsidiary* of the parent corporation.

(d) The following terms are used in the specifications for the financial test for plugging and abandonment. The definitions are intended to represent the common meanings of the terms as they are generally used by the business community.

Assets means all existing and all probable future economic benefits obtained or controlled by a particular entity.

Current assets means cash or other assets or resources commonly identified as those which are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business.

Current liabilities means obligations whose liquidation is reasonably expected to require the use

of existing resources properly classifiable as current assets or the creation of other current liabilities.

Independently audited refers to an audit performed by an independent certified public accountant in accordance with generally accepted auditing standards.

Liabilities means probable future sacrifices of economic benefits arising from present obligations to transfer assets or provide services to other entities in the future as a result of past transactions or events.

Net working capital means current assets minus current liabilities.

Net worth means total assets minus total liabilities and is equivalent to owner's equity.

Tangible net worth means the tangible assets that remain after deducting liabilities; such assets would not include intangibles such as goodwill and rights to patents or royalties.

§ 144.62 Cost estimate for plugging and abandonment.

(a) The owner or operator must prepare a written estimate, in current dollars, of the cost of plugging the injection well in accordance with the plugging and abandonment plan as specified in §§ 144.28 and 144.51. The plugging and abandonment cost estimate must equal the cost of plugging and abandonment at the point in the facility's operating life when the extent and manner of its operation would making plugging and abandonment the most expensive, as indicated by its plugging and abandonment plan.

(b) The owner or operator must adjust the plugging and abandonment cost estimate for inflation within 30 days after each anniversary of the date on which the first plugging and abandonment cost estimate was prepared. The adjustment must be made as specified in paragraphs (b) (1) and (2) of this section, using an inflation factor derived from the annual Oil and Gas Field Equipment Cost Index. The inflation factor is the result of dividing the latest published annual Index by the Index for the previous year.

(1) The first adjustment is made by multiplying the plugging and abandonment cost estimate by the inflation factor. The result is the adjusted plugging and abandonment cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted plugging and abandonment cost estimate by the latest inflation factor.

(c) The owner or operator must revise the plugging and abandonment cost estimate whenever a change in the plugging and abandonment plan increases the cost of plugging and abandonment. The revised plugging and abandonment cost estimate must be adjusted for inflation as specified in § 144.62(b).

(d) The owner or operator must keep the following at the facility during the operating life of the facility: the latest plugging and abandonment cost estimate prepared in accordance with § 144.62 (a) and (c) and, when this estimate has been adjusted in accordance with § 144.62(b), the latest adjusted plugging and abandonment cost estimate.

§ 144.63 Financial assurance for plugging and abandonment.

An owner or operator of each facility must establish financial assurance for the plugging and abandonment of each existing and new Class I hazardous waste injection well. He must choose from the options as specified in paragraphs (a) through (f) of this section.

(a) *Plugging and abandonment trust fund.* (1) An owner or operator may satisfy the requirements of this section by establishing a plugging and abandonment trust fund which conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the Regional Administrator. An owner or operator of a Class I well injecting hazardous waste must submit the originally signed duplicate of the trust agreement to the Regional Administrator with the permit application or for approval to operate under rule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) The wording of the trust agreement must be identical to the wording specified in § 144.70(a)(1), and the trust agreement must be accompanied by a formal certification of acknowledgment (for example, see § 144.70(a)(2)). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current plugging and abandonment cost estimate covered by the agreement.

(3) Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit or over the remaining operating life of the injection well as estimated in the plugging and abandonment plan, whichever period is shorter; this period is hereafter referred to as the ''pay-in period.'' The payments into the plugging and abandonment trust fund must be made as follows:

(i) For a new well, the first payment must be made before the initial injection of hazardous waste. A receipt from the trustee for this payment must be submitted by the owner or operator to the Regional Administrator before this initial injection of hazardous waste. The first payment must be at least equal to the current plugging and abandonment cost estimate, except as provided in § 144.70(g), divided by the number of years in the pay-in period. Subsequent payments must be made

no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

$$\text{Next payment} = \frac{PE \cdot CV}{Y}$$

where PE is the current plugging and abandonment cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(ii) If an owner or operator establishes a trust fund as specified in § 144.63(a) of this chapter, and the value of that trust fund is less than the current plugging and abandonment cost estimate when a permit is awarded for the injection well, the amount of the current plugging and abandonment cost estimate still to be paid into the trust fund must be paid in over the pay-in period as defined in paragraph (a)(3) of this section. Payments must continue to be made no later than 30 days after each anniversary date of the first payment made pursuant to part 144 of this chapter. The amount of each payment must be determined by this formula:

$$\text{Next payment} = \frac{PE \cdot CV}{Y}$$

where PE is the current plugging and abandonment cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) The owner or operator may accelerate payments into the trust fund or he may deposit the full amount of the current plugging and abandonment cost estimate at the time the fund is established. However, he must maintain the value of the fund at no less than the value that the fund would have if annual payments were made as specified in paragraph (a)(3) of this section.

(5) If the owner or operator establishes a plugging and abandonment trust fund after having used one or more alternate mechanisms specified in this section or in § 144.63 of this chapter, his first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to specifications of this paragraph.

(6) After the pay-in period is completed, whenever the current plugging and abandonment cost estimate changes, the owner or operator must compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current plugging and abandonment cost estimate, or obtain other financial assurance as specified in this section to cover the difference.

(7) If the value of the trust fund is greater than the total amount of the current plugging and abandonment cost estimate, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the current plugging and abandonment cost estimate.

(8) If an owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, he may submit a written request to the Regional Administrator for release of the amount in excess of the current plugging and abandonment cost estimate covered by the trust fund.

(9) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraph (a)(7) or (8) of this section, the Regional Administrator will instruct the trustee to release to the owner or operator such funds as the Regional Administrator specifies in writing.

(10) After beginning final plugging and abandonment, an owner or operator or any other person authorized to perform plugging and abandonment may request reimbursement for plugging and abandonment expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for plugging and abandonment activities, the Regional Administrator will determine whether the plugging and abandonment expenditures are in accordance with the plugging and abandonment plan or otherwise justified, and if so, he will instruct the trustee to make reimbursement in such amounts as the Regional Administrator specifies in writing. If the Regional Administrator has reason to believe that the cost of plugging and abandonment will be significantly greater than the value of the trust fund, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with § 144.63(i), that the owner or operator is no longer required to maintain financial assurance for plugging and abandonment.

(11) The Regional Administrator will agree to termination of the trust when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with § 144.63(i).

(b) *Surety bond guaranteeing payment into a plugging and abandonment trust fund.* (1) An owner or operator must satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Regional Administrator with the application for a permit or for approval to operate under rule. The bond must be effective

before the initial injection of hazardous waste. The surety company issuing the trust must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond must be identical to the wording in § 144.70(b).

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Regional Administrator. This standby trust fund must meet the requirements specified in § 144.63(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Regional Administrator with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these requirements:

(A) Payments into the trust fund as specified in § 144.63(a);

(B) Updating of Schedule A of the trust agreement [see § 144.70(a)] to show current plugging and abandonment cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator will:

(i) Fund the standby trust fund in an amount equal to the penal sum of the bond before beginning of plugging and abandonment of the injection well; or

(ii) Fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin plugging and abandonment is issued by the Regional Administrator or a U.S. district court or other court of competent jurisdiction; or

(iii) Provide alternate financial assurance as specified in this section, and obtain the Regional Administrator's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Regional Administrator of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(6) The penal sum of the bond must be in amount at least equal to the current plugging and abandonment cost estimate, except as provided in § 144.63(g).

(7) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current plugging and abandonment cost estimate and submit evidence of such increase to the Regional Administrator, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current plugging and abandonment cost estimate decreases, the penal sum may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the Regional Administrator.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Regional Administrator. Cancellation may not occur, however, during 120 days beginning on the date of the receipt of the notice of cancellation by both owner or operator and the Regional Administrator as evidenced by the returned receipts.

(9) The owner or operator may cancel the bond if the Regional Administrator has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this section.

(c) *Surety bond guaranteeing performance of plugging and abandonment.* (1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Regional Administrator. An owner or operator of a new facility must submit the bond to the Regional Administrator with the permit application or for approval to operate under rule. The bond must be effective before injection of hazardous waste is started. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond must be identical to the wording specified in § 144.70(c).

(3) The owner or operator who uses a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Regional Administrator. The standby trust must meet the requirements specified in § 144.63(a), except that:

(i) An original signed duplicate of the trust agreement must be submitted to the Regional Administrator with the surety bond; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in § 144.63(a);

(B) Updating of Schedule A of the trust agreement [see § 144.70(a)] to show current plugging and abandonment cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator will:

(i) Perform plugging and abandonment in accordance with the plugging and abandonment plan and other requirements of the permit for the injection well whenever required to do so; or

(ii) Provide alternate financial assurance as specified in this section, and obtain the Regional Administrator's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Regional Administrator of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination that the owner or operator has failed to perform plugging and abandonment in accordance with the plugging and abandonment plan and other permit requirements when required to do so, under terms of the bond the surety will perform plugging and abandonment as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond must be in an amount at least equal to the current plugging and abandonment cost estimate.

(7) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current plugging and abandonment cost estimate and submit evidence of such increase to the Regional Administrator, or obtain other financial assurance as specified in this section. Whenever the plugging and abandonment cost estimate decreases, the penal sum may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the Regional Administrator.

(8) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Regional Administrator. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Regional Administrator, as evidenced by the return receipts.

(9) The owner or operator may cancel the bond if the Regional Administrator has given prior written consent. The Regional Administrator will provide such written consent when:

(i) An owner or operator substitute alternate financial assurance as specified in this section; or

(ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with § 144.63(i).

(10) The surety will not be liable for deficiencies in the performance of plugging and abandonment by the owner or operator after the Regional Administrator releases the owner or operator from the requirements of this section in accordance with § 144.63(i).

(d) *Plugging and abandonment letter of credit.* (1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and submitting the letter to the Regional Administrator. An owner or operator of an injection well must submit the letter of credit to the Regional Administrator during submission of the permit application or for approval to operate under rule. The letter of credit must be effective before initial injection of hazardous waste. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit must be identical to the wording specified in § 144.70(d).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Regional Administrator will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Regional Administrator. This standby trust fund must meet the requirements of the trust fund specified in § 144.63(a), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Regional Administrator with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in § 144.63(a);

(B) Updating of Schedule A of the trust agreement (see § 144.70(a)) to show current plugging and abandonment cost estimates;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The letter of credit must be accompanied by a letter from the owner or operator referring to the

letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, name, and address of the facility, and the amount of funds assured for plugging and abandonment of the well by the letter of credit.

(5) The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Regional Administrator by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Regional Administrator have received the notice, as evidenced by the return receipts.

(6) The letter of credit must be issued in an amount at least equal to the current plugging and abandonment cost estimate, except as provided in § 144.63(g).

(7) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current plugging and abandonment cost estimate and submit evidence of such increase to the Regional Administrator, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current plugging and abandonment cost estimate decreases, the amount of the credit may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the Regional Administrator.

(8) Following a determination that the owner or operator has failed to perform final plugging and abandonment in accordance with the plugging and abandonment plan and other permit requirements when required to do so, the Regional Administrator may draw on the letter of credit.

(9) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the Regional Administrator within 90 days after receipt by both the owner or operator and the Regional Administrator of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Regional Administrator will draw on the letter of credit. The Regional Administrator may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension the Regional Administrator will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the Regional Administrator.

(10) The Regional Administrator will return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with § 144.63(i).

(e) *Plugging and abandonment insurance.* (1) An owner or operator may satisfy the requirements of this section by obtaining plugging and abandonment insurance which conforms to the requirements of this paragraph and submitting a certificate of such insurance to the Regional Administrator. An owner or operator of a new injection well must submit the certificate of insurance to the Regional Administrator with the permit application or for approval operate under rule. The insurance must be effective before injection starts. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States.

(2) The wording of the certificate of insurance must be identical to the wording specified in § 144.70(e).

(3) The plugging and abandonment insurance policy must be issued for a face amount at least equal to the current plugging and abandonment estimate, except as provided in § 144.63(g). The term ''face amount'' means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurers future liability will be lowered by the amount of the payments.

(4) The plugging and abandonment insurance policy must guarantee that funds will be available whenever final plugging and abandonment occurs. The policy must also guarantee that once plugging and abandonment begins, the issurer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the Regional Administrator, to such party or parties as the Regional Administrator specifies.

(5) After beginning plugging and abandonment, an owner or operator or any other person authorized to perform plugging and abandonment may request reimbursement for plugging and abandonment expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for plugging and abandonment activities, the Regional Administrator will determine whether the plugging and abandonment expenditures are in accordance with the plugging and abandonment plan or otherwise justified, and if so,

he will instruct the insurer to make reimbursement in such amounts as the Regional Administrator specifies in writing. If the Regional Administrator has reason to believe that the cost of plugging and abandonment will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with § 144.63(i), that the owner or operator is no longer required to maintain financial assurance for plugging and abandonment of the injection well.

(6) The owner or operator must maintain the policy in full force and effect until the Regional Administrator consents to termination of the policy by the owner or operator as specified in paragraph (e)(10) of this section. Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations, warranting such remedy as the Regional Administrator deems necessary. Such violation will be deemed to begin upon receipt by the Regional Administrator of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(7) Each policy must contain provisions allowing assignment to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided such consent is not unreasonably refused.

(8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Regional Administrator. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with the date of receipt of the notice by both the Regional Administrator and the owner or operator, as evidenced by the return of receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(i) The Regional Administrator deems the injection well abandoned; or

(ii) The permit is terminated or revoked or a new permit is denied; or

(iii) Plugging and abandonment is ordered by the Regional Administrator or a U.S. district court or other court of competent jurisdiction; or

(iv) The owner or operator is named as debtor in a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code; or

(v) The premium due is paid.

(9) Whenever the current plugging and abandonment cost estimate increases to an amount greater than the face amount of the policy, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current plugging and abandonment estimate and submit evidence of such increase to the Regional Administrator, or obtain other financial assurance as specified in this section to cover the increase. Whenever the current plugging and abandonment cost estimate decreases, the face amount may be reduced to the amount of the current plugging and abandonment cost estimate following written approval by the Regional Administrator.

(10) The Regional Administrator will give written consent to the owner or operator that he may terminate the insurance policy when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with § 144.63(i).

(f) *Financial test and corporate guarantee for plugging and abandonment.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test the owner or operator must meet the criteria of either paragraph (f)(1)(i) or (f)(1)((ii) of this section:

(i) The owner or operator must have:

(A) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(B) Net working capital and tangible net worth each at least six times the sum of the current plugging and abandonment cost estimate; and

(C) Tangible net worth of at least $10 million; and

(D) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current plugging and abandonment cost estimate.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth at least six times the sum of the current plugging and abandonment cost estimate; and

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at

least six times the sum of the current plugging and abandonment cost estimates.

(2) The phrase ''current plugging and abandonment cost estimate'' as used in paragraph (f)(1) of this section refers to the cost estimate required to be shown in paragraphs 1 through 4 of the letter from the owner's or operator's chief financial officer § 144.70(f).

(3) To demonstrate that he meets this test, the owner or operator must submit the following items to the Regional Administrator:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in § 144.70(f); and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) In connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) An owner or operator of a new injection well must submit the items specified in paragraph (f)(3) of this section to the Regional Administrator within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (f)(3) of this section.

(5) After the initial submission of items specified in paragraph (f)(3) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (f)(3) of this section.

(6) If the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, he must send notice to the Regional Administrator of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The Regional Administrator may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (f)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (f)(3) of this section. If the Regional Administrator finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (f)(1) of this section, the owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(8) The Regional Administrator may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements [see paragraph (f)(3)(ii) of this section]. An adverse opinion or disclaimer of opinion will be cause for disallowance. The Regional Administrator will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in paragraph (f)(3) of this section when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with § 144.63(i).

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as ''corporate guarantee.'' The guarantee must be the parent corporation of the owner or operator. The guarantee must meet the requirements for owners or operators in paragraphs (f)(1) through (f)(8) of this section and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in § 144.70(h). The corporate guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (f)(3) of this section. The terms of the corporate guarantee must provide that:

(i) If the owner or operator fails to perform plugging and abandonment of the injection well covered by the corporate guarantee in accordance with the plugging and abandonment plan and other permit requirements whenever required to do so, the guarantee will do so or establish a trust fund as specified in § 144.63(a) in the name of the owner or operator.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and the Regional Administrator, as evidenced by the return receipts. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the

owner or operator and the Regional Administrator, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Regional Administrator within 90 days after receipt by both the owner or operator and the Regional Administrator of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

(g) *Use of multiple financial mechanisms.* An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per injection well. These mechanisms are limited to trust funds, surety bonds, guaranteeing payment into a trust fund, letters of credit, and insurance. The mechanisms must be as specified in paragraphs (a), (b), (d), and (e), respectively, of this section, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the adjusted plugging and abandonment cost. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, he may use that trust fund as the standby trust fund for the other mechanisms. A single standby trust may be established for two or more mechanisms. The Regional Administrator may invoke any or all of the mechanisms to provide for plugging and abandonment of the injection well.

(h) *Use of a financial mechanism for multiple facilities.* An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one injection well. Evidence of financial assurance submitted to the Regional Administrator must include a list showing, for each injection well, the EPA Identification Number, name, address, and the amount of funds for plugging and abandonment assured by the mechanism. If the injection wells covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained with the Regional Administrators of all such Regions. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each injection well. In directing funds available through the mechanism for plugging and abandonment of any of the injection wells covered by the mechanism, the Regional Administrator may direct only the amount of funds designated for that injection well, unless the owner or operator agrees to use additional funds available under the mechanism.

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and an independent registered professional engineer that plugging and abandonment has been accomplished in accordance with the plugging and abandonment plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for plugging and abandonment of the injection well, unless the Regional Administrator has reason to believe that plugging and abandonment has not been in accordance with the plugging and abandonment plan.

§ 144.64 Incapacity of owners or operators, guarantors, or financial institutions.

(a) An owner or operator must notify the Regional Administrator by certified mail of the commencement of a voluntary or involuntary proceeding under title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 business days after the commencement of the proceeding. A guarantor of a corporate guarantee as specified in § 144.63(f) must make such a notification if he is named as debtor, as required under the terms of the guarantee (§ 144.70(f)).

(b) An owner or operator who fulfills the requirements of § 144.63 by obtaining a letter of credit, surety bond, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy, insolvency, or a suspension or revocation of the license or charter of the issuing institution. The owner or operator must establish other financial assurance or liability coverage within 60 days after such an event.

§ 144.65 Use of State-required mechanisms.

(a) For a facility located in a State where EPA is administering the requirements of this subpart but where the State has plugging and abandonment regulations that include requirements for financial assurance of plugging and abandonment, an owner or operator may use State-required financial mechanisms to meet the requirements of this subpart if the Regional Administrator determines that the State mechanisms are at least equivalent to the mechanisms specified in this subpart. The Regional Administrator will evaluate the equivalency of the mechanisms mainly in terms of (1) certainty of the availability of funds for the required plugging and abandonment activities and (2) the amount of funds that will be made available. The Regional Administrator may also consider other factors. The owner or operator must submit to the Regional Administrator evidence of the establish-

ment of the mechanism together with a letter requesting that the State-required mechanism be considered acceptable for meeting the requirements of this subpart. The submittal must include the following information: The facility's EPA Identification Number, name and address, and the amounts of funds for plugging and abandonment coverage assured by the mechanism. The Regional Administrator will notify the owner or operator of his determination regarding the mechanism's acceptability. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary for making this determination.

(b) If a State-required mechanism is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart by increasing the funds available through the State-required mechanism or using additional mechanisms as specified in this subpart. The amounts of funds available through the State and Federal mechanisms must at least equal the amounts required by this subpart.

§ 144.66 State assumption of responsibility.

(a) If a State either assumes legal responsibility for an owner's or operator's compliance with the plugging and abandonment requirements of these regulations or assures that funds will be available from State sources to cover these requirements, the owner or operator will be in compliance with the requirements of this subpart if the Regional Administrator determines that the State's assumption of responsibility is at least equivalent to the mechanisms specified in this subpart. The Regional Administrator will evaluate the equivalency of State guarantees mainly in terms of (1) certainty of the availability of funds for the required plugging and abandonment coverage and (2) the amount of funds that will be made available. The Regional Administrator may also consider other factors. The owner or operator must submit to the Regional Administrator a letter from the State describing the nature of the State's assumption of responsibility together with a letter from the owner or operator requesting that the State's asumption of responsibility be considered acceptable for meeting the requirements of this subpart. The letter from the State must include, or have attached to it, the following information: the facility's EPA Identification Number, name and address, and the amounts of funds for plugging and abandonment coverage that are guaranteed by the State. The Regional Administrator will notify the owner or operator of his determination regarding the acceptability of the State's guarantee in lieu of mechanisms specified in this subpart. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with § 144.63.

(b) If a State's assumption of responsibility is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart by use of both the State's assurance and additional financial mechanisms as specified in this subpart. The amount of funds available through the State and Federal mechanisms must at least equal the amount required by this subpart.

§ 144.70 Wording of the instruments.

(a)(1) A trust agreement for a trust fund, as specified in § 144.63(a) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

TRUST AGREEMENT, the ''Agreement,'' entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert ''corporation,'' ''partnership,'' ''association,'' or ''proprietorship''], the ''Grantor,'' and [name of corporate trustee], [insert ''incorporated in the State of _____'' or ''a national bank''], the ''Trustee.''

Whereas, the United States Environmental Protection Agency, ''EPA,'' an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an injection well shall provide assurance that funds will be available when needed for plugging and abandonment of the injection well,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility(ies) identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term ''Grantor'' means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term ''Trustee'' means the Trustee who enters into this Agreement and any successor Trustee.

(c) Facility or activity means any ''underground injection well'' or any other facility or activity that is subject to regulation under the Underground Injection Control Program.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current plugging and abandonment cost estimate, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the ''Fund,'' for the benefit of EPA. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by EPA.

Section 4. Payment for Plugging and Abandonment. The Trustee shall make payments from the Fund as the EPA Regional Administrator shall direct, in writing, to provide for the payment of the costs of plugging and abandonment of the injection wells covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the EPA Regional Administrator from the Fund for plugging and abandonment expenditures in such amounts as the EPA Regional Administrator shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the EPA Regional Administrator specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; *except that*:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a–2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depositary with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation. The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the appropriate EPA Regional Administrator a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the EPA Regional Adminis-

trator shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the EPA Regional Administrator, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the EPA Regional Administrator to the Trustee shall be in writing, signed by the EPA Regional Administrators of the Regions in which the facilities are located, or their designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or EPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA, except as provided for herein.

Section 15. Notice of Nonpayment. The Trustee shall notify the Grantor and the appropriate EPA Regional Administrator, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate EPA Regional Administrator, or by the Trustee and the appropriate EPA Regional Administrator if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the EPA Regional Administrator issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of [insert name of State].

Section 20. Interpretation. As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 144.70(a)(1) as such regulations were constituted on the date first above written.

[Signature of Grantor]
By [Title]
Attest:

[Title]

[Seal]

[Signature of Trustee]
By
Attest:

[Title]

[Seal]

(2) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in § 144.63(a). State requirements may differ on the proper content of this acknowledgment.

State of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that

she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order to the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

(b) A surety bond guaranteeing payment into a trust fund, as specified in § 144.63 of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Dated bond executed: _____

Effective date: _____

Principal: [legal name and business address of owner or operator].

Type of organization: [insert ''individual,'' ''joint venture,'' ''partnership,'' or ''corporation''].

State of incorporation: _____

Surety(ies): [name(s) and business address(es)].

EPA Identification Number, name, address, and plugging and abandonment amount(s) for each facility guaranteed by this bond [indicate plugging and abandonment amounts separately]: _____

Total penal sum of bond: $_____

Surety's bond number: _____

Know All Persons By These Presents, That we, the Principal and Surity(ies) hereto are firmly bound to the U.S. Environmental Protection Agency (hereinafter called EPA), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as cosurties, we, the Sureties, bind ourselves in such sum ''jointly and severally'' only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Underground Injection Control Regulations (UIC), to have a permit or comply with requirements to operate under rule in order to own or operate each injection well identified above, and

Whereas said Principal is required to provide financial assurance for plugging and abandonment as a condition of the permit or provisions to operate under rule, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of plugging and abandonment of each injection well identified above, fund the standby trust fund in the amount(s) identified above for the injection well,

Or if the Principal shall fund the standby trust fund in such amount(s) within 15 days after an order to begin plugging and abandonment is issued by an EPA Regional Administrator or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance, as specified in subpart F of 40 CFR part 144, as applicable, and obtain the EPA Regional Administrator's written approval of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the EPA Regional Administrator(s) from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by an EPA Regional Administrator that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the injection well(s) into the standby trust funds as directed by the EPA Regional Administrator.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the EPA Regional Administrator(s) for the Region(s) in which the injection well(s) is (are) located, provided, however, that that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the EPA Regional Administrator(s), as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the EPA Regional Administrator(s) of the Region(s) in which the bonded facility(ies) is (are) located.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new plugging and abandonment amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the EPA Regional Administrator(s).

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 144.70(b) as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)

[Name and address]

State of incorporation: _____.

Liability limit: $_____.
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $_____.

(c) A surety bond guaranteeing performance of plugging and abandonment, as specified in § 144.63(c), must be worded as follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

PERFORMANCE BOND

Date bond executed: _____.
Effective date: _____.
Principal: [legal name and business address of owner or operator].
Type of organization: [insert ''individual,'' ''joint venture,'' ''partnership,'' or ''corporation''].
State of incorporation: _____.
Surety(ies): [name(s) and business address(es)]

EPA Identification Number, name, address, and plugging and abandonment amounts(s) for each injection well guaranteed by this bond [indicate plugging and abandonment amounts for each well]:

Total penal sum of bond: $_____.
Surety's bond number: _____.

Know All Persons By These Presents, That We, the Principal and Surety(ies) hereto are firmly bound to the U.S. Environmental Protection Agency [hereinafter called EPA], in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum ''jointly and severally'' only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Undergound Injection Control Regulations, as amended, to have a permit or comply with provisions to operate under rule for each injection well identified above, and

Whereas said Principal is required to provide financial assurance for plugging and abandonment as a condition of the permit or approval to operate under rule, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of this obligation are such that if the Principal shall faithfully perform plugging and abandonment, whenever required to do so, of each injection well for which this bond guarantees plugging and abandonment, in accordance with the plugging and abandonment plan and other rquirements of the permit or provisions for operating under rule and other requirements of the permit or provisions for operating under rule as may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance as specified in subpart F of 40 CFR part 144, and obtain the EPA Regional Administrator's written approval of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the EPA Regional Administrator(s) from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by an EPA Regional Administrator that the Principal has been found in violation of the plugging and abandonment requirements of 40 CFR part 144, for an injection well which this bond guarantees performances of plugging and abandonment, the Surety(ies) shall either perform plugging and abandonment in accordance with the plugging and abandonment plan and other permit requirements or provisions for operating under rule and other requirements or place the amount for plugging and abandonment into a standby trust fund as directed by the EPA Regional Administrator.

Upon notification by an EPA Regional Administrator that the Principal has failed to provide alternate financial assurance as specified in subpart F of 40 CFR part 144, and obtain written approval of such assurance from the EPA Regional Administrator(s) during the 90 days following receipt by both the Principal and the EPA Regional Administrator(s) of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the injection well(s) into the standby trust fund as directed by the EPA Regional Administrator.

The surety(ies) hereby waive(s) notification of amendments to plugging and abandonment plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice by certified mail to the owner or operator and to the EPA Regional Administrator(s) for the Region(s) in which the injection well(s) is (are) located, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the EPA Regional Administrator(s), as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the EPA Regional Administrator(s) of the EPA Region(s) in which the bonded injection well(s) is (are) located.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new plugging and abandonment amount, provided that the penal sum does not increase by more than 20 percent in

any one year, and no decrease in the penal sum takes place without the written permission of the EPA Regional Administrator(s).

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording on this surety bond is identical to the wording specified in 40 CFR 144.70(c) as such regulation was constituted on the date this bond was executed.

Principal.
[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]
[Corporate Surety(ies)]
[Name and address]
State of incorporation:

Liability limit: $_____.
[Signature(s)]
[Name(s) and title(s)]
Corporate seal:
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $_____.

(d) A letter of credit, as specified in § 144.63(d) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

Regional Administrator(s)
Region(s) _____
U.S. Environmental Protection Agency.
Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars $_____, available upon presentation [insert, if more than one Regional Administrator is a beneficiary, ''by any one of you''] of

(1) Your sight draft, bearing reference to this letter of credit No. _____, and

(2) Your signed statement reading as follows: ''I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Safe Drinking Water Act.''

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner's or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [owner's or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 40 CFR 144.70(d) as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]
[Date]

This credit is subject to [insert ''the most recent edition of the Uniform Customs and Practice for Documentary Credits, published and copyrighted by the International Chamber of Commerce,'' or ''the Uniform Commercial Code'']

(e) A certificate of insurance, as specified in § 144.63(e) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certificate of Insurance for Plugging and Abandonment
Name and Address of Insurer (herein called the ''insurer''):

Name and Address of Insurer (herein called the ''insurer''):

Injection Wells covered: [list for each well: The EPA Identification Number, name, address, and the amount of insurance for plugging and abandonment (these amounts for all injection wells covered must total the face amount shown below).]
Face Amount: _____
Policy Number: _____
Effective Date: _____

The insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for plugging and abandonment for the injection wells identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 40 CFR 144.63(e), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the EPA Regional Administrator(s) of the U.S. Environmental Protection Agency, the Insurer agrees to furnish to the EPA Regional Administrator(s) a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 40 CFR 144.70(e) as such regulations were constituted on the date shown immediately below.

[Authorized signature of Insurer]
[Name of person signing]
[Title of person signing]
[Signature of witness or notary:]

[Date]

(f) A letter from the chief financial officer, as specified in § 144.63(f) of this chapter, must be worded as follows, except that instructions in

brackets are to be replaced with the relevant information and the brackets deleted:

LETTER FROM CHIEF FINANCIAL OFFICER

[Address to Regional Administrator of every Region in which injection wells for which financial responsibility is to be demonstrated through the financial test are located.]

I am the chief financial officer of [name and address of firm.] This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in subpart F of 40 CFR part 144.

[Fill out the following four paragraphs regarding injection wells and associated cost estimates. If your firm has no injection wells that belong in a particular paragraph, write ''None'' in the space indicated. For each injection well, include its EPA Identification Number, name, address, and current plugging and abandonment cost estimate.]

1. This firm is the owner or operator of the following injection wells for which financial assurance for plugging and abandonment is demonstrated through the financial test specified in subpart F of 40 CFR part 144. The current plugging and abandonment cost estimate covered by the test is shown for each injection well: _____.

2. This firm guarantees, through the corporate guarantee specified in subpart F of 40 CFR part 144, the plugging and abandonment of the following injection wells owned or operated by subsidaries of this firm. The current cost estimate for plugging and abandonment so guaranteed is shown for each injection well: _____.

3. In States where EPA is not administering the financial requirements of subpart F of 40 CFR part 144, this firm, as owner or operator or guarantor, is demonstrating financial assurance for the plugging and abandoment of the following injection wells through the use of a test equivalent or substantially equivalent to the financial test specified in subpart F of 40 CFR part 144. The current plugging and abandonment cost estimate covered by such a test is shown for each injection well: _____.

4. This firm is the owner or operator of the following injection wells for which financial assurance for plugging and abandonment is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in subpart F of 40 CFR part 144 or equivalent or substantially equivalent State mechanisms. The current plugging and abandonment cost estimate not covered by such financial assurance is shown for each injection well: _____.

This firm [insert ''is required'' or ''is not required''] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of paragraph (f)(1)(i) of § 144.63 of this chapter are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of § 144.63 of this chapter are used.]

ALTERNATIVE I

1. (a) Current plugging and abandonment cost	$_____
(b) Sum of the company's financial responsibilities under 40 CFR Parts 264 and 265, Subpart H, currently met using the financial test or corporate guarantee	
(c) Total of lines a and b	
*2. Total liabilities [if any portion of the plugging and abandonment cost is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4]	
*3. Tangible net worth	
*4. Net worth	
*5. Current assets	
*6. Current liabilities	
*7. Net working capital [line 5 minus line 6]	
*8. The sum of net income plus depreciation, depletion and amortization	
*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in U.S.)	

	Yes	No
10. Is line 3 at least $10 million?		
11. Is line 3 at least 6 times line 1(c)?		
12. Is line 7 at least 6 times line 1(c)?		
*13. Are at least 90% of firm's assets located in the U.S.? If not, complete line 14.		
14. Is line 9 at least 6 times line 1(c)?		
15. Is line 2 divided by line 4 less than 2.0?		
16. Is line 8 divided by line 2 greater than 0.1?		
17. Is line 5 divided by line 6 greater than 1.5?		

ALTERNATIVE II

1. (a) Current plugging and abandonment cost	$_____
(b) Sum of the company's financial responsibilities under 40 CFR Parts 264 and 265, Subpart H, currently met using the financial test or corporate guarantee	
(c) Total of lines a and b	
2. Current bond rating of most recent issuance of this firm and name of rating service	
3. Date of issuance of bond	
4. Date of maturity of bond	
*5. Tangible net worth [if any portion of the plugging and abandonment cost estimate is included in ''total liabilities'' on your firm's financial statements, you may add the amount of that portion to this line]	
*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in U.S.)	

	Yes	No
7. Is line 5 at least $10 million?		
8. Is line 5 at least 6 times line 1(c)?		
*9. Are at least 90% of the firm's assets located in the U.S.? If not, complete line 10		
10. Is line 6 at least 6 times line 1(c)?		

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 144.70(f) as such regulations were constituted on the date shown immediately below.
[Signature]
[Name]
[Title]
[Date]

(g) A corporate guarantee as specified in § 144.63(e) must be worded as follows except that instructions in brackets are to be replaced with the relevant information and the bracketed material deleted:

GUARANTEE FOR PLUGGING AND ABANDONMENT

Guarantee made this ____ day of _____, 19____, by [name of guaranteeing entity], a business corporation organized under the laws of the State of _____, herein referred to as guarantor, to the United States Environmental Protection Agency (EPA), obligee, on behalf of our subsidiary [owner or operator] of [business address].
Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 144.63(e).

2. [Owner or operator] owns or operates the following Class I hazardous waste injection well covered by this guarantee: [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure, post-closure care, or both.]

3. ''Plugging and abandonment plan'' as used below refers to the plans maintained as required by 40 CFR part 144 for the plugging and abandonment of injection wells as identified above.

4. For value received from [owner or operator], guarantor guarantees to EPA that in the event that [owner or operator] fails to perform [''plugging and abandonment''] of the above facility(ies) in accordance with the plugging and abandonment plan and other requirements when required to do so, the guarantor will do so or fund a trust fund as specified in 40 CFR 144.63 in the name of [owner or operator] in the amount of the adjusted plugging and abandonment cost estimates prepared as specified in 40 CFR 144.62.

5. Guarantor agrees that, if at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor will send within 90 days, by certified mail, notice to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to [owner or operator] that he intends to provide alternate financial assurance as specified in 40 CFR 144.63 in the name of [owner or operator]. Within 30 days after sending such notice, the guarantor will establish such financial assurance if [owner or operator] has not done so.

6. The guarantor agrees to notify the Regional Administrator, by certified mail, of a voluntary or involuntary case under Title 11, U.S. Code, naming guarantor as debtor, within 10 days after its commencement.

7. Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of plugging and adandonment, he will establish alternate financial assurance, as specified in 40 CFR 144.63, in the name of [owner or operator] if [owner or operator] has not done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the plugging and abandonment plan, the extension or reduction of the time of performance of plugging and abandonment or any other modification or alteration of an obligation of [owner or operator] pursuant to 40 CFR part 144.

9. Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of 40 CFR part 144 for the above-listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail, to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to [owner or operator], such cancellation to become effective no earlier than 120 days after actual receipt of such notice by both EPA and [owner or operator] as evidenced by the return receipts.

10. Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance and obtain written approval of such assurance from the EPA Regional Administrator(s) within 90 days after a notice of cancellation by the guarantor is received by both the EPA Regional Administrator(s) and [owner or operator], guarantor will provide alternate financial assurance as specified in 40 CFR 144.63 in the name of [owner or operator].

11. Guarantor expressly waives notice of acceptance of this guarantee by the EPA or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the plugging and abandonment plan.

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 144.70(f).

Effective date: _____.
[Name of guarantor]
[Authorized signature for guarantor]
[Type name of person signing]
[Title of person signing]
Signature of witness or notary: _____

[48 FR 14189, Apr. 1, 1983, as amended at 59 FR 29959, June 10, 1994]

PART 145—STATE UIC PROGRAM REQUIREMENTS

Subpart A—General Program Requirements

Subpart B—Requirements for State Programs

Subpart C—State Program Submissions

Subpart D—Program Approval, Revision and Withdrawal

Subpart E—Indian Tribes

AUTHORITY: 42 U.S.C. 300f *et seq.*

SOURCE: 48 FR 14202, Apr. 1, 1983, unless otherwise noted.

Subpart A—General Program Requirements

§ 145.1 Purpose and scope.

(a) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State programs under section 1422 (underground injection control—UIC) of SDWA, and includes the elements which must be part of submissions to EPA for program approval and the substantive provisions which must be present in State programs for them to be approved.

(b) State submissions for program approval must be made in accordance with the procedures set out in subpart C. This includes developing and submitting to EPA a program description (§ 145.23), an Attorney General's Statement (§ 145.24), and a Memorandum of Agreement with the Regional Administrator (§ 145.25).

(c) The substantive provisions which must be included in State programs to obtain approval include requirements for permitting, compliance evaluation, enforcement, public participation, and sharing of information. The requirements are found in subpart B. Many of the requirements for State programs are made applicable to States by cross-referencing other EPA regulations. In particular, many of the provisions of parts 144 and 124 are made applicable to States by the references contained in § 145.11.

(d) Upon submission of a complete program, EPA will conduct a public hearing, if interest is shown, and determine whether to approve or disapprove the program taking into consideration the requirements of this part, the Safe Drinking Water Act and any comments received.

(e) Upon approval of a State program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program.

(f) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this part.

(g) Nothing in this part precludes a State from:

(1) Adopting or enforcing requirements which are more stringent or more extensive than those required under this part;

(2) Operating a program with a greater scope of coverage than that required under this part. Where an approved State program has a greater scope of coverage than required by Federal law the additional coverage is not part of the federally approved program.

(h) Section 1451 of the SDWA authorizes the Administrator to delegate primary enforcement responsibility for the Underground Injection Control Program to eligible Indian Tribes. An Indian Tribe must establish its eligibility to be treated as a State before it is eligible to apply for Underground Injection Control grants and primary enforcement responsibility. All requirements of parts 124, 144, 145, and 146 that apply to States with UIC primary enforcement responsibility also apply to Indian Tribes except where specifically noted.

[48 FR 14202, Apr. 1, 1983, as amended at 53 FR 37412, Sept. 26, 1988; 59 FR 64345, Dec. 14, 1994]

§ 145.2 Definitions.

The definitions of part 144 apply to all subparts of this part.

Subpart B—Requirements for State Programs

§ 145.11 Requirements for permitting.

(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) Section 144.5(b)—(Confidential information);

(2) Section 144.6—(Classification of injection wells);

(3) Section 144.7—(Identification of underground sources of drinking water and exempted aquifers);

(4) Section 144.8—(Noncompliance reporting);

(5) Section 144.11—(Prohibition of unauthorized injection);

(6) Section 144.12—(Prohibition of movement of fluids into underground sources of drinking water);

(7) Section 144.13—(Elimination of Class IV wells);

(8) Section 144.14—(Requirements for wells managing hazardous waste);

(9) Sections 144.21–144.26—(Authorization by rule);

(10) Section 144.31—(Application for a permit);

(11) Section 144.32—(Signatories);

(12) Section 144.33—(Area Permits);

(13) Section 144.34—(Emergency permits);

(14) Section 144.35—(Effect of permit);

(15) Section 144.36—(Duration);

(16) Section 144.38—(Permit transfer);

(17) Section 144.39—(Permit modification);

(18) Section 144.40—(Permit termination);

(19) Section 144.51—(Applicable permit conditions);

(20) Section 144.52—(Establishing permit conditions);

(21) Section 144.53(a)—(Schedule of compliance);

(22) Section 144.54—(Monitoring requirements);

(23) Section 144.55—(Corrective Action);

(24) Section 124.3(a)—(Application for a permit);

(25) Section 124.5 (a), (c), (d), and (f)—(Modification of permits);

(26) Section 124.6 (a), (c), (d), and (e)—(Draft Permit);

(27) Section 124.8—(Fact sheets);

(28) Section 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e)—(Public notice);

(29) Section 124.11—(Public comments and requests for hearings);

(30) Section 124.12(a)—(Public hearings); and

(31) Section 124.17 (a) and (c)—(Response to comments).

(b)(1) States need not implement provisions identical to the provisions listed in paragraphs (a)(1) through (31) of this section. 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.

(2) State programs may, if they have adequate legal authority, implement any of the provisions of parts 144 and 124. See, for example § 144.37(d) (continuation of permits) and § 124.4 (consolidation of permit processing).

§ 145.12 Requirements for compliance evaluation programs.

(a) State programs shall have procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees and other regulated persons (and for investigation for possible enforcement of failure to submit these notices and reports).

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements. The State shall maintain:

(1) A program which is capable of making comprehensive surveys of all facilities and activities subject to the State Director's authority to identify persons subject to regulation who have failed to comply with permit application or other program requirements. Any compilation, index, or inventory of such facilities and activities shall be made available to the Regional Administrator upon request;

(2) A program for periodic inspections of the facilities and activities subject to regulation. These inspections shall be conducted in a manner designed to:

(i) Determine compliance or noncompliance with issued permit conditions and other program requirements;

(ii) Verify the accuracy of information submitted by permittees and other regulated persons in reporting forms and other forms supplying monitoring data; and

(iii) Verify the adequacy of sampling, monitoring, and other methods used by permittees and other regulated persons to develop that information;

(3) A program for investigating information obtained regarding violations of applicable program and permit requirements; and

(4) Procedures for receiving and ensuring proper consideration of information submitted by the public about violations. Public effort in reporting violations shall be encouraged and the State Director shall make available information on reporting procedures.

(c) The State Director and State officers engaged in compliance evaluation shall have authority to enter any site or premises subject to regulation or in which records relevant to program operation are kept in order to copy any records, inspect, monitor or otherwise investigate compliance with permit conditions and other program requirements. States whose law requires a search warrant before entry conform with this requirement.

(d) Investigatory inspections shall be conducted, samples shall be taken and other information shall be gathered in a manner [e.g., using proper ''chain of custody'' procedures] that will produce evidence admissible in an enforcement proceeding or in court.

§ 145.13 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or environment;

NOTE: This paragraph requires that States have a mechanism (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to stop any unauthorized activity endangering public health or the environment.

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit;

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) For all wells except Class II wells, civil penalties shall be recoverable for any program violation in at least the amount of $2,500 per day. For Class II wells, civil penalties shall be recoverable for any program violation in at least the amount of $1,000 per day.

(ii) Criminal fines shall be recoverable in at least the amount of $5,000 per day against any person who willfully violates any program requirement, or for Class II wells, pipeline (production) severance shall be imposable against any person who willfully violates any program requirement.

NOTE: In many States the State Director will be represented in State courts by the State Attorney General or other appropriate legal officer. Although the State Director need not appear in court actions he or she should have power to request that any of the above actions be brought.

(b)(1) The maximum civil penalty or criminal fine (as provided in paragraph (a)(3) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the Safe Drinking Water Act.

NOTE: For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.

(c) A civil penalty assessed, sought, or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation.

NOTE: To the extent that State judgments or settlements provide penalties in amounts which EPA believes to be substantially inadequate in comparison to the amounts which EPA would require under similar facts, EPA, when authorized by the applicable statute, may commence separate actions for penalties.

In addition to the requirements of this paragraph, the State may have other enforcement remedies. The following enforcement options, while not mandatory, are highly recommended:

Procedures for assessment by the State of the costs of investigations, inspections, or monitoring surveys which lead to the establishment of violations;

Procedures which enable the State to assess or to sue any persons responsible for unauthorized activities for any expenses incurred by the State in removing, correcting, or terminating any adverse effects upon human health and the environment resulting from the unauthorized activity, or both; and

Procedures for the administrative assessment of penalties by the Director.

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil or administrative action to obtain remedies specified in paragraph (a) (1), (2) or (3) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in § 145.12(b)(4);

(ii) Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

(e) To the extent that an Indian Tribe does not assert or is precluded from asserting criminal enforcement authority the Administrator will assume primary enforcement responsibility for criminal violations. The Memorandum of Agreement in § 145.25 shall reflect a system where the Tribal agency will refer such violations to the Administrator in an appropriate and timely manner.

(Clean Water Act (33 U.S.C. 1251 *et seq.*), Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), Clean Air Act (42 U.S.C. 7401 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*))

[48 FR 14202, Apr. 1, 1983, as amended at 48 FR 39621, Sept. 1, 1983; 53 FR 37412, Sept. 26, 1988]

§ 145.14 Sharing of information.

(a) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information under this section. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR part 2. If EPA obtains from a State information that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA shall furnish to States with approved programs the information in its files not submitted under a claim of confidentiality which the State needs to implement its approved program. EPA shall furnish to States with approved programs information submitted to EPA under a claim of confidentiality, which the State needs to implement its approved program, subject to the conditions in 40 CFR part 2.

Subpart C—State Program Submissions

§ 145.21 General requirements for program approvals.

(a) States shall submit to the Administrator a proposed State UIC program complying with § 145.22 of this part within 270 days of the date of promulgation of the UIC regulations on June 24, 1980. The administrator may, for good cause, extend the date for submission of a proposed State UIC program for up to an additional 270 days.

(b) States shall submit to the Administrator 6 months after the date of promulgation of the UIC regulations a report describing the State's progress in developing a UIC program. If the Administrator extends the time for submission of a UIC program an additional 270 days, pursuant to § 145.21(a), the State shall submit a second report six months after the first report is due. The Administrator may prescribe the manner and form of the report.

(c) The requirements of § 145.21 (a) and (b) shall not apply to Indian Tribes.

(d) EPA will establish a UIC program in any State which does not comply with paragraph (a) of this section. EPA will continue to operate a UIC program in such a State until the State receives approval of a UIC program in accordance with the requirements of this part.

NOTE: States which are authorized to administer the NPDES permit program under section 402 of CWA are encouraged to rely on existing statutory authority, to the extent possible, in developing a State UIC program. Section 402(b)(1)(D) of CWA requires that NPDES States have the authority ''to issue permits which control the disposal of pollutants into wells.'' In many instances, therefore, NPDES States will have existing statutory authority to regulate well disposal which satisfies the requirements of the UIC program. Note, however, that CWA excludes certain types of well injections from the definition of ''pollutant.'' If the State's statutory authority contains a similar exclusion it may need to be modified to qualify for UIC program approval.

(e) If a State can demonstrate to EPA's satisfaction that there are no underground injections within the State for one or more classes of injection wells (other than Class IV wells) subject to SDWA and that such injections cannot legally occur in the State until the State has developed an approved program for those classes of injections, the State need not submit a program to regulate those injections and a partial program may be approved. The demonstration of legal prohibition shall be made by either explicitly banning new injections of the class not covered by the State program or providing a certification from the State Attorney General that such new injections cannot legally occur until the State has developed an approved program for that class. The State shall submit a program to regulate both those classes of injections for which a demonstration is not made and class IV wells.

(f) When a State UIC program is fully approved by EPA to regulate all classes of injections, the State assumes primary enforcement authority under section 1422(b)(3) of SDWA. EPA retains primary enforcement responsibility whenever the State program is disapproved in whole or in part. States which have partially approved programs have authority to enforce any violation of the approved portion of their program. EPA retains authority to enforce violations of State underground injection control programs, except that, when a State has a fully approved program, EPA will not

take enforcement actions without providing prior notice to the State and otherwise complying with section 1423 of SDWA.

(g) A State can assume primary enforcement responsibility for the UIC program, notwithstanding § 145.21(3), when the State program is unable to regulate activities on Indian lands within the State. EPA will administer the program on Indian lands if the State does not seek this authority.

[48 FR 14202, Apr. 1, 1983, as amended at 53 FR 37412, Sept. 26, 1988]

§ 145.22 Elements of a program submission.

(a) Any State that seeks to administer a program under this part shall submit to the Administrator at least three copies of a program submission. The submission shall contain the following:

(1) A letter from the Governor of the State requesting program approval;

(2) A complete program description, as required by § 145.23, describing how the State intends to carry out its responsibilities under this part;

(3) An Attorney General's statement as required by § 145.24;

(4) A Memorandum of Agreement with the Regional Administrator as required by § 145.25;

(5) Copies of all applicable State statutes and regulations, including those governing State administrative procedures;

(6) The showing required by § 145.31(b) of the State's public participation activities prior to program submission.

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the statutory review period (i.e., the period of time allotted for formal EPA review of a proposed State program under the Safe Drinking Water Act) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the statutory review period shall not begin until all the necessary information is received by EPA.

(c) If the State's submission is materially changed during the statutory review period, the statutory review period shall begin again upon receipt of the revised submission.

(d) The State and EPA may extend the statutory review period by agreement.

§ 145.23 Program description.

Any State that seeks to administer a program under this part shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under an interstate compact. The program description shall include:

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency may be designated as a ''lead agency'' to facilitate communications between EPA and the State agencies having program responsibility. When the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program.

(1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support.

(3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding.

(c) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.

(d) Copies of the permit form(s), application form(s), reporting form(s), and manifest format the State intends to employ in its program. Forms used by States need not be identical to the forms used by EPA but should require the same basic information. The State need not provide copies of uniform national forms it intends to use but should note its intention to use such forms.

NOTE: States are encouraged to use uniform national forms established by the Administrator. If uniform national forms are used, they may be modified to include the State Agency's name, address, logo, and other similar information, as appropriate, in place of EPA's.

(e) A complete description of the State's compliance tracking and enforcement program.

(f) A State UIC program description shall also include:

(1) A schedule for issuing permits within five years after program approval to all injection wells within the State which are required to have permits under this part and part 144;

(2) The priorities (according to criteria set forth in 40 CFR 146.09) for issuing permits, including the number of permits in each class of injection well which will be issued each year during the first five years of program operation;

(3) A description of how the Director will implement the mechanical integrity testing requirements of 40 CFR 146.08, including the frequency of testing that will be required and the number of tests that will be reviewed by the Director each year;

(4) A description of the procedure whereby the Director will notify owners and operators of injection wells of the requirement that they apply for and obtain a permit. The notification required by this paragraph shall require applications to be filed as soon as possible, but not later than four years after program approval for all injection wells requiring a permit;

(5) A description of any rule under which the Director proposes to authorize injections, including the text of the rule;

(6) For any existing enhanced recovery and hydrocarbon storage wells which the Director proposes to authorize by rule, a description of the procedure for reviewing the wells for compliance with applicable monitoring, reporting, construction, and financial responsibility requirements of §§ 144.51 and 144.52, and 40 CFR part 146;

(7) A description of and schedule for the State's program to establish and maintain a current inventory of injection wells which must be permitted under State law;

(8) Where the Director had designated underground sources of drinking water in accordance with § 144.7(a), a description and identification of all such designated sources in the State;

(9) A description of aquifers, or parts thereof, which the Director has identified under § 144.7(b) as exempted aquifers, and a summary of supporting data;

(10) A description of and schedule for the State's program to ban Class IV wells prohibited under § 144.13; and

(11) A description of and schedule for the State's program to establish an inventory of Class V wells and to assess the need for a program to regulate Class V wells.

§ 145.24 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 § 145.23 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) When a State seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

§ 145.25 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this part shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this Part and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's statutory oversight responsibility.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). When existing permits are transferred from EPA to State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

NOTE: For example, EPA and the State and the permittee could agree that the State would issue a permit(s) identical to the outstanding Federal permit which would simultaneously be terminated.

(2) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment and, where applicable, objection.

(3) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate.

(4) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(5) When appropriate, provisions for joint processing of permits by the State and EPA, for facilities or activities which require permits from both EPA and the State under different programs. See § 124.4.

(6) Provisions for modification of the Memorandum of Agreement in accordance with this part.

(c) The Memorandum of Agreement, the annual program and grant and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended through the procedures set forth in this part. The State/EPA Agreement may not override the Memorandum of Agreement.

NOTE: Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. However, it may still be appropriate to specify in the MOA the basis for such detailed agreements, e.g., a provision in the MOA specifying that EPA will select facilities in the State for inspection annually as part of the State/EPA agreement.

Subpart D—Program Approval, Revision and Withdrawal

§ 145.31 Approval process.

(a) Prior to submitting an application to the Administrator for approval of a State UIC program, the State shall issue public notice of its intent to adopt a UIC program and to seek program approval from EPA. This public notice shall:

(1) Be circulated in a manner calculated to attract the attention of interested persons. Circulation of the public notice shall include publication in enough of the largest newspapers in the State to attract Statewide attention and mailing to persons on appropriate State mailing lists and to any other persons whom the agency has reason to believe are interested;

(2) Indicate when and where the State's proposed program submission may be reviewed by the public;

(3) Indicate the cost of obtaining a copy of the submission;

(4) Provide for a comment period of not less than 30 days during which interested persons may comment on the proposed UIC program;

(5) Schedule a public hearing on the State program for no less than 30 days after notice of the hearing is published;

(6) Briefly outline the fundamental aspects of the State UIC program; and

(7) Identify a person that an interested member of the public may contact for further information.

(b) After complying with the requirements of paragraph (a) of this section any State may submit a proposed UIC program under section 1422 of SDWA and § 145.22 of this part to EPA for approval. Such a submission shall include a showing of compliance with paragraph (a) of this section; copies of all written comments received by the State; a transcript, recording or summary of any public hearing which was held by the State; and a responsiveness summary which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received, and responds to these comments. A copy of the responsiveness summary shall be sent to those who testified at the hearing, and others upon request.

(c) After determining that a State's submission for UIC program approval is complete the Administrator shall issue public notice of the submission in the FEDERAL REGISTER and in accordance with paragraph (a)(1) of this section. Such notice shall:

(1) Indicate that a public hearing will be held by EPA no earlier than 30 days after notice of the hearing. The notice may require persons wishing to present testimony to file a request with the Regional Administrator, who may cancel the public hearing if sufficient public interest in a hearing is not expressed;

(2) Afford the public 30 days after the notice to comment on the State's submission; and

(3) Note the availability of the State submission for inspection and copying by the public.

(d) The Administrator shall approve State programs which conform to the applicable requirements of this part.

(e) Within 90 days of the receipt of a complete submission (as provided in § 145.22) or material amendment thereto, the Administrator shall by rule either fully approve, disapprove, or approve in part the State's UIC program taking into account any comments submitted. The Administrator shall give notice of this rule in the FEDERAL REGISTER and in accordance with paragraph (a)(1) of this section. If the Administrator determines not to approve the State program or to approve it only in part, the notice shall include a concise statement of the reasons for this determination. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received, and explains the Agency's response to these comments. The responsiveness summary shall be sent to those who testified at the public hearing, and to others upon request.

§ 145.32 Procedures for revision of State programs.

(a) Either EPA or the approved State may initiate program revision. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The state shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances.

(2) Whenever EPA determines that the proposed program revision is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days. The public notice shall be mailed to interested persons and shall be published in the FEDERAL REGISTER and in enough of the largest newspapers in the State to provide Statewide coverage. The public notice shall summarize the proposed revisions and provide for the opportunity to request a public hearing. Such a hearing will be held is there if significant public interest based on requests received.

(3) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Safe Drinking Water Act.

(4) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the FEDERAL REGISTER. Notice of approval of non-substantial program revisions may be given by a letter from the Administrator to the State Governor or his designee.

(c) States with approved programs shall notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approval by the Administrator under paragraph (b) of this section. Organizational charts required under § 145.23(b) shall be revised and resubmitted.

(d) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as are necessary.

(e) The State shall submit the information required under paragraph (b)(1) of this section within 270 days of any amendment to this part or 40 CFR part 144, 146, or 124 which revises or adds any requirement respecting an approved UIC program.

§ 145.33 Criteria for withdrawal of State programs.

(a) The Administrator may withdraw program approval when a State program no longer complies with the requirements of this part, and the State fails to take corrective action. Such circumstances include the following:

(1) When the State's legal authority no longer meets their requirements of this part, including:

(i) Failure of the State to promulgate or enact new authorities when necessary; or

(ii) Action by a State legislature or court striking down or limiting State authorities.

(2) When the operation of the State program fails to comply with the requirements of this part, including:

(i) Failure to exercise control over activities required to be regulated under this part, including failure to issue permits;

(ii) Repeated issuance of permits which do not conform to the requirements of this part; or

(iii) Failure to comply with the public participation requirements of this part.

(3) When the State's enforcement program fails to comply with the requirements of this part, including:

(i) Failure to act on violations of permits or other program requirements;

(ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed; or

(iii) Failure to inspect and monitor activities subject to regulation.

(4) When the State program fails to comply with the terms of the Memorandum of Agreement required under § 145.24.

§ 145.34 Procedures for withdrawal of State programs.

(a) A State with a program approved under this part may voluntarily transfer program responsibilities required by Federal law to EPA by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

(1) The State shall give the Administrator 180 days notice of the proposed transfer and shall submit a plan for the orderly transfer of all relevant program information not in the possession of EPA (such as permits, permit files, compliance files, reports, permit applications) which are necessary for EPA to administer the program.

(2) Within 60 days of receiving the notice and transfer plan, the Administrator shall evaluate the State's transfer plan and shall identify any additional information needed by the Federal government for program administration and/or identify any other deficiencies in the plan.

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of the transfer in the FEDERAL REGISTER and in enough of the largest newspapers in the State to provide Statewide coverage, and shall mail notice to all permit holders, permit applicants, other regulated persons and other interested persons on appropriate EPA and State mailing lists.

(b) Approval of a State UIC program may be withdrawn and a Federal program established in its place when the Administrator determines, after holding a public hearing, that the State program is not in compliance with the requirements of SDWA and this part.

(1) *Notice to State of public hearing.* If the Administrator has cause to believe that a State is not administering or enforcing its authorized program in compliance with the requirements of SDWA and this part, he or she shall inform the State by registered mail of the specific areas of alleged noncompliance. If the State demonstrates to the Administrator within 30 days of such notification that the State program is in compliance, the Administrator shall take no further action toward withdrawal and shall so notify the State by registered mail.

(2) *Public hearing.* If the State has not demonstrated its compliance to the satisfaction of the Administrator within 30 days after notification, the Administrator shall inform the State Director and schedule a public hearing to discuss withdrawal of the State program. Notice of such public hearing shall be published in the FEDERAL REGISTER and in enough of the largest newspapers in the State to attract statewide attention, and mailed to persons on appropriate State and EPA mailing lists. This hearing shall be convened not less than 60 days nor more than 75 days following the publication of the notice of the hearing. Notice of the hearing shall identify the Administrator's concerns. All interested persons shall be given opportunity to make written or oral presentation on the State's program at the public hearing.

(3) *Notice to State of findings.* When the Administrator finds after the public hearing that the State is not in compliance, he or she shall notify the State by registered mail of the specific deficiencies in the State program and of necessary remedial actions. Within 90 days of receipt of the above letter, the State shall either carry out the required remedial action or the Administrator shall withdraw program approval. If the State carries out the remedial action or, as a result of the hearing is found to be in compliance, the Administrator shall so notify the State by registered mail and conclude the withdrawal proceedings.

Subpart E—Indian Tribes

SOURCE: 53 FR 37412, Sept. 26, 1988, unless otherwise noted.

§ 145.52 Requirements for Tribal eligibility.

The Administrator is authorized to treat an Indian Tribe as eligible to apply for primary enforcement responsibility for the Underground Injection Control Program if it meets the following criteria:

(a) The Indian Tribe is recognized by the Secretary of the Interior.

(b) The Indian Tribe has a Tribal governing body which is currently ''carrying out substantial governmental duties and powers'' over a defined area, (*i.e.,* is currently performing governmental functions to promote the health, safety, and welfare of the affected population within a defined geographic area).

(c) The Indian Tribe demonstrates that the functions to be performed in regulating the underground injection wells that the applicant intends to regulate are within the area of the Indian Tribal government's jurisdiction.

(d) The Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of administering (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Underground Injection Control Program.

[53 FR 37412, Sept. 26, 1988, as amended at 59 FR 64345, Dec. 14, 1994]

§ 145.56 Request by an Indian Tribe for a determination of eligibility.

An Indian Tribe may apply to the Administrator for a determination that it meets the criteria of section 1451 of the Act. The application shall be concise and describe how the Indian Tribe will meet each of the requirements of § 145.52. The application shall consist of the following:

(a) A statement that the Tribe is recognized by the Secretary of the Interior.

(b) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. The statement should:

(1) Describe the form of the Tribal government;

(2) Describe the types of governmental functions currently performed by the Tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(3) Identify the sources of the Tribal government's authority to carry out the governmental functions currently being performed.

(c) A map or legal description of the area over which the Indian Tribe asserts jurisdiction; a statement by the Tribal Attorney General (or equivalent official) which describes the basis for the Tribe's jurisdictional assertion (including the nature or subject matter of the asserted jurisdiction); a copy of those documents such as Tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which the Tribe believes are relevant to its assertions regarding jurisdiction; and a description of the locations of the underground injection wells the Tribe proposes to regulate.

(d) A narrative statement describing the capability of the Indian Tribe to administer an effective Underground Injection Control program which should include:

(1) A description of the Indian Tribe's previous management experience which may include, the administration of programs and services authorized under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian Sanitation Facilities Construction Activity Act (42 U.S.C. 2004a).

(2) A list of existing environmental or public health programs administered by the Tribal governing body and a copy of related Tribal laws, regulations and policies.

(3) A description of the Indian Tribe's accounting and procurement systems.

(4) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government.

(5) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary enforcement responsibility, including a description of the relationship between owners/operators of the underground injection wells and the agency.

(6) A description of the technical and administrative capabilities of the staff to administer and manage an effective Underground Injection Control Program or a plan which proposes how the Tribe will acquire additional administrative and/or technical expertise. The plan must address how the Tribe will obtain the funds to acquire the additional administrative and technical expertise.

(e) The Adminstrator may, in his discretion, request further documentation necessary to support a Tribe's eligibility.

(f) If the Administrator has previously determined that a Tribe has met the prerequisites that make it eligible to assume a role similar to that of a State as provided by statute under the Safe Drinking Water Act, the Clean Water Act, or the Clean Air Act, then that Tribe need provide only that information unique to the Underground Injection Control program (§ 145.76(c) and (d)(6)).

[53 FR 37412, Sept. 26, 1988, as amended at 59 FR 64345, Dec. 14, 1994]

§ 145.58 Procedure for processing an Indian Tribe's application.

(a) The Administrator shall process a completed application of an Indian Tribe in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(b) A tribe that meets the requirements of § 145.52 is eligible to apply for development grants and primary enforcement responsibility for an Underground Injection Control program and the associated funding under section 1443(b) of the Act and primary enforcement responsibility for the Underground Injection Control Program under sections 1422 and/or 1425 of the Act.

[53 FR 37412, Sept. 26, 1988, as amended at 59 FR 64345, Dec. 14, 1994]

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

Subpart A—General Provisions

Subpart B—Criteria and Standards Applicable to Class I Wells

Subpart C—Criteria and Standards Applicable to Class II Wells

Subpart D—Criteria and Standards Applicable to Class III Wells

Subpart E—Criteria and Standards Applicable to Class IV Injection Wells [Reserved]

Subpart F—Criteria and Standards Applicable to Class V Injection Wells

Subpart G—Criteria and Standards Applicable to Class I Hazardous Waste Injection Wells

AUTHORITY: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.;* Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

SOURCE: 45 FR 42500, June 24, 1980, unless otherwise noted.

EDITORIAL NOTE: 1. For a rule-related notice affecting part 146, see 52 FR 26342, July 14, 1987.

2. For a document removing the OMB control number wherever it appeared in part 146, see 58 FR 34370, June 25, 1993.

Subpart A—General Provisions

§ 146.1 Applicability and scope.

(a) This part sets forth technical criteria and standards for the Underground Injection Control Program. This part should be read in conjunction with 40 CFR parts 124, 144, and 145, which also apply to UIC programs. 40 CFR part 144 defines the regulatory framework of EPA administered permit programs. 40 CFR part 145 describes the elements of an approvable State program and procedures for EPA approval of State participation in the permit programs. 40 CFR part 124 describes the procedures the Agency will use for issuing permits under the covered programs. Certain of these procedures will also apply to State-administered programs as specified in 40 CFR part 145.

(b) Upon the approval, partial approval or promulgation of a State UIC program by the Administrator, any underground injection which is not authorized by the Director by rule or by permit is unlawful.

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[45 FR 42500, June 24, 1980, as amended at 48 FR 14293, Apr. 1, 1983]

§ 146.2 Law authorizing these regulations.

The Safe Drinking Water Act, 42 U.S.C. 300f *et seq.* authorizes these regulations and all other UIC program regulations referenced in 40 CFR part 144. Certain regulations relating to the injection of hazardous waste are also authorized by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

[58 FR 63898, Dec. 3, 1993]

§ 146.3 Definitions.

The following definitions apply to the underground injection control program.

Abandoned well means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be used for its intended purpose or for observation purposes.

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in approved States, including any approved modifications or revisions. For RCRA, application also includes the information required by the Director under § 122.25 (contents of Part B of the RCRA application).

Aquifer means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

Area of review means the area surrounding an injection well described according to the criteria set forth in § 146.06 or in the case of an area permit, the project area plus a circumscribing area the width of which is either ¼ of a mile or a number calculated according to the criteria set forth in § 146.06.

Casing means a pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole.

Catastrophic collapse means the sudden and utter failure of overlying ''strata'' caused by removal of underlying materials.

Cementing means the operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

Confining bed means a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

Confining zone means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

Contaminant means any physical, chemical, biological, or radiological substance or matter in water.

Conventional mine means an open pit or underground excavation for the production of minerals.

Director means the Regional Administrator, the State director or the Tribal director as the context requires, or an authorized representative. When there is no approved State or Tribal program, and there is an EPA administered program, ''Director'' means the Regional Administrator. When there is an approved State or Tribal program, ''Director'' normally means the State or Tribal director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State or Tribal program. (For example, when EPA has issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval; see § 123.69). In such cases, the term *Director* means the Regional Administrator and not the State or Tribal director.

Disposal well means a well used for the disposal of waste into a subsurface stratum.

Effective date of a UIC program means the date that a State UIC program is approved or established by the Administrator.

Environmental Protection Agency (''EPA'') means the United States Environmental Protection Agency.

EPA means the United States ''Environmental Protection Agency.''

Exempted acquifer means an aquifer or its portion that meets the criteria in the definition of ''underground source of drinking water'' but which has been exempted according to the procedures of § 144.8(b).

Existing injection well means an ''injection well'' other than a ''new injection well.''

Experimental technology means a technology which has not been proven feasible under the conditions in which it is being tested.

Facility or activity means any ''HWM facility,'' UIC ''injection well,'' NPDES ''point source,'' or State 404 dredge and fill activity, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the RCRA, UIC, NPDES, or 404 programs.

Fault means a surface or zone of rock fracture along which there has been displacement.

Flow rate means the volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel.

Fluid means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

Formation means a body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

Formation fluid means ''fluid'' present in a ''formation'' under natural conditions as opposed to introduced fluids, such as drilling mud.

Generator means any person, by site location, whose act or process produces hazardous waste identified or listed in 40 CFR part 261.

Ground water means water below the land surface in a zone of saturation.

Hazardous waste means a hazardous waste as defined in 40 CFR 261.3.

Hazardous Waste Management facility (''HWM facility'') means all contiguous land, and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them).

HWM facility means ''Hazardous Waste Management facility.''

Indian Tribe means any Indian Tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

Injection well means a ''well'' into which ''fluids'' are being injected.

Injection zone means a geological ''formation'', group of formations, or part of a formation receiving fluids through a well.

Lithology means the description of rocks on the basis of their physical and chemical characteristics.

Owner or operator means the owner or operator of any facility or activity subject to regulation under the RCRA, UIC, NPDES, or 404 programs.

Packer means a device lowered into a well to produce a fluid-tight seal.

Permit means an authorization, license, or equivalent control document issued by EPA or an ''approved State'' to implement the requirements of this part and parts 124, 144, and 145. Permit does not include RCRA interim status (§ 122.23), UIC authorization by rule (§§ 144.21 to 144.26 and 144.15), or any permit which has not yet been the subject of final agency action, such as a ''draft permit'' or a ''proposed permit.''

Plugging means the act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation.

Plugging record means a systematic listing of permanent or temporary abandonment of water, oil, gas, test, exploration and waste injection wells, and may contain a well log, description of amounts and types of plugging material used, the method employed for plugging, a description of formations which are sealed and a graphic log of the well showing formation location, formation thickness, and location of plugging structures.

Pressure means the total load or force per unit area acting on a surface.

Project means a group of wells in a single operation.

Radioactive waste means any waste which contains radioactive material in concentrations which exceed those listed in 10 CFR part 20, appendix B, table II column 2.

RCRA means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580, as amended by Pub. L. 95–609, 42 U.S.C. 6901 *et seq.).*

SDWA means the Safe Drinking Water Act (Pub. L. 95–523, as amended by Pub. L. 95–190, 42 U.S.C. 300(f) *et seq.).*

Site means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

Sole or principal source aquifer means an aquifer which has been designated by the Administrator pursuant to section 1424 (a) or (e) of the SDWA.

State Director means the chief administrative officer of any State, interstate, or Tribal agency operating an ''approved program,'' or the delegated representative of the State Director. If the responsibility is divided among two or more State, interstate, or Tribal agencies, ''State Director'' means the chief administrative officer of the State, interstate, or Tribal agency authorized to perform the particular procedure or function to which reference is made.

Stratum (plural *strata*) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

Subsidence means the lowering of the natural land surface in response to: Earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in soils; or added load on the land surface.

Surface casing means the first string of well casing to be installed in the well.

Total dissolved solids (''TDS'') means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR part 136.

UIC means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an ''approved program.''

Underground injection means a ''well injection.''

Underground source of drinking water (USDW) means an aquifer or its portion:

(1) (i) Which supplies any public water system; or

(ii) Which contains a sufficient quantity of ground water to supply a public water system; and

(A) Currently supplies drinking water for human consumption; or

(B) Contains fewer than 10,000 mg/l total dissolved solids; and

(2) Which is not an exempted aquifer.

USDW means ''underground source of drinking water.''

Well means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

Well injection means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

Well plug means a watertight and gastight seal installed in a borehole or well to prevent movement of fluids.

Well stimulation means several processes used to clean the well bore, enlarge channels, and increase pore space in the interval to be injected thus making it possible for wastewater to move more readily into the formation, and includes (1) surging, (2) jetting, (3) blasting, (4) acidizing, (5) hydraulic fracturing.

Well monitoring means the measurement, by on-site instruments or laboratory methods, of the quality of water in a well.

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[45 FR 42500, June 24, 1980, as amended at 46 FR 43161, Aug. 27, 1981; 47 FR 4998, Feb. 3, 1982; 48 FR 14293, Apr. 1, 1983; 53 FR 37414, Sept. 26, 1988]

§ 146.4 Criteria for exempted aquifers.

An aquifer or a portion thereof which meets the criteria for an ''underground source of drinking water'' in § 146.3 may be determined under 40 CFR 144.8 to be an ''exempted aquifer'' if it meets the following criteria:

(a) It does not currently serve as a source of drinking water; and

(b) It cannot now and will not in the future serve as a source of drinking water because:

(1) It is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated by a permit applicant as part of a permit application for a Class II or III operation to contain minerals or hydrocarbons that considering their quantity and location are expected to be commercially producible.

(2) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical;

(3) It is so contaminated that it would be economically ot technologically impractical to render that water fit for human consumption; or

(4) It is located over a Class III well mining area subject to subsidence or catastrophic collapse; or

(c) The total dissolved solids content of the ground water is more than 3,000 and less than 10,000 mg/l and it is not reasonably expected to supply a public water system.

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[45 FR 42500, June 24, 1980, as amended at 47 FR 4998, Feb. 3, 1982; 48 FR 14293, Apr. 1, 1983]

§ 146.5 Classification of injection wells.

Injection wells are classified as follows:

(a) *Class I.* (1) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one quarter (¼) mile of the well bore, an underground source of drinking water.

(2) Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water.

(b) *Class II.* Wells which inject fluids:

(1) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

(2) For enhanced recovery of oil or natural gas; and

(3) For storage of hydrocarbons which are liquid at standard temperature and pressure.

(c) *Class III.* Wells which inject for extraction of minerals including:

(1) Mining of sulfur by the Frasch process;

(2) In situ production of uranium or other metals. This category includes only in-situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V.

(3) Solution mining of salts or potash.

(d) *Class IV.* (1) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which within one quarter (¼) mile of the well contains an underground source of drinking water.

(2) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one quarter (¼) mile of the well contains an underground source of drinking water.

(3) Wells used by generators of hazardous waste or owners or operators of hazardous waste man-

agement facilities to dispose of hazardous waste, which cannot be classified under § 146.05(a)(1) or § 146.05(d) (1) and (2) (e.g., wells used to dispose of hazardous wastes into or above a formation which contains an aquifer which has been exempted pursuant to § 146.04).

(e) *Class V.* Injection wells not included in Class I, II, III, or IV. Class V wells include:

(1) Air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump;

(2) Cesspools including multiple dwelling, community or regional cesspools, or other devices that receive wastes which have an open bottom and sometimes have perforated sides. The UIC requirements do not apply to single family residential cesspools nor to non-residential cesspools which receive solely sanitary wastes and have the capacity to serve fewer than 20 persons a day.

(3) Cooling water return flow wells used to inject water previously used for cooling;

(4) Drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation;

(5) Dry wells used for the injection of wastes into a subsurface formation;

(6) Recharge wells used to replenish the water in an aquifer;

(7) Salt water intrusion barrier wells used to inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;

(8) Sand backfill and other backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines whether what is injected is a radioactive waste or not.

(9) Septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank. The UIC requirements do not apply to single family residential septic system wells, nor to non-residential septic system wells which are used solely for the disposal of sanitary waste and have the capacity to serve fewer than 20 persons a day.

(10) Subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

(11) Radioactive waste disposal wells other than Class IV;

(12) Injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electric power.

(13) Wells used for solution mining of conventional mines such as stopes leaching;

(14) Wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts;

(15) Injection wells used in experimental technologies.

(16) Injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale.

[45 FR 42500, June 24, 1980, as amended at 46 FR 43161, Aug. 27, 1981; 47 FR 4999, Feb. 3, 1982]

§ 146.6 Area of review.

The area of review for each injection well or each field, project or area of the State shall be determined according to either paragraph (a) or (b) of this section. The Director may solicit input from the owners or operators of injection wells within the State as to which method is most appropriate for each geographic area or field.

(a) *Zone of endangering influence.* (1) The zone of endangering influence shall be:

(i) In the case of application(s) for well permit(s) under § 122.38 that area the radius of which is the lateral distance in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into an underground source of drinking water; or

(ii) In the case of an application for an area permit under § 122.39, the project area plus a circumscribing area the width of which is the lateral distance from the perimeter of the project area, in which the pressures in the injection zone may cause the migration of the injection and/or formation fluid into an underground source of drinking water.

(2) Computation of the zone of endangering influence may be based upon the parameters listed below and should be calculated for an injection time period equal to the expected life of the injection well or pattern. The following modified Theis equation illustrates one form which the mathematical model may take.

$$r = \left(\frac{2.25KHt}{S10^{X}} \right)^{1/2}$$

where:

$$X = \frac{4\pi KH(h_w - h_{bo} \times S_p G_b)}{2.3Q}$$

r=Radius of endangering influence from injection well (length)
k=Hydraulic conductivity of the injection zone (length/time)
H=Thickness of the injection zone (length)
t=Time of injection (time)
S=Storage coefficient (dimensionless)
Q=Injection rate (volume/time)

h_{bo}=Observed original hydrostatic head of injection zone (length) measured from the base of the lowermost underground source of drinking water

h_w=Hydrostatic head of underground source of drinking water (length) measured from the base of the lowest underground source of drinking water

S_pG_b=Specific gravity of fluid in the injection zone (dimensionless)

π=3.142 (dimensionless)

The above equation is based on the following assumptions:

(i) The injection zone is homogenous and isotropic;

(ii) The injection zone has infinite area extent;

(iii) The injection well penetrates the entire thickness of the injection zone;

(iv) The well diameter is infinitesimal compared to ''r'' when injection time is longer than a few minutes; and

(v) The emplacement of fluid into the injection zone creates instantaneous increase in pressure.

(b) *Fixed radius.* (1) In the case of application(s) for well permit(s) under § 122.38 a fixed radius around the well of not less than one-fourth (¼) mile may be used.

(2) In the case of an application for an area permit under § 122.39 a fixed width of not less than one-fourth (¼) mile for the circumscribing area may be used.

In determining the fixed radius, the following factors shall be taken into consideration: Chemistry of injected and formation fluids; hydrogeology; population and ground-water use and dependence; and historical practices in the area.

(c) If the area of review is determined by a mathematical model pursuant to paragraph (a) of this section, the permissible radius is the result of such calculation even if it is less than one-fourth (¼) mile.

[45 FR 42500, June 24, 1980, as amended at 46 FR 43161, Aug. 27, 1981; 47 FR 4999, Feb. 3, 1982]

§ 146.7 Corrective action.

In determining the adequacy of corrective action proposed by the applicant under 40 CFR 144.55 and in determining the additional steps needed to prevent fluid movement into underground sources of drinking water, the following criteria and factors shall be considered by the Director:

(a) Nature and volume of injected fluid;

(b) Nature of native fluids or by-products of injection;

(c) Potentially affected population;

(d) Geology;

(e) Hydrology;

(f) History of the injection operation;

(g) Completion and plugging records;

(h) Abandonment procedures in effect at the time the well was abandoned; and

(i) Hydraulic connections with underground sources of drinking water.

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[45 FR 42500, June 24, 1980, as amended at 46 FR 43162, Aug. 27, 1981; 48 FR 14293, Apr. 1, 1983]

§ 146.8 Mechanical integrity.

(a) An injection well has mechanical integrity if:

(1) There is no significant leak in the casing, tubing or packer; and

(2) There is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore.

(b) One of the following methods must be used to evaluate the absence of significant leaks under paragraph (a)(1) of this section:

(1) Following an initial pressure test, monitoring of the tubing-casing annulus pressure with sufficient frequency to be representative, as determined by the Director, while maintaining an annulus pressure different from atmospheric pressure measured at the surface;

(2) Pressure test with liquid or gas; or

(3) Records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate for the following Class II enhanced recovery wells:

(i) Existing wells completed without a packer provided that a pressure test has been performed and the data is available and provided further that one pressure test shall be performed at a time when the well is shut down and if the running of such a test will not cause further loss of significant amounts of oil or gas; or

(ii) Existing wells constructed without a long string casing, but with surface casing which terminates at the base of fresh water provided that local geological and hydrological features allow such construction and provided further that the annular space shall be visually inspected. For these wells, the Director shall prescribe a monitoring program which will verify the absence of significant fluid movement from the injection zone into an USDW.

(c) One of the following methods must be used to determine the absence of significant fluid movement under paragraph (a)(2) of this section:

(1) The results of a temperature or noise log; or

(2) For Class II only, cementing records demonstrating the presence of adequate cement to prevent such migration; or

(3) For Class III wells where the nature of the casing precludes the use of the logging techniques prescribed at paragraph (c)(1) of this section, cementing records demonstrating the presence of adequate cement to prevent such migration;

(4) For Class III wells where the Director elects to rely on cementing records to demonstrate the absence of significant fluid movement, the monitoring program prescribed by § 146.33(b) shall be designed to verify the absence of significant fluid movement.

(d) The Director may allow the use of a test to demonstrate mechanical integrity other than those listed in paragraphs (b) and (c)(2) of this section with the written approval of the Administrator. To obtain approval, the Director shall submit a written request to the Administrator, which shall set forth the proposed test and all technical data supporting its use. The Administrator shall approve the request if it will reliably demonstrate the mechanical integrity of wells for which its use is proposed. Any alternate method approved by the Administrator shall be published in the FEDERAL REGISTER and may be used in all States unless its use is restricted at the time of approval by the Administrator.

(e) In conducting and evaluating the tests enumerated in this section or others to be allowed by the Director, the owner or operator and the Director shall apply methods and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Director, he shall include a description of the test(s) and the method(s) used. In making his/her evaluation, the Director shall review monitoring and other test data submitted since the previous evaluation.

(f) The Director may require additional or alternative tests if the results presented by the owner or operator under § 146.8(e) are not satisfactory to the Director to demonstrate that there is no movement of fluid into or between USDWs resulting from the injection activity.

[45 FR 42500, June 24, 1980, as amended at 46 FR 43162, Aug. 27, 1981; 47 FR 4999, Feb. 3, 1982; 58 FR 63898, Dec. 3, 1993]

§ 146.9 Criteria for establishing permitting priorities.

In determining priorities for setting times for owners or operators to submit applications for authorization to inject under the procedures of § 144.31 (a), (c), (g) or § 144.22(f), the Director shall base these priorities upon consideration of the following factors:

(a) Injection wells known or suspected to be contaminating underground sources of drinking water;

(b) Injection wells known to be injecting fluids containing hazardous contaminants;

(c) Likelihood of contamination of underground sources of drinking water;

(d) Potentially affected population;

(e) Injection wells violating existing State requirements;

(f) Coordination with the issuance of permits required by other State or Federal permit programs;

(g) Age and depth of the injection well; and

(h) Expiration dates of existing State permits, if any.

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[45 FR 42500, June 24, 1980, as amended at 48 FR 14293, Apr. 1, 1983]

§ 146.10 Plugging and abandoning Class I–III wells.

(a) Prior to abandoning Class I to III wells the well shall be plugged with cement in a manner which will not allow the movement of fluids either into or between underground sources of drinking water. The Director may allow Class III wells to use other plugging materials if he is satisfied that such materials will prevent movement of fluids into or between underground sources of drinking water.

(b) Placement of the cement plugs shall be accomplished by one of the following:

(1) The Balance method;

(2) The Dump Bailer method;

(3) The Two-Plug method; or

(4) An alternative method approved by the Director, which will reliably provide a comparable level of protection to underground sources of drinking water.

(c) The well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the Director, prior to the placement of the cement plug(s).

(d) The plugging and abandonment plan required in 40 CFR 144.52(a)(6) and 144.51(n) shall, in the case of a Class III project which underlies or is in an aquifer which has been exempted under 40 CFR 146.04, also demonstrate adequate protection of USDWs. The Director shall prescribe aquifer cleanup and monitoring where he deems it necessary and feasible to insure adequate protection of USDWs.

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[45 FR 42500, June 24, 1980, as amended at 47 FR 5000, Feb. 3, 1982; 48 FR 14293, Apr. 1, 1983]

Subpart B—Criteria and Standards Applicable to Class I Wells

§ 146.11 Criteria and standards applicable to Class I nonhazardous wells.

This subpart establishes criteria and standards for underground injection control programs to regulate Class I nonhazardous wells.

[53 FR 28148, July 26, 1988]

§ 146.12 Construction requirements.

(a) All Class I wells shall be sited in such a fashion that they inject into a formation which is beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water.

(b) All Class I wells shall be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

(1) Depth to the injection zone;

(2) Injection pressure, external pressure, internal pressure, and axial loading;

(3) Hole size;

(4) Size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

(5) Corrosiveness of injected fluid, formation fluids, and temperatures;

(6) Lithology of injection and confining intervals; and

(7) Type or grade of cement.

(c) All Class I injection wells, except those municipal wells injecting non-corrosive wastes, shall inject fluids through tubing with a packer set immediately above the injection zone, or tubing with an approved fluid seal as an alternative. The tubing, packer, and fluid seal shall be designed for the expected service.

(1) The use of other alternatives to a packer may be allowed with the written approval of the Director. To obtain approval, the operator shall submit a written request to the Director, which shall set forth the proposed alternative and all technical data supporting its use. The Director shall approve the request if the alternative method will reliably provide a comparable level of protection to underground sources of drinking water. The Director may approve an alternative method solely for an individual well or for general use.

(2) In determining and specifying requirements for tubing, packer, or alternatives the following factors shall be considered:

(i) Depth of setting;

(ii) Characteristics of injection fluid (chemical content, corrosiveness, and density);

(iii) Injection pressure;

(iv) Annular pressure;

(v) Rate, temperature and volume of injected fluid; and

(vi) Size of casing.

(d) Appropriate logs and other tests shall be conducted during the drilling and construction of new Class I wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. At a minimum, such logs and tests shall include:

(1) Deviation checks on all holes constructed by first drilling a pilot hole, and then enlarging the pilot hole by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

(2) Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information, that may arise from time to time as the construction of the well progresses. In determining which logs and tests shall be required, the following logs shall be considered for use in the following situations:

(i) For surface casing intended to protect underground sources of drinking water:

(A) Resistivity, spontaneous potential, and caliper logs before the casing is installed; and

(B) A cement bond, temperature, or density log after the casing is set and cemented.

(ii) For intermediate and long strings of casing intended to facilitate injection:

(A) Resistivity, spontaneous potential, porosity, and gamma ray logs before the casing is installed;

(B) Fracture finder logs; and

(C) A cement bond, temperature, or density log after the casing is set and cemented.

(e) At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class I wells:

(1) Fluid pressure;

(2) Temperature;

(3) Fracture pressure;

(4) Other physical and chemical characteristics of the injection matrix; and

(5) Physical and chemical characteristics of the formation fluids.

[45 FR 42500, June 24, 1980, as amended at 46 FR 43162, Aug. 27, 1981]

§ 146.13 Operating, monitoring and reporting requirements.

(a) *Operating requirements.* Operating requirements shall at a minimum, specify that:

(1) Except during stimulation injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case shall injection pressure initiate fractures in the confining zone or cause the movement of injection or formation fluids into an underground source of drinking water.

(2) Injection between the outermost casing protecting underground sources of drinking water and the well bore is prohibited.

(3) Unless an alternative to a packer has been approved under § 146.12(c), the annulus between the tubing and the long string of casings shall be filled with a fluid approved by the Director and a pressure, also approved by the Director, shall be maintained on the annulus.

(b) *Monitoring requirements.* Monitoring requirements shall, at a minimum, include:

(1) The analysis of the injected fluids with sufficient frequency to yield representative data of their characteristics;

(2) Installation and use of continuous recording devices to monitor injection pressure, flow rate and volume, and the pressure on the annulus between the tubing and the long string of casing;

(3) A demonstration of mechanical integrity pursuant to § 146.8 at least once every five years during the life of the well; and

(4) The type, number and location of wells within the area of review to be used to monitor any migration of fluids into and pressure in the underground sources of drinking water, the parameters to be measured and the frequency of monitoring.

(c) *Reporting requirements.* Reporting requirements shall, at a minimum, include:

(1) Quarterly reports to the Director on:

(i) The physical, chemical and other relevant characteristics of injection fluids;

(ii) Monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure; and

(iii) The results of monitoring prescribed under paragraph (b)(4) of this section.

(2) Reporting the results, with the first quarterly report after the completion, of:

(i) Periodic tests of mechanical integrity;

(ii) Any other test of the injection well conducted by the permittee if required by the Director; and

(iii) Any well work over.

(d) *Ambient monitoring.* (1) Based on a site-specific assessment of the potential for fluid movement from the well or injection zone and on the potential value of monitoring wells to detect such movement, the Director shall require the owner or operator to develop a monitoring program. At a minimum, the Director shall require monitoring of the pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

(2) When prescribing a monitoring system the Director may also require:

(i) Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the Director;

(ii) The use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the Director, or to provide other site specific data;

(iii) Periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

(iv) Periodic monitoring of the ground water quality in the lowermost USDW; and

(v) Any additional monitoring necessary to determine whether fluids are moving into or between USDWs.

[45 FR 42500, June 24, 1980, as amended at 46 FR 43162, Aug. 27, 1981; 47 FR 32129, July 26, 1982; 53 FR 28148, July 26, 1988]

§ 146.14 Information to be considered by the Director.

This section sets forth the information which must be considered by the Director in authorizing Class I wells. For an existing or converted new Class I well the Director may rely on the existing permit file for those items of information listed below which are current and accurate in the file. For a newly drilled Class I well, the Director shall require the submission of all the information listed below. For both existing and new Class I wells certain maps, cross-sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current, readily available to the Director (for example, in the permitting agency's files) and sufficiently identified to be retrieved. In cases where EPA issues the permit all the information in this section must be submitted to the Administrator.

(a) Prior to the issuance of a permit for an existing Class I well to operate or the construction

or conversion of a new Class I well the Director shall consider the following:

(1) Information required in 40 CFR 144.31 and 144.31(g);

(2) A map showing the injection well(s) for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all producing wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;

(3) A tabulation of data on all wells within the area of review which penetrate into the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the Director may require;

(4) Maps and cross sections indicating the general vertical and lateral limits of all underground sources of drinking water within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each underground source of drinking water which may be affected by the proposed injection;

(5) Maps and cross sections detailing the geologic structure of the local area;

(6) Generalized maps and cross sections illustrating the regional geologic setting;

(7) Proposed operating data:

(i) Average and maximum daily rate and volume of the fluid to be injected;

(ii) Average and maximum injection pressure; and

(iii) Source and an analysis of the chemical, physical, radiological and biological characteristics of injection fluids;

(8) Proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the receiving formation;

(9) Proposed stimulation program;

(10) Proposed injection procedure;

(11) Schematic or other appropriate drawings of the surface and subsurface construction details of the well.

(12) Contingency plans to cope with all shut-ins or well failures so as to prevent migration of fluids into any underground source of drinking water;

(13) Plans (including maps) for meeting the monitoring requirements in § 146.13(b);

(14) For wells within the area of review which penetrate the injection zone but are not properly completed or plugged, the corrective action proposed to be taken under 40 CFR 144.55;

(15) Construction procedures including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program; and

(16) A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well as required by 40 CFR 122.42(g).

(b) Prior to granting approval for the operation of a Class I well the Director shall consider the following information:

(1) All available logging and testing program data on the well;

(2) A demonstration of mechanical integrity pursuant to § 146.8;

(3) The anticipated maximum pressure and flow rate at which the permittee will operate;

(4) The results of the formation testing program;

(5) The actual injection procedure;

(6) The compatibility of injected waste with fluids in the injection zone and minerals in both the injection zone and the confining zone; and

(7) The status of corrective action on defective wells in the area of review.

(c) Prior to granting approval for the plugging and abandonment of a Class I well the Director shall consider the following information:

(1) The type and number of plugs to be used;

(2) The placement of each plug including the elevation of the top and bottom;

(3) The type and grade and quantity of cement to be used;

(4) The method for placement of the plugs; and

(5) The procedure to be used to meet the requirement of § 146.10(c).

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[45 FR 42500, June 24, 1980, as amended at 46 FR 43162, Aug. 27, 1981; 48 FR 14293, Apr. 1, 1983]

Subpart C—Criteria and Standards Applicable to Class II Wells

§ 146.21 Applicability.

This subpart establishes criteria and standards for underground injection control programs to regulate Class II wells.

§ 146.22 Construction requirements.

(a) All new Class II wells shall be sited in such a fashion that they inject into a formation which is separated from any USDW by a confining zone that is free of known open faults or fractures within the area of review.

(b)(1) All Class II injection wells shall be cased and cemented to prevent movement of fluids into or between underground sources of drinking water. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

(i) Depth to the injection zone;

(ii) Depth to the bottom of all USDWs; and

(iii) Estimated maximum and average injection pressures;

(2) In addition the Director may consider information on:

(i) Nature of formation fluids;

(ii) Lithology of injection and confining zones;

(iii) External pressure, internal pressure, and axial loading;

(iv) Hole size;

(v) Size and grade of all casing strings; and

(vi) Class of cement.

(c) The requirements in paragraph (b) of this section need not apply to existing or newly converted Class II wells located in existing fields if:

(1) Regulatory controls for casing and cementing existed for those wells at the time of drilling and those wells are in compliance with those controls; and

(2) Well injection will not result in the movement of fluids into an underground source of drinking water so as to create a significant risk to the health of persons.

(d) The requirements in paragraph (b) of this section need not apply to newly drilled wells in existing fields if;

(1) They meet the requirements of the State for casing and cementing applicable to that field at the time of submission of the State program to the Administrator; and

(2) Well injection will not result in the movement of fluids into an underground source of drinking water so as to create a significant risk to the health of persons.

(e) Where a State did not have regulatory controls for casing and cementing prior to the time of the submission of the State program to the Administrator, the Director need not apply the casing and cementing requirements in paragraph (b) of this section if he submits as a part of his application for primacy, an appropriate plan for casing and cementing of existing, newly converted, and newly drilled wells in existing fields, and the Administrator approves the plan.

(f) Appropriate logs and other tests shall be conducted during the drilling and construction of new Class II wells. A descriptive report interpreting the results of that portion of those logs and tests which specifically relate to (1) an USDW and the confining zone adjacent to it, and (2) the injection and adjacent formations shall be prepared by a knowledgeable log analyst and submitted to the director. At a minimum, these logs and tests shall include:

(1) Deviation checks on all holes constructed by first drilling a pilot hole and then enlarging the pilot hole, by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling.

(2) Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses. In determining which logs and tests shall be required the following shall be considered by the Director in setting logging and testing requirements:

(i) For surface casing intended to protect underground sources of drinking water in areas where the lithology has not been determined:

(A) Electric and caliper logs before casing is installed; and

(B) A cement bond, temperature, or density log after the casing is set and cemented.

(ii) for intermediate and long strings of casing intended to facilitate injection:

(A) Electric porosity and gamma ray logs before the casing is installed;

(B) Fracture finder logs; and

(C) A cement bond, temperature, or density log after the casing is set and cemented.

(g) At a minimum, the following information concerning the injection formation shall be determined or calculated for new Class II wells or projects:

(1) Fluid pressure;

(2) Estimated fracture pressure;

(3) Physical and chemical characteristics of the injection zone.

[45 FR 42500, June 24, 1980, as amended at 46 FR 43162, Aug. 27, 1981; 47 FR 5000, Feb. 3, 1982]

§ 146.23 Operating, monitoring, and reporting requirements.

(a) *Operating requirements.* Operating requirements shall, at a minimum, specify that:

(1) Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure during injection does not initiate new fractures or propagate existing fractures in the confining zone adjacent to the USDWs. In no case shall injection pressure cause the movement of injection or formation fluids into an underground source of drinking water

(2) Injection between the outermost casing protecting underground sources of drinking water and the well bore shall be prohibited.

(b) *Monitoring requirements.* Monitoring requirements shall, at a minimum, include:

(1) Monitoring of the nature of injected fluids at time intervals sufficiently frequent to yield data representative of their characteristics;

(2) Observation of injection pressure, flow rate, and cumulative volume at least with the following frequencies:

(i) Weekly for produced fluid disposal operations;

(ii) Monthly for enhanced recovery operations;

(iii) Daily during the injection of liquid hydrocarbons and injection for withdrawal of stored hydrocarbons; and

(iv) Daily during the injection phase of cyclic steam operations

And recording of one observation of injection pressure, flow rate and cumulative volume at reasonable intervals no greater than 30 days.

(3) A demonstration of mechanical integrity pursuant to § 146.8 at least once every five year during the life of the injection well;

(4) Maintenance of the results of all monitoring until the next permit review (see 40 CFR 144.52(a)(5)); and

(5) Hydrocarbon storage and enhanced recovery may be monitored on a field or project basis rather than on an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

(c) *Reporting requirements.* (1) Reporting requirements shall at a minimum include an annual report to the Director summarizing the results of monitoring required under paragraph (b) of this section. Such summary shall include monthly records of injected fluids, and any major changes in characteristics or sources of injected fluid. Previously submitted information may be included by reference.

(2) Owners or operators of hydrocarbon storage and enhanced recovery projects may report on a field or project basis rather than an individual well basis where manifold monitoring is used.

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act; 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[45 FR 42500, June 24, 1980, as amended at 46 FR 43162, Aug. 27, 1981; 47 FR 5000, Feb. 3, 1982; 48 FR 14293, Apr. 1, 1983; 48 FR 31404, July 8, 1983]

§ 146.24 Information to be considered by the Director.

This section sets forth the information which must be considered by the Director in authorizing Class II wells. Certain maps, cross-sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Director (for example, in the permitting agency's files) and sufficiently identified to be retrieved. In cases where EPA issues the permit, all the information in this section is to be submitted to the Administrator.

(a) Prior to the issuance of a permit for an existing Class II well to operate or the construction or conversion of a new Class II well the Director shall consider the following:

(1) Information required in 40 CFR 144.31 and 144.31(g);

(2) A map showing the injection well or project area for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, abandoned wells, dry holes, and water wells. The map may also show surface bodies of waters, mines (surface and subsurface), quarries and other pertinent surface features including residences and roads, and faults if known or suspended. Only information of public record and pertinent information known to the applicant is required to be included on this map. This requirement does not apply to existing Class II wells; and

(3) A tabulation of data reasonably available from public records or otherwise known to the applicant on all wells within the area of review included on the map required under paragraph (a)(2) of this section which penetrate the proposed injection zone or, in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review which penetrate formations affected by the increase in pressure. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and complete, and any additional information the Director may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction the Director may elect to only require data on a representative number of wells. This requirement does not apply to existing Class II wells.

(4) Proposed operating data:

(i) Average and maximum daily rate and volume of fluids to be injected.

(ii) Average and maximum injection pressure; and

(iii) Source and an appropriate analysis of the chemical and physical characteristics of the injection fluid.

(5) Appropriate geological data on the injection zone and confining zone including lithologic description, geological name, thickness and depth;

(6) Geologic name and depth to bottom of all underground sources of drinking water which may be affected by the injection;

(7) Schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(8) In the case of new injection wells the corrective action proposed to be taken by the applicant under 40 CFR 122.44;

(9) A certificate that the applicant has assured through a performance bond or other appropriate means, the resources necessary to close plug or abandon the well as required by 40 CFR 122.42(g);

(b) In addition the Director may consider the following:

(1) Proposed formation testing program to obtain the information required by § 146.22(g);

(2) Proposed stimulation program;

(3) Proposed injection procedure;

(4) Proposed contingency plans, if any, to cope with well failures so as to prevent migration of contaminating fluids into an underground source of drinking water;

(5) Plans for meeting the monitoring requirements of § 146.23(b).

(c) Prior to granting approval for the operation of a Class II well the Director shall consider the following information:

(1) All available logging and testing program data on the well;

(2) A demonstration of mechanical integrity pursuant to § 146.8;

(3) The anticipated maximum pressure and flow rate at which the permittee will operate.

(4) The results of the formation testing program;

(5) The actual injection procedure; and

(6) For new wells the status of corrective action on defective wells in the area of review.

(d) Prior to granting approval for the plugging and abandonment of a Class II well the Director shall consider the following information:

(1) The type, and number of plugs to be used;

(2) The placement of each plug including the elevation of top and bottom;

(3) The type, grade, and quantity of cement to be used;

(4) The method of placement of the plugs; and

(5) The procedure to be used to meet the requirements of § 146.10(c).

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[45 FR 42500, June 24, 1980, as amended at 46 FR 43162, Aug. 27, 1981; 47 FR 5000, Feb. 3, 1982; 48 FR 14293, Apr. 1, 1983]

Subpart D—Criteria and Standards Applicable to Class III Wells

§ 146.31 Applicability.

This subpart establishes criteria and standards for underground injection control programs to regulate Class III wells.

§ 146.32 Construction requirements.

(a) All new Class III wells shall be cased and cemented to prevent the migration of fluids into or between underground sources of drinking water. The Director may waive the cementing requirement for new wells in existing projects or portions of existing projects where he has substantial evidence that no contamination of underground sources of drinking water would result. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

(1) Depth to the injection zone;

(2) Injection pressure, external pressure, internal pressure, axial loading, etc.;

(3) Hole size;

(4) Size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

(5) Corrosiveness of injected fluids and formation fluids;

(6) Lithology of injection and confining zones; and

(7) Type and grade of cement.

(b) Appropriate logs and other tests shall be conducted during the drilling and construction of new Class III wells. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. The logs and tests appropriate to each type of Class III well shall be determined based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site and the need for additional information that may arise from time to time as the construction of the well progresses. Deviation checks shall be conducted on all holes where pilot holes and reaming are used, unless the hole will be cased and cemented by circulating cement to the surface. Where deviation checks are necessary they shall be conducted at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drillings.

(c) Where the injection zone is a formation which is naturally water-bearing the following information concerning the injection zone shall be determined or calculated for new Class III wells or projects:

(1) Fluid pressure;

(2) Fracture pressure; and

(3) Physical and chemical characteristics of the formation fluids.

(d) Where the injection formation is not a water-bearing formation, the information in paragraph (c)(2) of this section must be submitted.

(e) Where injection is into a formation which contains water with less than 10,000 mg/l TDS monitoring wells shall be completed into the injection zone and into any underground sources of drinking water above the injection zone which could be affected by the mining operation. These wells shall be located in such a fashion as to detect any excursion of injection fluids, process by-products, or formation fluids outside the mining area or zone. If the operation may be affected by subsidence or catastrophic collapse the monitoring wells shall be located so that they will not be physically affected.

(f) Where injection is into a formation which does not contain water with less than 10,000 mg/l TDS, no monitoring wells are necessary in the injection stratum.

(g) Where the injection wells penetrate an USDW in an area subject to subsidence or catastrophic collapse an adequate number of monitoring wells shall be completed into the USDW to detect any movement of injected fluids, process by-products or formation fluids into the USDW. The monitoring wells shall be located outside the physical influence of the subsidence or catastrophic collapse.

(h) In determining the number, location, construction and frequency of monitoring of the monitoring wells the following criteria shall be considered:

(1) The population relying on the USDW affected or potentially affected by the injection operation;

(2) The proximity of the injection operation to points of withdrawal of drinking water;

(3) The local geology and hydrology;

(4) The operating pressures and whether a negative pressure gradient is being maintained;

(5) The nature and volume of the injected fluid, the formation water, and the process by-products; and

(6) The injection well density.

[45 FR 42500, June 24, 1980, as amended at 46 FR 43163, Aug. 27, 1981; 47 FR 5000, Feb. 3, 1982]

§ 146.33 Operating, monitoring, and reporting requirements.

(a) *Operating requirements.* Operating requirements prescribed shall, at a minimum, specify that:

(1) Except during well stimulation injection pressure at the wellhead shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. In no case, shall injection pressure initiate fractures in the confining zone or cause the migration of injection or formation fluids into an underground source of drinking water.

(2) Injection between the outermost casing protecting underground sources of drinking water and the well bore is prohibited.

(b) *Monitoring requirements.* Monitoring requirements shall, at a minimum, specify:

(1) Monitoring of the nature of injected fluids with sufficient frequency to yield representative data on its characteristics. Whenever the injection fluid is modified to the extent that the analysis required by § 146.34(a)(7)(iii) is incorrect or incomplete, a new analysis as required by § 146.34(a)(7)(iii) shall be provided to the Director.

(2) Monitoring of injection pressure and either flow rate or volume semi-monthly, or metering and daily recording of injected and produced fluid volumes as appropriate.

(3) Demonstration of mechanical integrity pursuant to § 146.08 at least once every five years during the life of the well for salt solution mining.

(4) Monitoring of the fluid level in the injection zone semi-monthly, where appropriate and monitoring of the parameters chosen to measure water quality in the monitoring wells required by § 146.32(e), semi-monthly.

(5) Quarterly monitoring of wells required by § 146.32(g).

(6) All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

(c) *Reporting requirements.* Reporting requirements shall, at a minimum, include:

(1) Quarterly reporting to the Director on required monitoring;

(2) Results of mechanical integrity and any other periodic test required by the Director reported with the first regular quarterly report after the completion of the test; and

(3) Monitoring may be reported on a project or field basis rather than individual well basis where manifold monitoring is used.

[45 FR 42500, June 24, 1980, as amended at 46 FR 43163, Aug. 27, 1981; 46 FR 5001, Feb. 3, 1982; 48 FR 31404, July 8, 1983]

§ 146.34 Information to be considered by the Director.

This section sets forth the information which must be considered by the Director in authorizing Class III wells. Certain maps, cross sections, tabulations of wells within the area of review, and other data may be included in the application by reference provided they are current, readily available to the Director (for example, in the permitting agency's files) and sufficiently identified to be retrieved. In cases where EPA issues the permit, all the information in this section must be submitted to the Administrator.

(a) Prior to the issuance of a permit for an existing Class III well or area to operate or the construction of a new Class III well the Director shall consider the following:

(1) Information required in 40 CFR 144.31 and 144.31(g);

(2) A map showing the injection well or project area for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, abandoned wells, dry holes, public water systems and water wells. The map may also show surface bodies of waters, mines (surface and subsurface), quarries and other pertinent surface features including residences and roads, and faults if known or suspected. Only information of public record and pertinent information known to the applicant is required to be included on this map.

(3) A tabulation of data reasonably available from public records or otherwise known to the applicant on wells within the area of review included on the map required under paragraph (a)(2) of this section which penetrate the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and completion, and any additional information the Director may require. In cases where the information would be repetitive and the wells are of similar age, type, and construction the Director may elect to only require data on a representative number of wells.

(4) Maps and cross sections indicating the vertical limits of all underground sources of drinking water within the area of review, their position relative to the injection formation, and the direction of water movement, where known, in every underground source of drinking water which may be affected by the proposed injection:

(5) Maps and cross sections detailing the geologic structure of the local area;

(6) Generalized map and cross sections illustrating the regional geologic setting;

(7) Proposed operating data:

(i) Average and maximum daily rate and volume of fluid to be injected;

(ii) Average and maximum injection pressure; and

(iii) Qualitative analysis and ranges in concentrations of all constituents of injected fluids. The applicant may request Federal confidentiality as specified in 40 CFR part 2. If the information is proprietary an applicant may, in lieu of the ranges in concentrations, choose to submit maximum concentrations which shall not be exceeded. In such a case the applicant shall retain records of the undisclosed concentrations and provide them upon request to the Director as part of any enforcement investigation.

(8) Proposed formation testing program to obtain the information required by § 146.32(c).

(9) Proposed stimulation program;

(10) Proposed injection procedure;

(11) Schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(12) Plans (including maps) for meeting the monitoring requirements of § 146.33(b);

(13) Expected changes in pressure, native fluid displacement, direction of movement of injection fluid;

(14) Contingency plans to cope with all shut-ins or well failures so as to prevent the migration of contaminating fluids into underground sources of drinking water;

(15) A certificate that the applicant has assured, through a performance bond, or other appropriate means, the resources necessary to close, plug, or abandon the well as required by 40 CFR 144.52(a)(7) and

(16) The corrective action proposed to be taken under 40 CFR 144.55.

(b) Prior to granting approval for the operation of a Class III well the Director shall consider the following information:

(1) All available logging and testing data on the well;

(2) A satisfactory demonstration of mechanical integrity for all new wells and for all existing salt solution wells pursuant to § 146.08;

(3) The anticipated maximum pressure and flow rate at which the permittee will operate;

(4) The results of the formation testing program;

(5) The actual injection procedures; and

(6) The status of corrective action on defective wells in the area of review.

(c) Prior to granting approval for the plugging and abandonment of a Class III well the Director shall consider the following information:

(1) The type and number of plugs to be used;

(2) The placement of each plug including the elevation of the top and bottom;

(3) The type, grade, and quantity of cement to be used;

(4) The method of placement of the plugs; and

(5) The procedure to be used to meet the requirements of § 146.10(c).

(Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[45 FR 42500, June 24, 1980, as amended at 46 FR 43163, Aug. 27, 1981; 47 FR 5001, Feb. 3, 1982; 48 FR 14293, Apr. 1, 1983]

Subpart E—Criteria and Standards Applicable to Class IV Injection Wells [Reserved]

Subpart F—Criteria and Standards Applicable to Class V Injection Wells

§ 146.51 Applicability.

This subpart sets forth criteria and standards for underground injection control programs to regulate all injection not regulated in subparts B, C, D, and E.

(a) Generally, wells covered by this subpart inject non-hazardous fluids into or above formations that contain underground sources of drinking water. It includes all wells listed in § 146.5(e) but is not limited to those types of injection wells.

(b) It also includes wells not covered in Class IV that inject radioactive material listed in 10 CFR part 20, appendix B, table II, column 2.

[45 FR 42500, June 24, 1980, as amended at 47 FR 5001, Feb. 3, 1982]

Subpart G—Criteria and Standards Applicable to Class I Hazardous Waste Injection Wells

SOURCE: 53 FR 28148, July 26, 1988, unless otherwise noted.

§ 146.61 Applicability

(a) This subpart establishes criteria and standards for underground injection control programs to regulate Class I hazardous waste injection wells. Unless otherwise noted this subpart supplements the requirements of subpart A and applies instead of subpart B to Class I hazardous waste injection wells.

(b) *Definitions.*

Cone of influence means that area around the well within which increased injection zone pressures caused by injection into the hazardous waste injection well would be sufficient to drive fluids into an underground source of drinking water (USDW).

Existing well means a Class I well which was authorized prior to August 25, 1988, by an approved State program, or an EPA-administered program or a well which has become a Class I well as a result of a change in the definition of the injected waste which would render the waste hazardous under § 261.3 of this part.

Injection interval means that part of the injection zone in which the well is screened, or in which the waste is otherwise directly emplaced.

New well means any Class I hazardous waste injection well which is not an existing well.

Transmissive fault or fracture is a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

§ 146.62 Minimum criteria for siting.

(a) All Class I hazardous waste injection wells shall be sited such that they inject into a formation that is beneath the lowermost formation containing within one quarter mile of the well bore an underground source of drinking water.

(b) The siting of Class I hazardous waste injection wells shall be limited to areas that are geologically suitable. The Director shall determine geologic suitability based upon:

(1) An analysis of the structural and stratigraphic geology, the hydrogeology, and the seismicity of the region;

(2) An analysis of the local geology and hydrogeology of the well site, including, at a minimum, detailed information regarding stratigraphy, structure and rock properties, aquifer hydrodynamics and mineral resources; and

(3) A determination that the geology of the area can be described confidently and that limits of waste fate and transport can be accurately predicted through the use of models.

(c) Class I hazardous waste injection wells shall be sited such that:

(1) The injection zone has sufficient permeability, porosity, thickness and areal extent to prevent migration of fluids into USDWs.

(2) The confining zone:

(i) Is laterally continuous and free of transecting, transmissive faults or fractures over an area sufficient to prevenet the movement of fluids into a USDW; and

(ii) Contains at least one formation of sufficient thickness and with lithologic and stress characteristics capable of preventing vertical propagation of fractures.

(d) The owner or operator shall demonstrate to the satisfaction of the Director that:

(1) The confining zone is separated from the base of the lowermost USDW by at least one sequence of permeable and less permeable strata that will provide an added layer of protection for the USDW in the event of fluid movement in an unlocated borehole or transmissive fault; or

(2) Within the area of review, the piezometric surface of the fluid in the injection zone is less than the piezometric surface of the lowermost USDW, considering density effects, injection pressures and any significant pumping in the overlying USDW; or

(3) There is no USDW present.

(4) The Director may approve a site which does not meet the requirements in paragraphs (d) (1), (2), or (3) of this section if the owner or operator can demonstrate to the Director that because of the geology, nature of the waste, or other considerations, abandoned boreholes or other conduits would not cause endangerment of USDWs.

§ 146.63 Area of review.

For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of § 146.6. The area of review for Class I hazardous waste injection wells shall be a 2-mile radius around the well bore. The Director may specify a larger area of review based on the calculated cone of influence of the well.

§ 146.64 Corrective action for wells in the area of review.

For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of § 144.55 and § 146.07.

(a) The owner or operator of a Class I hazardous waste well shall as part of the permit application submit a plan to the Director outlining the protocol used to:

(1) Identify all wells penetrating the confining zone or injection zone within the area of review; and

(2) Determine whether wells are adequately completed or plugged.

(b) The owner or operator of a Class I hazardous waste well shall identify the location of all wells within the area of review that penetrate the injection zone or the confining zone and shall submit as required in § 146.70(a):

(1) A tabulation of all wells within the area of review that penetrate the injection zone or the confining zone; and

(2) A description of each well or type of well and any records of its plugging or completion.

(c) For wells that the Director determines are improperly plugged, completed, or abandoned, or for which plugging or completion information is unavailable, the applicant shall also submit a plan consisting of such steps or modification as are necessary to prevent movement of fluids into or between USDWs. Where the plan is adequate, the Director shall incorporate it into the permit as a condition. Where the Director's review of an application indicates that the permittee's plan is inadequate (based at a minimum on the factors in paragraph (e) of this section), the Director shall:

(1) Require the applicant to revise the plan;

(2) Prescribe a plan for corrective action as a condition of the permit; or

(3) Deny the application.

(d) Requirements:

(1) Existing injection wells. Any permit issued for an existing Class I hazardous waste injection well requiring corrective action other than pressure limitations shall include a compliance schedule requiring any corrective action accepted or prescribed under paragraph (c) of this section. Any such compliance schedule shall provide for compliance no later than 2 years following issuance of the permit and shall require observance of appropriate pressure limitations under paragraph (d)(3) until all other corrective action measures have been implemented.

(2) New injection wells. No owner or operator of a new Class I hazardous waste injection well may begin injection until all corrective actions required under this section have been taken.

(3) The Director may require pressure limitations in lieu of plugging. If pressure limitations are used in lieu of plugging, the Director shall require as a permit condition that injection pressure be so limited that pressure in the injection zone at the site of any improperly completed or abandoned well within the area of review would not be sufficient to drive fluids into or between USDWs. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation may be made part of a compliance schedule and may be required to be maintained until all other required corrective actions have been implemented.

(e) In determining the adequacy of corrective action proposed by the applicant under paragraph (c) of this section and in determining the additional steps needed to prevent fluid movement into and between USDWs, the following criteria and factors shall be considered by the Director:

(1) Nature and volume of injected fluid;

(2) Nature of native fluids or byproducts of injection;

(3) Geology;

(4) Hydrology;

(5) History of the injection operation;

(6) Completion and plugging records;

(7) Closure procedures in effect at the time the well was closed;

(8) Hydraulic connections with USDWs;

(9) Reliability of the procedures used to identify abandoned wells; and

(10) Any other factors which might affect the movement of fluids into or between USDWs.

§ 146.65 Construction requirements.

(a) *General.* All existing and new Class I hazardous waste injection wells shall be constructed and completed to:

(1) Prevent the movement of fluids into or between USDWs or into any unauthorized zones;

(2) Permit the use of appropriate testing devices and workover tools; and

(3) Permit continuous monitoring of injection tubing and long string casing as required pursuant to §146.67(f).

(b) *Compatibility.* All well materials must be compatible with fluids with which the materials may be expected to come into contact. A well shall be deemed to have compatibility as long as the materials used in the construction of the well meet or exceed standards developed for such materials by the American Petroleum Institute, The American Society for Testing Materials, or comparable standards acceptable to the Director.

(c) *Casing and Cementing of New Wells.* (1) Casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well, including the post-closure care period. The casing and cementing program shall be designed to prevent the movement of fluids into or between USDWs, and to prevent potential leaks of fluids from the well. In determining and specifying casing and cementing requirements, the Director shall consider the following information as required by § 146.70:

(i) Depth to the injection zone;

(ii) Injection pressure, external pressure, internal pressure and axial loading;

(iii) Hole size;

(iv) Size and grade of all casing strings (well thickness, diameter, nominal weight, length, joint specification and construction material);

(v) Corrosiveness of injected fluid, formation fluids and temperature;

(vi) Lithology of injection and confining zones;

(vii) Type or grade of cement; and

(viii) Quantity and chemical composition of the injected fluid.

(2) One surface casing string shall, at a minimum, extend into the confining bed below the lowest formation that contains a USDW and be cemented by circulating cement from the base of the casing to the surface, using a minimum of 120% of the calculated annual volume. The Director may require more than 120% when the geology or other circumstances warrant it.

(3) At least one long string casing, using a sufficient number of centralizers, shall extend to the injection zone and shall be cemented by circulating cement to the surface in one or more stages:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure; and

(ii) In a quantity no less than 120% of the calculated volume necessary to fill the annular space. The Director may require more than 120% when the geology or other circumstances warrant it.

(4) Circulation of cement may be accomplished by staging. The Director may approve an alternative method of cementing in cases where the cement cannot be recirculated to the surface, provided the owner or operator can demonstrate by using logs that the cement is continuous and does not allow fluid movement behind the well bore.

(5) Casings, including any casing connections, must be rated to have sufficient structural strength to withstand, for the design life of the well:

(i) The maximum burst and collapse pressures which may be experienced during the construction, operation and closure of the well; and

(ii) The maximum tensile stress which may be experienced at any point along the length of the casing during the construction, operation, and closure of the well.

(6) At a minimum, cement and cement additivies must be of sufficient quality and quantity to maintain integrity over the design life of the well.

(d) *Tubing and packer.* (1) All Class I hazardous waste injection wells shall inject fluids through tubing with a packer set at a point specified by the Director.

(2) In determining and specifying requirements for tubing and packer, the following factors shall be considered:

(i) Depth of setting;

(ii) Characteristics of injection fluid (chemical content, corrosiveness, temperature and density);

(iii) Injection pressure;

(iv) Annular pressure;

(v) Rate (intermittent or continuous), temperature and volume of injected fluid;

(vi) Size of casing; and

(vii) Tubing tensile, burst, and collapse strengths.

(3) The Director may approve the use of a fluid seal if he determines that the following conditions are met:

(i) The operator demonstrates that the seal will provide a level of protection comparable to a packer;

(ii) The operator demonstrates that the staff is, and will remain, adequately trained to operate and maintain the well and to identify and interpret variations in parameters of concern;

(iii) The permit contains specific limitations on variations in annular pressure and loss of annular fluid;

(iv) The design and construction of the well allows continuous monitoring of the annular pressure and mass balance of annular fluid; and

(v) A secondary system is used to monitor the interface between the annulus fluid and the injection fluid and the permit contains requirements for testing the system every three months and recording the results.

§ 146.66 Logging, sampling, and testing prior to new well operation.

(a) During the drilling and construction of a new Class I hazardous waste injection well, appropriate logs and tests shall be run to determine or verify the depth, thickness, porosity, permeability, and rock type of, and the salinity of any entrained fluids in, all relevant geologic units to assure conformance with performance standards in § 146.65, and to establish accurate baseline data against which future measurements may be compared. A descriptive report interpreting results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director. At a minimum, such logs and tests shall include:

(1) Deviation checks during drilling on all holes constructed by drilling a pilot hole which are enlarged by reaming or another method. Such checks shall be at sufficiently frequent intervals to determine the location of the borehole and to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling; and

(2) Such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses. At a minimum, the following logs shall be required in the following situations:

(i) Upon installation of the surface casing:

(A) Resistivity, spontaneous potential, and caliper logs before the casing is installed; and

(B) A cement bond and variable density log, and a temperature log after the casing is set and cemented.

(ii) Upon installation of the long string casing:

(A) Resistivity, spontaneous potential, porosity, caliper, gamma ray, and fracture finder logs before the casing is installed; and

(B) A cement bond and variable density log, and a temperature log after the casing is set and cemented.

(iii) The Director may allow the use of an alternative to the above logs when an alternative will provide equivalent or better information; and

(3) A mechanical integrity test consisting of:

(i) A pressure test with liquid or gas;

(ii) A radioactive tracer survey;

(iii) A temperature or noise log;

(iv) A casing inspection log, if required by the Director; and

(v) Any other test required by the Director.

(b) Whole cores or sidewall cores of the confining and injection zones and formation fluid samples from the injection zone shall be taken. The Director may accept cores from nearby wells if the owner or operator can demonstrate that core retrieval is not possible and that such cores are representative of conditions at the well. The Director may require the owner or operator to core other formations in the borehole.

(c) The fluid temperature, pH, conductivity, pressure and the static fluid level of the injection zone must be recorded.

(d) At a minimum, the following information concerning the injection and confining zones shall be determined or calculated for Class I hazardous waste injection wells:

(1) Fracture pressure;

(2) Other physical and chemical characteristics of the injection and confining zones; and

(3) Physical and chemical characteristics of the formation fluids in the injection zone.

(e) Upon completion, but prior to operation, the owner or operator shall conduct the following tests to verify hydrogeologic characteristics of the injection zone:

(1) A pump test; or

(2) Injectivity tests.

(f) The Director shall have the opportunity to witness all logging and testing by this Subpart. The owner or operator shall submit a schedule of such activities to the Director 30 days prior to conducting the first test.

§ 146.67 Operating requirements.

(a) Except during stimulation, the owner or operator shall assure that injection pressure at the wellhead does not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. The owner or operator shall assure that the injection pressure does not initiate fractures or propagate existing fractures in the confining zone, nor cause the movement of injection or formation fluids into a USDW.

(b) Injection between the outermost casing protecting USDWs and the well bore is prohibited.

(c) The owner or operator shall maintain an annulus pressure that exceeds the operating injection pressure, unless the Director determines that such a requirement might harm the integrity of the well.

The fluid in the annulus shall be noncorrosive, or shall contain a corrosion inhibitor.

(d) The owner or operator shall maintain mechanical integrity of the injection well at all times.

(e) Permit requirements for owners or operators of hazardous waste wells which inject wastes which have the potential to react with the injection formation to generate gases shall include:

(1) Conditions limiting the temperature, pH or acidity of the injected waste; and

(2) Procedures necessary to assure that pressure imbalances which might cause a backflow or blowout do not occur.

(f) The owner or operator shall install and use continuous recording devices to monitor: the injection pressure; the flow rate, volume, and temperature of injected fluids; and the pressure on the annulus between the tubing and the long string casing, and shall install and use:

(1) Automatic alarm and automatic shut-off systems, designed to sound and shut-in the well when pressures and flow rates or other parameters approved by the Director exceed a range and/or gradient specified in the permit; or

(2) Automatic alarms, designed to sound when the pressures and flow rates or other parameters approved by the Director exceed a rate and/or gradient specified in the permit, in cases where the owner or operator certifies that a trained operator will be on-site at all times when the well is operating.

(g) If an automatic alarm or shutdown is triggered, the owner or operator shall immediately investigate and identify as expeditiously as possible the cause of the alarm or shutoff. If, upon such investigation, the well appears to be lacking mechanical integrity, or if monitoring required under paragraph (f) of this section otherwise indicates that the well may be lacking mechanical integrity, the owner or operator shall:

(1) Cease injection of waste fluids unless authorized by the Director to continue or resume injection.

(2) Take all necessary steps to determine the presence or absence of a leak; and

(3) Notify the Director within 24 hours after the alarm or shutdown.

(h) If a loss of mechanical integrity is discovered pursuant to paragraph (g) of this section or during periodic mechanical integrity testing, the owner or operator shall:

(1) Immediately cease injection of waste fluids;

(2) Take all steps reasonably necessary to determine whether there may have been a release of hazardous wastes or hazardous waste constituents into any unauthorized zone;

(3) Notify the Director within 24 hours after loss of mechanical integrity is discovered;

(4) Notify the Director when injection can be expected to resume; and

(5) Restore and demonstrate mechanical integrity to the satisfaction of the Director prior to resuming injection of waste fluids.

(i) Whenever the owner or operator obtains evidence that there may have been a release of injected wastes into an unauthorized zone:

(1) The owner or operator shall immediately case injection of waste fluids, and:

(i) Notify the Director within 24 hours of obtaining such evidence;

(ii) Take all necessary steps to identify and characterize the extent of any release;

(iii) Comply with any remediation plan specified by the Director;

(iv) Implement any remediation plan approved by the Director; and

(v) Where such release is into a USDW currently serving as a water supply, place a notice in a newspaper of general circulation.

(2) The Director may allow the operator to resume injection prior to completing cleanup action if the owner or operator demonstrates that the injection operation will not endanger USDWs.

(j) The owner or operator shall notify the Director and obtain his approval prior to conducting any well workover.

§ 146.68 Testing and monitoring requirements.

Testing and monitoring requirements shall at a minimum include:

(a) Monitoring of the injected wastes. (1) The owner or operator shall develop and follow an approved written waste analysis plan that describes the procedures to be carried out to obtain a detailed chemical and physical analysis of a representative sample of the waste, including the quality assurance procedures used. At a minimum, the plan shall specify:

(i) The paramenters for which the waste will be analyzed and the rationale for the selection of these parameters;

(ii) The test methods that will be used to test for these parameters; and

(iii) The sampling method that will be used to obtain a representative sample of the waste to be analyzed.

(2) The owner or operator shall repeat the analysis of the injected wastes as described in the waste analysis plan at frequencies specified in the waste analysis plan and when process or operating changes occur that may significantly alter the characteristics of the waste stream.

(3) The owner or operator shall conduct continuous or periodic monitoring of selected parameters as required by the Director.

(4) The owner or operator shall assure that the plan remains accurate and the analyses remain representative.

(b) Hydrogeologic compatibility determination. The owner or operator shall submit information demonstrating to the satisfaction of the Director that the waste stream and its anticipated reaction products will not alter the permeability, thickness or other relevant characteristics of the confining or injection zones such that they would no longer meet the requirements specified in § 146.62.

(c) Compatibility of well materials. (1) The owner or operator shall demonstrate that the waste stream will be compatible with the well materials with which the waste is expected to come into contact, and submit to the Director a description of the methodology used to make that determination. Compatibility for purposes of this requirement is established if contact with injected fluids will not cause the well materials to fail to satisfy any design requirement imposed under § 146.65(b).

(2) The Director shall require continuous corrosion monitoring of the construction materials used in the well for wells injecting corrosive waste, and may require such monitoring for other waste, by:

(i) Placing coupons of the well construction materials in contact with the waste stream; or

(ii) Routing the waste stream through a loop constructed with the material used in the well; or

(iii) Using an alternative method approved by the Director.

(3) If a corrosion monitoring program is required:

(i) The test shall use materials identical to those used in the construction of the well, and such materials must be continuously exposed to the operating pressures and temperatures (measured at the well head) and flow rates of the injection operation; and

(ii) The owner or operator shall monitor the materials for loss of mass, thickness, cracking, pitting and other signs of corrosion on a quarterly basis to ensure that the well components meet the minimum standards for material strength and performance set forth in § 146.65(b).

(d) *Periodic mechanical integrity testing.* In fulfilling the requirements of § 146.8, the owner or operator of a Class I hazardous waste injection well shall conduct the mechanical integrity testing as follows:

(1) The long string casing, injection tube, and annular seal shall be tested by means of an approved pressure test with a liquid or gas annually and whenever there has been a well workover;

(2) The bottom-hole cement shall be tested by means of an approved radioactive tracer survey annually;

(3) An approved temperature, noise, or other approved log shall be run at least once every five years to test for movement of fluid along the borehole. The Director may require such tests whenever the well is worked over;

(4) Casing inspection logs shall be run whenever the owner or operator conducts a workover in which the injection string is pulled, unless the Director waives this requirement due to well construction or other factors which limit the test's reliability, or based upon the satisfactory results of a casing inspection log run within the previous five years. The Director may require that a casing inspection log be run every five years, if he has reason to believe that the integrity of the long string casing of the well may be adversely affected by naturally-occurring or man-made events;

(5) Any other test approved by the Director in accordance with the procedures in § 146.8(d) may also be used.

(e) *Ambient monitoring.* (1) Based on a site-specific assessment of the potential for fluid movement from the well or injection zone, and on the potential value of monitoring wells to detect such movement, the Director shall require the owner or operator to develop a monitoring program. At a minimum, the Director shall require monitoring of the pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

(2) When prescribing a monitoring system the Director may also require:

(i) Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the Director;

(ii) The use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the Director, or to provide other site specific data;

(iii) Periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

(iv) Periodic monitoring of the ground water quality in the lowermost USDW; and

(v) Any additional monitoring necessary to determine whether fluids are moving into or between USDWs.

(f) The Director may require seismicity monitoring when he has reason to believe that the injection activity may have the capacity to cause seismic disturbances.

[53 FR 28148, July 26, 1988, as amended at 57 FR 46294, Oct. 7, 1992]

§ 146.69 Reporting requirements.

Reporting requirements shall, at a minimum, include:

(a) Quarterly reports to the Director containing:

(1) The maximum injection pressure;

(2) A description of any event that exceeds operating parameters for annulus pressure or injection pressure as specified in the permit;

(3) A description of any event which triggers an alarm or shutdown device required pursuant to § 146.67(f) and the response taken;

(4) The total volume of fluid injected;

(5) Any change in the annular fluid volume;

(6) The physical, chemical and other relevant characteristics of injected fluids; and

(7) The results of monitoring prescribed under § 146.68.

(b) Reporting, within 30 days or with the next quarterly report whichever comes later, the results of:

(1) Periodic tests of mechanical integrity;

(2) Any other test of the injection well conducted by the permittee if required by the Director; and

(3) Any well workover.

§ 146.70 Information to be evaluated by the Director.

This section sets forth the information which must be evaluated by the Director in authorizing Class I hazardous waste injection wells. For a new Class I hazardous waste injection well, the owner or operator shall submit all the information listed below as part of the permit application. For an existing or converted Class I hazardous waste injection well, the owner or operator shall submit all information listed below as part of the permit application except for those items of information which are current, accurate, and available in the existing permit file. For both existing and new Class I hazardous waste injection wells, certain maps, cross-sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current and readily available to the Director (for example, in the permitting agency's files) and sufficiently identifiable to be retrieved. In cases where EPA issues the permit, all the information in this section must be submitted to the Administrator or his designee.

(a) Prior to the issuance of a permit for an existing Class I hazardous waste injection well to operate or the construction or conversion of a new Class I hazardous waste injection well, the Director shall review the following to assure that the requirements of this part and part 144 are met:

(1) Information required in § 144.31;

(2) A map showing the injection well for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features, including residences and roads. The map should also show faults, if known or suspected;

(3) A tabulation of all wells within the area of review which penetrate the proposed injection zone or confining zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion and any additional information the Director may require;

(4) The protocol followed to identify, locate and ascertain the condition of abandoned wells within the area of review which penetrate the injection or the confining zones;

(5) Maps and cross-sections indicating the general vertical and lateral limits of all underground sources of drinking water within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each underground source of drinking water which may be affected by the proposed injection;

(6) Maps and cross-sections detailing the geologic structure of the local area;

(7) Maps and cross-sections illustrating the regional geologic setting;

(8) Proposed operating data;

(i) Average and maximum daily rate and volume of the fluid to be injected; and

(ii) Average and maximum injection pressure;

(9) Proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the injection formation and the confining zone;

(10) Proposed stimulation program;

(11) Proposed injection procedure;

(12) Schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(13) Contingency plans to cope with all shut-ins or well failures so as to prevent migration of fluids into any USDW;

(14) Plans (including maps) for meeting monitoring requirements of § 146.68;

(15) For wells within the area of review which penetrate the injection zone or the confining zone but are not properly completed or plugged, the corrective action to be taken under § 146.64;

(16) Construction procedures including a cementing and casing program, well materials specifications and their life expectancy, logging procedures, deviation checks, and a drilling, testing and coring program; and

(17) A demonstration pursuant to part 144, subpart F, that the applicant has the resources necessary to close, plug or abandon the well and for post-closure care.

(b) Prior to the Director's granting approval for the operation of a Class I hazardous waste injection well, the owner or operator shall submit and the Director shall review the following information, which shall be included in the completion report:

(1) All available logging and testing program data on the well;

(2) A demonstration of mechanical integrity pursuant to § 146.68;

(3) The anticipated maximum pressure and flow rate at which the permittee will operate;

(4) The results of the injection zone and confining zone testing program as required in § 146.70(a)(9);

(5) The actual injection procedure;

(6) The compatibility of injected waste with fluids in the injection zone and minerals in both the injection zone and the confining zone and with the materials used to construct the well;

(7) The calculated area of review based on data obtained during logging and testing of the well and the formation, and where necessary revisions to the information submitted under § 146.70(a) (2) and (3).

(8) The status of corrective action on wells identified in § 146.70(a)(15).

(c) Prior to granting approval for the plugging and abandonment (i.e., closure) of a Class I hazardous waste injection well, the Director shall review the information required in §§ 146.71(a)(4) and 146.72(a).

(d) Any permit issued for a Class I hazardous waste injection well for disposal on the premises where the waste is generated shall contain a certification by the owner or operator that:

(1) The generator of the hazardous waste has a program to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) Injection of the waste is that practicable method of disposal currently available to the generator which minimizes the present and future threat to human health and the environment.

§ 146.71 Closure.

(a) *Closure Plan.* The owner or operator of a Class I hazardous waste injection well shall prepare, maintain, and comply with a plan for closure of the well that meets the requirements of paragraph (d) of this section and is acceptable to the Director. The obligation to implement the closure plan survives the termination of a permit or the cessation of injection activities. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

(1) The owner or operator shall submit the plan as a part of the permit application and, upon approval by the Director, such plan shall be a condition of any permit issued.

(2) The owner or operator shall submit any proposed significant revision to the method of closure reflected in the plan for approval by the Director no later than the date on which notice of closure is required to be submitted to the Director under paragraph (b) of this section.

(3) The plan shall assure financial responsibility as required in § 144.52(a)(7).

(4) The plan shall include the following information:

(i) The type and number of plugs to be used;

(ii) The placement of each plug including the elevation of the top and bottom of each plug;

(iii) The type and grade and quantity of material to be used in plugging;

(iv) The method of placement of the plugs;

(v) Any proposed test or measure to be made;

(vi) The amount, size, and location (by depth) of casing and any other materials to be left in the well;

(vii) The method and location where casing is to be parted, if applicable;

(viii) The procedure to be used to meet the requirements of paragraph (d)(5) of this section;

(ix) The estimated cost of closure; and

(x) Any proposed test or measure to be made.

(5) The Director may modify a closure plan following the procedures of § 124.5.

(6) An owner or operator of a Class I hazardous waste injection well who ceases injection temporarily, may keep the well open provided he:

(i) Has received authorization from the Director; and

(ii) Has described actions or procedures, satisfactory to the Director, that the owner or operator will take to ensure that the well will not endanger USDWs during the period of temporary disuse. These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the Director.

(7) The owner or operator of a well that has ceased operations for more than two years shall notify the Director 30 days prior to resuming operation of the well.

(b) *Notice of intent to close.* The owner or operator shall notify the Director at least 60 days before closure of a well. At the discretion of the Director, a shorter notice period may be allowed.

(c) *Closure report.* Within 60 days after closure or at the time of the next quarterly report (whichever is less) the owner or operator shall submit a closure report to the Director. If the quarterly report is due less than 15 days after completion of closure, then the report shall be submitted within 60 days after closure. The report shall be certified as accurate by the owner or operator and by the

person who performed the closure operation (if other than the owner or operator). Such report shall consist of either:

(1) A statement that the well was closed in accordance with the closure plan previously submitted and approved by the Director; or

(2) Where actual closure differed from the plan previously submitted, a written statement specifying the differences between the previous plan and the actual closure.

(d) *Standards for well closure.* (1) Prior to closing the well, the owner or operator shall observe and record the pressure decay for a time specified by the Director. The Director shall analyze the pressure decay and the transient pressure observations conducted pursuant to § 146.68(e)(1)(i) and determine whether the injection activity has conformed with predicted values.

(2) Prior to well closure, appropriate mechanical integrity testing shall be conducted to ensure the integrity of that portion of the long string casing and cement that will be left in the ground after closure. Testing methods may include:

(i) Pressure tests with liquid or gas;

(ii) Radioactive tracer surveys;

(iii) Noise, temperature, pipe evaluation, or cement bond logs; and

(iv) Any other test required by the Director.

(3) Prior to well closure, the well shall be flushed with a buffer fluid.

(4) Upon closure, a Class I hazardous waste well shall be plugged with cement in a manner that will not allow the movement of fluids into or between USDWs.

(5) Placement of the cement plugs shall be accomplished by one of the following:

(i) The Balance Method;

(ii) The Dump Bailer Method;

(iii) The Two-Plug Method; or

(iv) An alternate method, approved by the Director, that will reliably provide a comparable level of protection.

(6) Each plug used shall be appropriately tagged and tested for seal and stability before closure is completed.

(7) The well to be closed shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the Director, prior to the placement of the cement plug(s).

§ 146.72 Post-closure care.

(a) The owner or operator of a Class I hazardous waste well shall prepare, maintain, and comply with a plan for post-closure care that meets the requirements of paragraph (b) of this section and is acceptable to the Director. The obligation to implement the post-closure plan survives the termination of a permit or the cessation of injection activities. The requirement to maintain an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

(1) The owner or operator shall submit the plan as a part of the permit application and, upon approval by the Director, such plan shall be a condition of any permit issued.

(2) The owner or operator shall submit any proposed significant revision to the plan as appropriate over the life of the well, but no later than the date of the closure report required under § 146.71(c).

(3) The plan shall assure financial responsibility as required in § 146.73.

(4) The plan shall include the following information:

(i) The pressure in the injection zone before injection began;

(ii) The anticipated pressure in the injection zone at the time of closure;

(iii) The predicted time until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost USDW;

(iv) Predicted position of the waste front at closure;

(v) The status of any cleanups required under § 146.64; and

(vi) The estimated cost of proposed post-closure care.

(5) At the request of the owner or operator, or on his own initiative, the Director may modify the post-closure plan after submission of the closure report following the procedures in § 124.5.

(b) The owner or operator shall:

(1) Continue and complete any cleanup action required under § 146.64, if applicable;

(2) Continue to conduct any groundwater monitoring required under the permit until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost USDW. The Director may extend the period of post-closure monitoring if he determines that the well may endanger a USDW.

(3) Submit a survey plat to the local zoning authority designated by the Director. The plat shall indicate the location of the well relative to permanently surveyed benchmarks. A copy of the plat shall be submitted to the Regional Administrator of the appropriate EPA Regional Office.

(4) Provide appropriate notification and information to such State and local authorities as have cognizance over drilling activities to enable such State and local authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the well's confining or injection zone.

(5) Retain, for a period of three years following well closure, records reflecting the nature, composition and volume of all injected fluids. The Director shall require the owner or operator to deliver the records to the Director at the conclusion of the retention period, and the records shall thereafter be retained at a location designated by the Director for that purpose.

(c) Each owner of a Class I hazardous waste injection well, and the owner of the surface or subsurface property on or in which a Class I hazardous waste injection well is located, must record a notation on the deed to the facility property or on some other instrument which is normally examined during title search that will in perpetuity provide any potential purchaser of the property the following information:

(1) The fact that land has been used to manage hazardous waste;

(2) The name of the State agency or local authority with which the plat was filed, as well as the address of the Regional Environmental Protection Agency Office to which it was submitted;

(3) The type and volume of waste injected, the injection interval or intervals into which it was injected, and the period over which injection occurred.

§ 146.73 Financial responsibility for post-closure care.

The owner or operator shall demonstrate and maintain financial responsibility for post-closure by using a trust fund, surety bond, letter of credit, financial test, insurance or corporate guarantee that meets the specifications for the mechanisms and instruments revised as appropriate to cover closure and post-closure care in 40 CFR part 144, subpart F. The amount of the funds available shall be no less than the amount identified in § 146.72(a)(4)(vi). The obligation to maintain financial responsibility for post-closure care survives the termination of a permit or the cessation of injection. The requirement to maintain financial responsibility is enforceable regardless of whether the requirement is a condition of the permit.

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

Subpart A—General Provisions

Subpart B—Alabama

Subpart C—Alaska

Subpart D—Arizona

Subpart E—Arkansas

Subpart F—California

Subpart G—Colorado

Subpart H—Connecticut

Subpart I—Delaware

Subpart J—District of Columbia

Subpart K—Florida

Subpart L—Georgia

Subpart M—Hawaii

Subpart N—Idaho

Subpart O—Illinois

Subpart P—Indiana

Subpart Q—Iowa

AUTHORITY: 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

SOURCE: 49 FR 20197, May 11, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 147.1 Purpose and scope.

(a) This part sets forth the applicable Underground Injection Control (UIC) programs for each of the states, territories, and possessions identified pursuant to the Safe Drinking Water Act (SDWA) as needing a UIC program.

(b) The applicable UIC program for a State is either a State-administered program approved by EPA, or a federally-administered program promulgated by EPA. In some cases, the UIC program may consist of a State-administered program appli-

cable to some classes of wells and a federally-administered program applicable to other classes of wells. Approval of a State program is based upon a determination by the Administrator that the program meets the requirements of section 1422 or section 1425 of the Safe Drinking Water Act and the applicable provisions of parts 124, 144, and 146 of this chapter. A federally-administered program is promulgated in those instances where the state has failed to submit a program for approval or where the submitted program does not meet the minimum statutory and regulatory requirements.

(c) In the case of State programs approved by EPA pursuant to section 1422 of the SDWA, each State subpart describes the major elements of such programs, including State statutes and regulations, Statement of Legal Authority, Memorandum of Agreement, and Program Description. State statutes and regulations that contain standards, requirements, and procedures applicable to owners or operators have been incorporated by reference pursuant to regulations of the Office of the Federal Register. Material incorporated by reference is available for inspection in the appropriate EPA Regional Office, in EPA Headquarters, and at the Office of the Federal Register Information Center, Room 8301, 800 North Capitol Street, NW., suite 700, Washington, DC. Other State statutes and regulations containing standards and procedures that constitute elements of the State program but do not apply directly to owners or operators have been listed but have not been incorporated by reference.

(d) In the case of State programs promulgated under section 1422 that are to be administered by EPA, the State subpart makes applicable the provisions of parts 124, 144, and 146, and provides additional requirements pertinent to the specific State program.

(e) Regulatory provisions incorporated by reference (in the case of approved State programs) or promulgated by EPA (in the case of EPA-administered programs), and all permit conditions or permit denials issued pursuant to such regulations, are enforceable by the Administrator pursuant to section 1423 of the SDWA.

(f) The information requirements located in the following sections have been cleared by the Office of Management and Budget: Sections 147.104, 147.304, 147.754, 147.904, 147.1154, 147.1354, 147.1454, 147.1654, 147.1954, and 147.2154.

The OMB clearance number is No. 2040–0042.

§ 147.2 Severability of provisions.

The provisions in this part and the various applications thereof are distinct and severable. If any provision of this part or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of such provision to other persons or circumstances which can be given effect without the invalid provision or application.

Subpart B—Alabama

§ 147.50 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Alabama, except those on Indian lands, is the program administered by the State Oil and Gas Board of Alabama, approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on August 2, 1982 (47 FR 33268); the effective date of this program is August 2, 1982. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Alabama. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Code of Alabama Sections 9–17–1 through 9–17–109 (Cumm. Supp. 1989);

(2) State Oil and Gas Board of Alabama Administrative Code, Oil and Gas Report 1 (supplemented through May 1989), Rules and Regulations Governing the Conservation of Oil and Gas in Alabama, and Oil and Gas Statutes of Alabama with Oil and Gas Board Forms, § 400–1–2 and § 400–1–5–.04.

(b) The Memorandum of Agreement between EPA Region IV and the Alabama Oil and Gas Board, signed by the EPA Regional Administrator on June 15, 1982.

(c) *Statement of legal authority.* ''State Oil and Gas Board has Authority to Carry Out Underground Injection Control Program Relating to Class II Wells as Described in Federal Safe Drinking Water Act—Opinion by Assistant Attorney General,'' May 28, 1982.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43086, Oct. 25, 1988; 56 FR 9411, Mar. 6, 1991]

§ 147.51 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV and V wells in the State of Alabama, except those on Indian lands, is the program administered by the Alabama Department of Environmental Management, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was pub-

lished in the FEDERAL REGISTER on August 25, 1983 (48 FR 38640); the effective date of this program is August 25, 1983. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Alabama. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Alabama Water Pollution Control Act, Code of Alabama 1975, sections 22–22–1 through 22–22–14 (1980 and Supp. 1983);

(2) Regulations, Policies and Procedures of the Alabama Water Improvement Commission, Title I (Regulations) (Rev. December 1980), as amended May 17, 1982, to add Chapter 9, Underground Injection Control Regulations (effective June 10, 1982), as amended April 6, 1983 (effective May 11, 1983).

(b) The Memorandum of Agreement between EPA Region IV and the Alabama Department of Environment Management, signed by the EPA Regional Administrator on May 24, 1983.

(c) *Statement of legal authority.* (1) ''Water Pollution—Public Health—State has Authority to Carry Out Underground Injection Control Program Described in Federal Safe Drinking Water Act—Opinion by Legal Counsel for the Water Improvement Commission,'' June 25, 1982;

(2) Letter from Attorney, Alabama Water Improvement Commission, to Regional Administrator, EPA Region IV, ''Re: AWIC Response to Phillip Tate's (U.S. EPA, Washington) Comments on AWIC's Final Application for Class I, III, IV, and V UIC Program,'' September 21, 1982;

(3) Letter from Alabama Chief Assistant Attorney General to Regional Counsel, EPA Region IV, ''Re: Status of Independent Legal Counsel in Alabama Water Improvement Commission's Underground Injection Control Program,'' September 14, 1982.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43086, Oct. 25, 1988]

§ 147.60 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Alabama is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Alabama is November 25, 1988.

[53 FR 43086, Oct. 25, 1988, as amended at 56 FR 9411, Mar. 6, 1991]

Subpart C—Alaska

§ 147.100 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Alaska, other than those on Indian lands, is the program administered by the Alaska Oil and Gas Conservation Commission approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER [May 6, 1986]; the effective date of this program is June 19, 1986. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Alaska. This incorporation by reference was approved by the Director of the FEDERAL REGISTER effective June 19, 1986.

(1) Alaska Statutes, Alaska Oil and Gas Conservation Act, Title 31, §§ 31.05.005 through 31.30.010 (1979 and Cum. Supp. 1984);

(2) Alaska Statutes, Administrative Procedures Act, Title 44, §§ 44.62.010 through 44.62.650 (1984);

(3) Alaska Administrative Code, Alaska Oil and Gas Conservation Commission, 20 AAC 25.005 through 20 AAC 25.570 (Supp. 1986).

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 10, and the Alaska Oil and Gas Conservation Commission, signed by the EPA Regional Administrator on January 29, 1986, as amended on June 21, 1988.

(c) *Statement of Legal Authority.* Statement from the Attorney General of the State of Alaska, signed by the Assistant Attorney General on December 10, 1985.

(d) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[51 FR 16684, May 6, 1986, as amended at 56 FR 9411, Mar. 6, 1991]

§ 147.101 EPA-administered program.

(a) *Contents.* The UIC program in the State of Alaska for Class I, III, IV, and V wells, and for all classes of wells on Indian lands, is adminis-

tered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for all non-Class II wells in Alaska and for all wells on Indian lands, is June 25, 1984.

[52 FR 17680, May 11, 1987, as amended at 56 FR 9412, Mar. 6, 1991]

§ 147.102 Aquifer exemptions.

(a) This section identifies any aquifers or their portions exempted in accordance with §§ 144.7(b) and 146.4 of this chapter at the time of program promulgation. EPA may in the future exempt other aquifers or portions, according to applicable procedures, without codifying such exemptions in this section. An updated list of exemptions will be maintained in the Regional office.

(b) The following aquifers are exempted in accordance with the provisions of §§ 144.7(b) and 146.4 of this chapter for Class II injection activities only:

(1) The portions of aquifers in the Kenai Peninsula, greater than the indicated depths below the ground surface, and described by a ¼ mile area beyond and lying directly below the following oil and gas producing fields:

(i) Swanson River Field—1700 feet.

(ii) Beaver Creek Field—1650 feet.

(iii) Kenai Gas Field—1300 feet.

(2) The portion of aquifers beneath Cook Inlet described by a ¼ mile area beyond and lying directly below the following oil and gas producing fields:

(i) Granite Point.

(ii) McArthur River Field.

(iii) Middle Ground Shoal Field.

(iv) Trading Bay Field.

(3) The portions of aquifers on the North Slope described by a ¼ mile area beyond and lying directly below the Kuparuk River Unit oil and gas producing field.

§ 147.103 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.

Maximum injection pressure. The owner or operator shall limit injection pressure to the lesser of:

(a) A value which will not exceed the operating requirements of § 144.28(f)(3) (i) or (ii) as applicable; or

(b) A value for well head pressure calculated by using the following formula:

$$Pm=(0.733–0.433\ Sg)d$$

where

Pm=injection pressure at the well head in pounds per square inch

Sg=specific gravity of inject fluid (unitless)

d=injection depth in feet.

§ 147.104 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* (1) To meet the operating requirements of § 144.28(f)(3)(ii) (A) and (B) of this chapter, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish maximum injection pressures after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure; or

(ii) May inject at pressures greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating provided he submits a request in writing to the Regional Administrator, and demonstrates to the satisfaction of the Regional Administrator that such injection pressure will not violate the requirement of § 144.28(f)(3)(ii) (A) and (B). The Regional Administrator may grant such a request after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter.

(2) Prior to such time as the Regional Administrator establishes rules for maximum injection pressure based on data provided pursuant to paragraph (a)(2)(ii) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Regional Administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission. The data shall be submitted to the Regional Administrator within 1 year of the effective date of this program.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall comply with paragraphs (b) (1) through (4) of this section, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may specify other requirements in addition to or in lieu of the requirements set forth in paragraphs (b) (1) through (3) as needed to protect USDWs.

Subpart D—Arizona

§ 147.150 State-administered program. [Reserved]

§ 147.151 EPA-administered program.

(a) *Contents.* The UIC program that applies to all injection activities in Arizona, including those on Indian lands, is administered by EPA. The UIC program for Navajo Indian lands consists of the requirements contained in subpart HHH of this part. The program for all injection activity except that on Navajo Indian lands consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program in Arizona, except for the lands of the Navajo Indians, is June 25, 1984. The effective date for the UIC program on the lands of the Navajo is November 25, 1988.

[53 FR 43086, Oct. 25, 1988, as amended at 56 FR 9412, Mar. 6, 1991]

§ 147.152 Aquifer exemptions. [Reserved]

Subpart E—Arkansas

§ 147.200 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV and V wells in the State of Arkansas, except those wells on Indian lands, is the program administered by the Arkansas Department of Pollution Control and Ecology approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on July 6, 1982 (47 FR 29236); the effective date of this program is July 6, 1982. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Arkansas. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Arkansas Water and Air Pollution Control Act, Act 472 of 1949 as amended, Arkansas Statutes Annotated sections 82–1901 through 82–1943 (1976);

(2) Act 105 of 1939, Arkansas Statutes Annotated sections 53–101 through 53–130 (1971 and Supp. 1981); Act 937 of 1979, Arkansas Statutes Annotated sections 53–1301 through 53–1320 (Supp. 1981); Act 523 of 1981;

(3) Arkansas Underground Injection Control Code, Department of Pollution Control and Ecology, promulgated January 22, 1982;

(4) General Rule and Regulations, Arkansas Oil and Gas Commission (Order No. 2–39, revised July 1972);

(5) Arkansas Hazardous Waste Management Code, Department of Pollution Control and Ecology, promulgated August 21, 1981.

(b) The Memorandum of Agreement and Addendum No. 1 to the Memorandum of Agreement, between EPA Region VI and the Arkansas Department of Pollution Control and Ecology and the Arkansas Oil and Gas Commission, signed by the EPA Regional Administrator on May 25, 1982.

(c) *Statement of legal authority.* (1) Letter from Chief Attorney, Arkansas Department of Pollution Control and Ecology, to Acting Regional Administrator, EPA Region VI, ''Re: Legal Authority of the Department of Pollution Control and Ecology of the State of Arkansas to Administer an Underground Injection Control Program,'' July 29, 1981;

(2) Letter from Chief Attorney, Arkansas Department of Pollution Control and Ecology, to Acting Regional Counsel, EPA Region VI, ''Re: Addendum to Legal Statement—Underground Injection Control Program,'' October 13, 1981;

(3) Letter from General Counsel, Arkansas Oil and Gas Commission, to Acting Regional Counsel, EPA Region VI, ''Re: Supplemental Addendum to Legal Statement—Underground Injection Control Program,'' October 20, 1981;

(4) Letter from Chief Attorney, Arkansas Department of Pollution Control and Ecology, to Attorney, Office of Regional Counsel, EPA Region

VI (re: status as independent legal counsel), December 31, 1981;

(5) Letter from General Counsel, Arkansas Oil and Gas Commission, to Acting Regional Counsel, EPA Region VI, ''Re: Supplemental Addendum to Legal Statement—Underground Injection Control Program,'' January 13, 1982;

(6) Letter from Chief Counsel, Arkansas Department of Pollution Control and Ecology, to Acting Regional Counsel, EPA Region VI, ''Re: Addendum to Legal Statement—Underground Injection Control Program,'' February 15, 1982;

(7) Letter from Chief Counsel, Arkansas Department of Pollution Control and Ecology, to Acting Regional Counsel, EPA Region VI, ''Re: Addendum to Legal Statement—Underground Injection Control Program,'' May 13, 1982.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43086, Oct. 25, 1988]

§ 147.201 State-administered program—Class II wells. [Reserved]

§ 147.205 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Arkansas is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148 and any additional requirements set forth in this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Arkansas is November 25, 1988.

[53 FR 43086, Oct. 25, 1988, as amended at 56 FR 9412, Mar. 6, 1991]

Subpart F—California

§ 147.250 State-administered program—Class II wells.

The UIC program for Class II wells in the State of California, except those on Indian lands, is the program administered by the California Division of Oil and Gas, approved by EPA pursuant to SDWA section 1425.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of California. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) California Laws for Conservation of Petroleum and Gas, California Public Resources Code Div. 3, Chapt. 1, §§ 3000–3359 (1989);

(2) California Administrative Code, title 14, §§ 1710 to 1724.10 (May 28, 1988).

(b) The Memorandum of Agreement between EPA Region IX and the California Division of Oil and Gas, signed by the EPA Regional Administrator on September 29, 1982.

(c) *Statement of legal authority.* (1) Letter from California Deputy Attorney General to the Administrator of EPA, ''Re: Legal Authority of California Division of Oil and Gas to Carry Out Class II Injection Well Program,'' April 1, 1981;

(2) Letter from California Deputy Attorney General to Chief of California Branch, EPA Region IX, ''Re: California Application for Primacy, Class II UIC Program,'' December 3, 1982.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 52 FR 17681, May 11, 1987; 56 FR 9412, Mar. 6, 1991]

§ 147.251 EPA-administered program—Class I, III, IV and V wells and Indian lands.

(a) *Contents.* The UIC program in the State of California for Class I, III, IV and V wells, and for all classes of wells on Indian lands, is administered by EPA. The program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program for all lands in California, including Indian lands, is June 25, 1984.

[52 FR 17681, May 11, 1987, as amended at 56 FR 9412, Mar. 6, 1991]

§ 147.252 Aquifer exemptions. [Reserved]

§ 147.253 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.

Maximum injection pressure. The owner or operator shall limit injection pressure to the lesser of:

(a) A value which will not exceed the operating requirements of § 144.28(f)(3) (i) or (ii) as applicable; or

(b) A value for well head pressure calculated by using the following formula:

$$Pm=(0.733 \cdot 0.433\ Sg)d$$

where

Pm=injection pressure at the well head in pounds per square inch
Sg=specific gravity of inject fluid (unitless)
d=injection depth in feet.

Subpart G—Colorado

§ 147.300 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Colorado, except those wells on Indian Lands, is the program administered by the Colorado Oil and Gas Commission approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the FR on April 2, 1984 (49 FR 13040); the effective date of this program is April 2, 1984. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Colorado. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the State of Colorado Oil and Gas Conservation Commission, Department of Natural Resources, Suite 380 Logan Tower Building, 1580 Logan Street, Denver, Colorado, 80203. Copies may be inspected at the Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(1) Colorado Revised Statutes, 1989 replacement volume, Section 34–60–101 through 34–60–123;

(2) Colorado Revised Statutes, 1989 replacement volume, Section 25–8–101 through 25–8–612;

(3) Rules and Regulations, Rules of Practice and Procedure, and Oil and Gas Conservation Act (As Amended) Department of Natural Resources, Oil and Gas Conservation Commission of the State of Colorado (revised July 1989);

(4) Oil and Gas Conservation Commission Revised Rules and Regulations in the 300, 400, 500, and 600 series, effective March 20, 1989.

(b) *Memorandum of agreement.* The Memorandum of Agreement between EPA Region VIII and the Colorado Oil and Gas Conservation Commission, signed by the EPA Regional Administrator on March 3, 1984 and amended on August 30, 1989.

(c) *Statement of legal authority.* (1) Letter from Colorado Assistant Attorney General to the Acting Regional Counsel, EPA Region VIII, ''Re: Class II Well Underground Injection Control Program of Colorado Oil and Gas Conservation Commission'', March 15, 1983;

(2) Letter from Colorado Assistant Attorney General to the Acting Regional Counsel, EPA Region VIII, ''Re: Class II Well Injection Control Program of Colorado Oil and Gas Conservation Commission'', April 29, 1983;

(3) Letter from Colorado Assistant Attorney General to the Acting Regional Counsel, EPA Region VIII, ''Re: Class II Underground Injection Control Program of Colorado Oil and Gas Conservation Commission, interpretation of C.R.S. 1973, 34–60–110'', July 11, 1983;

(4) Letter from Colorado Assistant Attorney General to the Acting Regional Counsel, EPA Region VIII, ''Re: Class II Well Underground Injection Control Program of Colorado Oil and Gas Conservation Commission'', February 17, 1984;

(5) Memorandum from Colorado Assistant Attorney General to the Acting Regional Counsel, EPA Region VIII, ''Re: Authority to set and enforce maximum pressure for injecting fluids into Class II wells with existing permits'', March 7, 1984.

(d) *Program description.* The Program Description and any other materials submitted as part of the application or as supplements thereto:

(1) Application and accompanying materials for approval of Colorado's UIC program for Class II wells submitted by the Director of the Colorado Oil and Gas Conservation Commission to the Regional Administrator, May 3, 1983;

(2) Supplemental amendment to Colorado's application for primacy for the UIC program for Class II wells describing the process through which the State will ensure enforceable limits for maximum injection pressure, describing the Commission's plan of administration for Class II wells, and describing Mechanical Integrity Test procedures for Class II wells, March 7, 1984;

(3) Official correspondence concerning various program issues between the Colorado Oil and Gas Conservation Commission and EPA Region VIII, for the period from March 7, 1984 to May 8, 1989.

[56 FR 9412, Mar. 6, 1991]

§ 147.301 EPA-administered program—Class I, III, IV, V wells and Indian lands.

(a) *Contents.* The UIC program for Class I, III, IV and V wells on all lands in Colorado, including Indian lands, and for Class II wells on Indian lands, is administered by EPA. The program for all EPA-administered wells in Colorado other than Class II wells on the lands of the Ute Mountain Ute consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any addi-

tional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on all lands in Colorado, including Indian lands, except for Class II wells on lands of the Ute Mountain Ute, is June 25, 1984.

[52 FR 17681, May 11, 1987, as amended at 56 FR 9413, Mar. 6, 1991]

§ 147.302 Aquifer exemptions.

(a) This section identifies any aquifers of their portions exempted in accordance with §§ 144.7(b) and 146.4 of this chapter at the time of program promulgation. EPA may in the future exempt other aquifers or portions according to applicable procedures without codifying such exemptions in this section. An updated list of exemptions will be maintained in the Regional office.

(b) For all aquifers into which existing Class II wells are injecting, those portions within a ¼ mile radius of the well are exempted for the purpose of Class II injection activities only.

§ 147.303 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.

Maximum injection pressure. The owner or operator shall limit injection pressure to the lesser of:

(a) A value which will not exceed the operating requirements of § 144.28(f)(3) (i) or (ii) as applicable; or

(b) A value for wellhead pressure calculated by using the following formula;

$$Pm=(0.733–0.433\ Sg)d$$

where:

Pm=injection pressure at the wellhead in pounds per square inch
Sg=specific gravity of injected fluid (unitless)
d=injection depth in feet.

§ 147.304 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* (1) To meet the operating requirements of § 144.28(f)(3)(ii) (A) and (B) of this chapter, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure; or

(ii) May inject at pressures greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating provided he submits a request in writing to the Regional Administrator and demonstrates to the satisfaction of the Regional Administrator that such injection pressure will not violate the requirements of § 144.28(f)(3)(ii) (A) and (B). The Regional Administrator may grant such a request after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter.

(2) Prior to such time as the Regional Administrator establishes rules for maximum injection pressures based on data provided pursuant to paragraph (a)(2)(ii) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Regional Administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission. The data shall be submitted to the Regional Administrator within one year of the effective date of this program.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall comply with paragraphs (b) (1) through (4) of this section, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistent to deterioration from formation and injection fluids; and

(iii) In quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may specify other requirements in addition to or in lieu of the requirements set forth in paragraphs (b) (1) through (3) as needed to protect USDWs.

§ 147.305 Requirements for all wells.

(a) The owner or operator converting an existing well to an injection well shall check the condition of the casing with one of the following logging tools:

(1) A Pipe analysis log; or

(2) A Caliper log.

(b) The owner or operator of a new injection well cased with plastic (PVC, ABS, and others) casings shall:

(1) Not construct a well deeper than 500 feet;

(2) Use cement and additives compatible with such casing material;

(3) Cement the annular space above the injection interval from the bottom of the blank casing to the surface.

(c) The owner or operator of a newly drilled well shall install centralizers as directed by the Regional Administrator.

(d) The owner or operator shall as required by the Regional Administrator:

(1) Protect USDWs by:

(i) Setting surface casing 50 feet below the base of the lowermost USDW;

(ii) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(iii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may approve alternate casing and cementing practices provided that the owner or operator demonstrates that such practices will adequately protect USDWs.

(e) *Area of review.* Notwithstanding the alternatives presented in § 146.6 of this chapter, the area of review shall be a fixed radius as described in § 146.6(b) of this chapter.

(f) The applicant must give separate notice of intent to apply for a permit to each owner or tenant of the land within one-quarter mile of the site. The addresses of those to whom notice is given, and a description of how notice is given, shall be submitted with the permit application. The notice shall include:

(1) Name and address of applicant;

(2) A brief description of the planned injection activities, including well location, name and depth of the injection zone, maximum injection pressure and volume, and fluid to be injected;

(3) EPA contact person; and

(4) A statement that opportunity to comment will be announced after EPA prepares a draft permit. This requirement may be waived by the Regional Administrator when he determines that individual notice to all land owners and tenants would be impractical.

Subpart H—Connecticut

§ 147.350 State-administered program.

The UIC program for all classes of wells in the State of Connecticut, except those wells on Indian lands, is the program administered by the Connecticut Department of Environmental Protection approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FR on March 26, 1984 (49 FR 11179); the effective date of this program is March 26, 1984. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made part of the applicable UIC program under the SDWA for the State of Connecticut. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and CFR part 51. Copies may be obtained at the State of Connecticut, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, Connecticut, 06106. Copies may be inspected at the Environmental Protection Agency, Region I, John F. Kennedy Federal Building, room 2203, Boston, Massachusetts, 02203, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(1) Connecticut General Statutes Annotated, title 22a (Environmental Protection), chapter 439, sections 22a–1 through 22a–27 (1985 and Cumm. Supp. 1990);

(2) Connecticut General Statutes Annotated, Title 22a (Environmental Protection), Chapter 446K (1985 and Cumm. Supp. 1990).

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region I and the Connecticut Department of Environmental Protection, signed by the EPA Regional Administrator on August 9, 1983.

(c) *Statement of legal authority.* (1) Statement from the Attorney General of the State of Connecticut, signed by the Attorney General on May 8, 1981;

(2) Addendum to the Statement from the Attorney General of the State of Connecticut, signed by the Attorney General on May 10, 1983.

(d) *Program Description.* The Program Description and any other materials submitted as part of the application or as supplements thereto.

[56 FR 9413, Mar. 6, 1991]

§§ 147.351—147.352 [Reserved]

§ 147.353 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Connecticut is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Connecticut is November 25, 1988.

[53 FR 43086, Oct. 25, 1988, as amended at 56 FR 9413, Mar. 6, 1991]

§§ 147.354—147.359 [Reserved]

Subpart I—Delaware

§ 147.400 State-administered program.

The UIC program for all classes of wells in the State of Delaware, except those wells on Indian lands, is the program administered by the Delaware Department of Natural Resources and Environmental Control approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FR on April 5, 1984 (49 FR 13525); the effective date of this program is May 7, 1984. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Delaware. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 5l. Copies may be obtained at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware, 19903. Copies may be inspected at the Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(1) Delaware Environmental Protection Act, (Environmental Control) 7 Delaware Code Annotated, Chapter 60, Sections 6001–6060 (Revised 1974 and Cumm. Supp. 1988);

(2) State of Delaware Regulations Governing Underground Injection Control, parts 122, 124 and 146 (Department of Natural Resources and Environmental Control), effective August 15, 1983.

(b) *Memorandum of agreement.* The Memorandum of Agreement between EPA Region III and the Delaware Department of Natural Resources and Environmental Control, signed by the EPA Regional Administrator on March 28, 1984.

(c) *Statement of legal authority.* Statement of the Delaware Attorney General for the Underground Injection Control Program, signed by the Attorney General on January 26, 1984.

(d) *Program Description*. The Program Description and any other materials submitted as part of the application (August 10, 1983), or as supplements thereto (October 14, 1983).

[56 FR 9413, Mar. 6, 1991]

§§ 147.401—147.402 [Reserved]

§ 147.403 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in Delaware is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Delaware is November 25, 1988.

[53 FR 43086, Oct. 25, 1988, as amended at 56 FR 9413, Mar. 6, 1991]

§§ 147.404—147.449 [Reserved]

Subpart J—District of Columbia

§ 147.450 State-administered program. [Reserved]

§ 147.451 EPA-administered program.

(a) *Contents.* The UIC program for the District of Columbia, including any Indian lands in the District, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in the District of Colum-

bia is November 25, 1988. The effective date for the UIC program in the rest of the District is June 25, 1984.

[53 FR 43087, Oct. 25, 1988, as amended at 56 FR 9413, Mar. 6, 1991]

§ 147.452 Aquifer exemptions. [Reserved]

Subpart K—Florida

§ 147.500 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Florida, except for those on Indian lands is administered by the Florida Department of Environmental Regulations, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on February 7, 1983 (48 FR 5556); the effective date of this program is March 9, 1983. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Florida. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Florida Air and Water Pollution Control Act, Florida Statutes Annotated sections 403.011 through 403.90 (1973 and Supp. 1983);

(2) Chapter 17–28, Underground Injection Control, Florida Administrative Code (April 27, 1989).

(b) *Other laws.* The following statutes and regulations although not incorporated by reference, also are part of the approved State-administered program:

(1) Administrative Procedures Act, Florida Statutes Chapter 120;

(2) Florida Administrative Code, Chapter 17–1 (1982) (Administrative Procedures Act);

(3) Florida Administrative Code, Chapter 17–3 (1982) (Water Quality Standards);

(4) Florida Administrative Code, Chapter 17–4 (1982) (Permits);

(5) Florida Administrative Code, Chapter 28–5 (1982) (Decisions Determining Substantial Interests);

(6) Florida Administrative Code, Chapter 28–6 (1982) (Licensing);

(c) The Memorandum of Agreement between EPA Region IV and the Florida Department of Environmental Regulation, signed by the EPA Regional Administrator on March 31, 1983.

(d) *Statement of legal authority.* (1) ''Statement of Legal Authority for Implementation of Underground Injection Control Program'' and accompanying certifications, signed by General Counsel for the Florida Department of Environmental Regulation, January 14, 1982;

(2) ''Addendum to Statement of Legal Authority for Implementation of Underground Injection Control Program'' and accompanying certifications, signed by Acting General Counsel for the Florida Department of Environmental Regulation, September 20, 1982.

(e) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43087, Oct. 25, 1988; 56 FR 9414, Mar. 6, 1991]

§ 147.501 EPA-administered program—Class II wells and Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands and for Class II wells on non-Indian lands in the State of Florida is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Florida is November 25, 1988. The effective date for Class II wells on non-Indian lands is December 30, 1984.

[53 FR 43087, Oct. 25, 1988, as amended at 56 FR 9414, Mar. 6, 1991]

§ 147.502 Aquifer exemptions. [Reserved]

§ 147.503 Existing Class II (except enhanced recovery and hydrocarbon storage) wells authorized by rule.

Maximum injection pressure. To meet the operating requirements of § 144.28(f)(3)(i) of this chapter, the owner or operator shall use an injection pressure at the well head no greater than the pressure calculated using the following formula:

$$Pm=(0.733 \cdot 0.433\ Sg)d$$

where

Pm=injection pressure at the well head in pounds per square inch

Sg=specific gravity of injected fluid (unitless)

d=injection depth in feet.

[49 FR 45306, Nov. 15, 1984]

§ 147.504 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* (1) To meet the operating requirements of § 144.28(f)(3)(ii) (A) and (B) of this chapter, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comment and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure; or

(ii) May inject at pressure greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating provided he submits a request in writing to the Regional Administrator, and demonstrates to the satisfaction of the Regional Administrator that such injection pressure will not violate the requirement of § 144.28(f)(3)(ii) (A) and (B). The Regional Administrator may grant such a request after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter.

(2) Prior to such time as the Regional Administrator establishes rules for maximum injection pressure based on data provided pursuant to paragraph (a)(2)(ii) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Regional Administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission. The data shall be submitted to the Regional Administrator within 1 year of the effective date of this program.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) Comply with other requirements which the Regional Administrator may specify either in addition to or in lieu of the requirements set forth in paragraphs (b)(1) through (3) of this section as needed to protect USDWs.

(c) *Area of review.* Notwithstanding the alternatives presented in § 146.06 of this chapter, the area of review shall be a minimum fixed radius as described in § 146.06(b) of this chapter.

(The information collection requirements contained in paragraph (a)(2)(ii) were appoved by the Office of Management and Budget under control number 2040–0042)

[49 FR 45306, Nov. 15, 1984]

Subpart L—Georgia

§ 147.550 State-administered program.

The UIC program for all classes of wells in the State of Georgia, except those wells on Indian lands, is the program administered by the Georgia Department of Natural Resources, Environmental Protection Division approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on April 19, 1984 (49 FR 15553); the effective date of this program is May 21, 1984. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Georgia. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the Georgia Department of Natural Resources, Environmental Protection Division, 270 Washington Street, SW., Atlanta, Georgia, 30334. Copies may be inspected at the Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia, 30365, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(1) Oil and Gas and Deep Drilling Act of 1975, Official Code of Georgia Annotated (O.C.G.A.) §§ 12–4–40 through 12–4–53 (1988);

(2) Ground Water Use Act of 1972, O.C.G.A. §§ 12–5–90 through 12–5–107 (1988);

(3) Water Well Standards Act of 1985, O.C.G.A. §§ 12–5–120, through 12–5–138 (1988);

(4) Georgia Administrative Procedure Act, O.C.G.A. §§ 50–13–1 through 50–13–22 (Reprinted from the 0.C.G.A. and 1988 Cumm. Supp.);

(5) Georgia Water Quality Control Act, O.C.G.A. §§ 12–5–20 through 12–5–53 (1988);

(6) Georgia Hazardous Waste Management Act, O.C.G.A. §§ 12–8–60 through 12–8–83 (1988);

(7) Georgia Safe Drinking Water Act of 1977, O.C.G.A. §§ 12–5–170 through 12–5–193 (1988);

(8) Rules of Georgia Department of Natural Resources, Environmental Protection Division, Water Quality Control, GA. COMP. R. & REGS. Chapter 391–3–6–.13 (Revised July 28, 1988).

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region IV and the State of Georgia, signed March 1, 1984.

(c) *Statement of legal authority.* (1) Unofficial Opinion of the Georgia Attorney General, Op. Atty. Gen. 080–24, June 12, 1980;

(2) Underground Injection Control Program, Attorney General's Statement, February 4, 1982;

(3) Amended Attorney General's Statement Relating to Authority of the State of Georgia to Implement an Underground Injection Control Program, April 22, 1983;

(4) Letter to EPA Office of General Counsel from Senior Assistant Attorney General ''Re: State UIC Program'', July 13, 1983.

(d) *Program Description.* The Program Description and any other materials submitted as part of the application or as supplements thereto.

[56 FR 9414, Mar. 6, 1991; 56 FR 14150, Apr. 5, 1991]

§§ 147.551—147.552 [Reserved]

§ 147.553 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Georgia is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Georgia is November 25, 1988.

[53 FR 43087, Oct. 25, 1988, as amended at 56 FR 9414, Mar. 6, 1991]

§§ 147.554—147.559 [Reserved]

Subpart M—Hawaii

§ 147.600 State-administered program. [Reserved]

§ 147.601 EPA-administered program.

(a) *Contents.* The UIC program for the State of Hawaii, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Hawaii is November 25, 1988. The effective date for the UIC program for all other lands in Hawaii is December 30, 1984.

[53 FR 43087, Oct. 25, 1988, as amended at 56 FR 9414, Mar. 6, 1991]

Subpart N—Idaho

§ 147.650 State-administrative program—Class I, II, III, IV, and V wells.

The UIC program for Class I, II, III, IV, and V wells in the State of Idaho, other than those on Indian lands, is the program administered by the Idaho Department of Water Resources, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on June 7, 1985; the effective date of this program is July 22, 1985. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Idaho. This incorporation by reference was approved by the Director of the FEDERAL REGISTER effective July 22, 1985.

(1) Public Writings, Title 9, Chapter 3, Idaho Code, sections 9–301 through 9–302 (Bobbs-Merrill 1979);

(2) Crimes and Punishments, Title 18, Chapter 1, Idaho Code, sections 18–113 through 18–114 (Bobbs-Merrill 1979 and Supp. 1984);

(3) Department of Health and Welfare, Title 39, Chapter 1, Idaho Code, Chapter 39–108 (Bobbs-Merrill 1977);

(4) Drainage-Water Rights and Reclamation, Title 42, Chapter 2, Idaho Code sections 42–

237(e); section 42–238 (Bobbs-Merrill 1977 and Supp. 1984);

(5) Department of Water Resources-Water Resources Board, Title 42, Chapter 17, Idaho Code, sections 42–1701, 42–1703, 42–1735 (Bobbs-Merrill 1977, section 42–1701A (Supp. 1984);

(6) Director of Department of Water Resources, Title 42, Chapter 18, Idaho Code, sections 42–1801 through 42–1805 (Bobbs-Merrill 1977);

(7) Waste Disposal and Injection Wells, Title 42, Chapter 39, Idaho Code, sections 42–3901 through 42–3914 (Bobbs-Merrill 1977), sections 42–3915 through 42–3919 (Supp. 1984);

(8) Idaho Trade Secrets Act, Title 48, Chapter 8, Idaho Code, sections 48–801 through 48–807 (Bobbs-Merrill 1977 and Supp. 1984);

(9) Administrative Procedure, Title 67, Chapter 52, Idaho Code, sections
67–5201 through 67–5218 (Bobbs-Merrill 1980 and Supp. 1984);

(10) Idaho Radiation Control Regulations (IRCR section 1–9002.70; sections 1–9100 through 1–9110, Department of Health and Welfare (May 1981);

(11) Rules and Regulations: Construction and Use of Injection Wells, Idaho Department of Water Resources, Rules 1 through 14 (August 1984);

(12) Rules and Regulations: Practice and Procedures, Idaho Department of Water Resources, Rules 1 through 14 (October 1983).

(b) The Memorandum of Agreement between EPA and Region X and the Idaho Department of Water Resources signed by the EPA Regional Administrator on February 11, 1985.

(c) *Statement of legal authority.* (1) The Idaho Attorney General's Statement for the Underground Injection Control Program, October 31, 1984.

(2) Letter from David J. Barber, Deputy Attorney General, Idaho Department of Water Resources to Harold Scott, EPA, Region 10, revising the Attorney General's Statement, February 14, 1985.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[50 FR 23957, June 7, 1985]

§ 147.651 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Idaho is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Idaho is June 11, 1984.

[52 FR 17681, May 11, 1987, as amended at 56 FR 9414, Mar. 6, 1991]

§ 147.652 Aquifer exemptions. [Reserved]

Subpart O—Illinois

§ 147.700 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV and V wells in the State of Illinois, except those on Indian lands, is the program administered by the Illinois Environmental Protection Agency, approved by EPA pursuant to section 1422 of the SDWA. Notice of the approval was published in the FEDERAL REGISTER on February 1, 1984 (49 FR 3991); the effective date of this program is March 3, 1984. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the state statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Illinois. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Illinois Environmental Protection Act, Illinois ch. 111½, sections 1001 to 1051 (Smith-Hurd 1977 Revised Statutes and Supp. 1983), as amended by Public Act No. 83–431, 1983 Illinois Legislative Service, pages 2910 to 2916 (West);

(2) Illinois Pollution Control Board Rules and Regulations at Title 35, Illinois Administrative Code, Chapter I, Part 700, Outline of Waste Disposal Regulations; Part 702, RCRA and UIC Permit Programs; Part 704, UIC Permit Program; Part 705, Procedures for Permit Issuance and Part 730, Underground Injection Control Operating Requirements as amended by IPCB Order No. R–83039 on December 15, 1983.

(b) The Memorandum of Agreement between EPA Region V and the Illinois Environmental Protection Agency, signed by the EPA Regional Administrator on March 22, 1984.

(c) *Statement of legal authority.* Letter from Illinois Attorney General to Regional Administrator, EPA Region V, and attached statement, December 16, 1982.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43087, Oct. 25, 1988]

§ 147.701 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Illinois, except those on Indian lands, is the program administered by the Illinois Environmental Protection Agency, approved by EPA pursuant to section 1425 of the SDWA. Notice of the approval was published in the FEDERAL REGISTER on February 1, 1984 (49 FR 3990); the effective date of this program is March 3, 1984. This program consists of the following elements, as submitted to EPA in the state's program application:

(a) *Incorporation by reference.* The requirements set forth in the State Statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Illinois. This incorporation by reference was approved by the Director of the FEDERAL REGISTER on June 25, 1984.

(1) Conservation of Oil and Gas, etc., Illinois Revised Statutes ch. 96½, sections 5401 to 5457 (Smith-Hurd 1979 and Supp. 1983), as amended by Public Act No. 83–1074 1983 Illinois Legislative Service pages 7183 to 7185 (West);

(2) Illinois Environmental Protection Act, Illinois Revised Statutes ch. 111½, sections 1001–1051 (Smith-Hurd 1977 and Supp. 1983), as amended by Public Act No. 83–431, 1983 Illinois Legislative Services pages 2910 to 2916 (West);

(3) Illinois Revised Statutes ch. 100½, section 26 (Smith-Hurd Supp. 1983);

(4) Illinois Department of Mines and Minerals Regulations for the Oil and Gas Division, Rules I, II, IIA, III, V, VII, and IX (1981).

(b) The Memorandum of Agreement between EPA Region V and the Illinois Department of Mines and Minerals, signed by the EPA Regional Administrator on March 22, 1984.

(c) *Statement of legal authority.* ''Certification of Legal Authority,'' signed by State Attorney, Richland County, Illinois, May 5, 1982.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43087, Oct. 25, 1988]

§ 147.703 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Illinois is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program for Indian lands is November 25, 1988.

[53 FR 43087, Oct. 25, 1988, as amended at 56 FR 9414, Mar. 6, 1991]

Subpart P—Indiana

§ 147.750 State-administered program—Class II wells.

The UIC program for Class II injection wells in the State of Indiana on non-Indian lands is the program administered by the Indiana Department of Natural Resources (INDR) approved by the EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the FR on August 19, 1991; the effective date of this program is August 19, 1991. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Indiana. This incorporation by reference was approved by the Director of the FR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the Indiana Department of Natural Resources, Division of Oil and Gas, 402 West Washington Street, room 293, Indianapolis, Indiana, 46204. Copies may be inspected at the Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois, 60604, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(1) Indiana Code, title 4, article 21.5, chapters 1 through 6 (1988).

(2) West's Annotated Indiana Code, title 13, article 8, chapters 1 through 15 (1990 and Cumm. Supp. 1990).

(3) Indiana Administrative Code, title 310, article 7, rules 1 through 3 (Cumm. Supp. 1991).

(b) *Memorandum of agreement.* The Memorandum of Agreement between EPA Region V and the Indiana Department of Natural Resources signed by the EPA Regional Administrator on February 18, 1991.

(c) *Statement of legal authority.* Statement and Amendment to the Statement from the Attorney General of the State of Indiana, signed on July 12, 1990, and December 13, 1990, respectively.

(d) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[56 FR 41072, Aug. 19, 1991, as amended at 62 FR 1834, Jan. 14, 1997]

§ 147.751 EPA-administered program.

(a) *Contents.* The UIC program for all classes of wells on Indian lands, and for Class I, III, IV, and V wells on non-Indian lands in the State of Indiana is administered by the EPA. The program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, and 148 and the additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is November 25, 1988. The effective date of the UIC program for the rest of Indiana is June 25, 1984.

[53 FR 43087, Oct. 25, 1988, as amended at 56 FR 9414, Mar. 6, 1991; 56 FR 41072, Aug. 19, 1991]

§ 147.752 Aquifer exemptions. [Reserved]

§ 147.753 Existing Class I and III wells authorized by rule.

Maximum injection pressure. The owner or operator shall limit injection pressure to the lessor of:

(a) A value which will not exceed the operating requirements of § 144.28(f)(3) (i) or (ii) as applicable; or

(b) A value for well head pressure calculated by using the following formula:

Pm=(0.800–0.433 Sg)d

where:

Pm=injection pressure at the wellhead in pounds per square inch
Sg=specific gravity of injected fluid (unitless)
d=injection depth in feet.

[49 FR 20197, May 11, 1984, as amended at 56 FR 41072, Aug. 19, 1991]

Subpart Q—Iowa

§ 147.800 State-administered program. [Reserved]

§ 147.801 EPA-administered program.

(a) *Contents.* The UIC program for the State of Iowa, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program for all lands in Iowa, including Indian lands, is June 25, 1984.

[52 FR 17681, May 11, 1987, as amended at 56 FR 9415, Mar. 6, 1991]

§ 147.802 Aquifer exemptions. [Reserved]

Subpart R—Kansas

§ 147.850 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V wells in the State of Kansas, except those on Indian lands as described in § 147.860, is the program administered by the Kansas Department of Health and Environment, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on December 2, 1983 (48 FR 54350); the effective date of this program is December 2, 1983. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Kansas. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the Kansas Department of Health and Environment, Forbes Field, Building 740, Topeka, Kansas, 66620. Copies may be inspected at the Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas, 66101, or at the Office of the FEDERAL REGISTER, 800 North Capitol Street, NW., suite 700, Washington, DC.

(1) Chapter 28, Article 46, Underground Injection Control Regulations, Kansas Administrative Regulations §§ 28–46–1 through 28–46–42 (1986 and Supp. 1987);

(2) Chapter 28, Article 43, Construction, operation, monitoring and abandonment of salt solution mining wells, Kansas Administrative Regulations §§ 28–43–1 through 28–43–10 (1986);

(3) Kansas Statutes Annotated §§ 65–161, 65–164 through 65–166a, 65–171d (1980 and Cumm. Supp. 1989).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference except for the select sections identified in paragraph (a) of this section, are also part of the approved State-administered program: Kansas Statutes Annotated §§ 65–161 through 65–171(w), (1980 and Supp. 1983).

(c) *Memorandum of Agreement.* (1) The Memorandum of Agreement between EPA Region VII and the Kansas Department of Health and Environment, signed by the EPA Regional Administrator on July 29, 1983;

(2) Addendum No. 1 of the Memorandum of Agreement, signed by the EPA Regional Administrator on August 29, 1983.

(d) *Statement of legal authority.* (1) ''Statement of Attorney General'', signed by the Attorney General of the State of Kansas, November 25, 1981;

(2) ''Supplemental Statement of Attorney General'', signed by the Attorney General of the State of Kansas, undated (one page).

(e) *Program description.* The program description and any other materials submitted as part of the application or supplements thereto.

[49 FR 45306, Nov. 15, 1984, as amended at 56 FR 9415, Mar. 6, 1991]

§ 147.851 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Kansas, except those on Indian lands as described in § 147.860, is the program administered by the Kansas Corporation Commission and the Kansas Department of Health and Environment, approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on February 8, 1984 (49 FR 4735); the effective date of this program is February 8, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

[49 FR 45306, Nov. 15, 1984]

§§ 147.852—147.859 [Reserved]

§ 147.860 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Kansas is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Kansas is December 30, 1984.

[49 FR 45307, Nov. 15, 1984, as amended at 56 FR 9415, Mar. 6, 1991]

Subpart S—Kentucky

§ 147.900 State-administered program. [Reserved]

§ 147.901 EPA-administered program.

(a) *Contents.* The UIC program for the Commonwealth of Kentucky, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is November 25, 1988. The effective date for the UIC program in the remainder of Kentucky is June 25, 1984.

[53 FR 43087, Oct. 25, 1988, as amended at 56 FR 9415, Mar. 6, 1991]

§ 147.902 Aquifer exemptions. [Reserved]

§ 147.903 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.

Maximum injection pressure. The owner or operator shall limit injection pressure to the lesser of:

(a) A value which will not exceed the operating requirements of § 144.28(f)(3) (i) or (ii) as applicable or;

(b) A value for well head pressure calculated by using the following formula:

$$Pm=(0.733–0.433\ Sg)d$$

where

Pm=injection pressure at the well head in pounds per square inch
Sg=specific gravity of inject fluid (unitless)
d=injection depth in feet.

§ 147.904 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* (1) To meet the operating requirements of § 144.28(f)(3)(ii) (A) and (B) of this chapter, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure; or

(ii) May inject at pressures greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating provided he submits a request in writing to the Regional Administrator, and demonstrates to the satisfaction of the Regional Administrator that such injection pressure will not violate the requirement of § 144.28(f)(3)(ii) (A) and (B). The Regional Administrator may grant such a request

after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter.

(2) Prior to such time as the Regional Administrator establishes rules for maximum injection pressure based on data provided pursuant to paragraph (a)(2)(ii) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Regional Administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission. The data shall be submitted to the Regional Administrator within 1 year of the effective date of this program.

(b) *Casing and Cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall comply with paragraphs (b) (1) through (4) of this section, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between and the casing the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may specify other requirements in addition to or in lieu of the requirements set forth in paragraphs (b) (1) through (3) of this section, as needed to protect USDWs.

§ 147.905 Requirements for all wells—area of review.

Notwithstanding the alternatives presented in § 146.6 of this chapter, the area of review shall be a minimum fixed radius as described in § 146.6(b) of this chapter.

Subpart T—Louisiana

§ 147.950 State-administered program.

The UIC program for Class I, II, III, IV, and V wells in the State of Louisiana, except those wells on Indian lands, is the program administered by the Louisiana Department of Natural Resources approved by EPA pursuant to sections 1422 and 1425 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on April 23, 1982 (47 FR 17487); the effective date of this program is March 23, 1982. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Louisiana. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Louisiana Revised Statutes Annotated sections 30:1–30:24 (1975 and Supp. 1982);

(2) Underground Injection Control Program Regulations for Class I, III, IV, and V wells, Statewide Order No. 29–N–1 (February 20, 1982), as amended June 1, 1985 and January 20, 1986;

(3)(i) Statewide Order Governing the Drilling for and Producing of Oil and Gas in the State of Louisiana, Statewide Order No. 29–B (August 26, 1974) (Composite Order Incorporating Amendments through March 1, 1974);

(ii) Amendments to Statewide Order No. 29–B (Off-site Disposal of Drilling Mud and Salt Water Generated from Drilling and Production of Oil and Gas Wells) (effective July 20, 1980);

(iii) Amendment to Statewide Order No. 29–B (Amendment concerning the use of Tables 5A and 6A, etc.) (December 15, 1980, effective January 1, 1981);

(iv) Amendment to Statewide Order No. 29–B (Amendment concerning the underground injection control of saltwater disposal wells, enhanced recovery injection wells, and liquid hydrocarbon storage wells) (effective February 20, 1982);

(v) Amendment to Statewide Order No. 29–B (Amendment concerning the offsite disposal of drilling mud and saltwater) (effective May 20, 1983);

(vi) Amendment to Statewide Order No. 29–B (Amendment concerning disposal of nonhazardous oilfield waste) (March 20, 1984, effective May 20, 1984);

(vii) Amendment to Statewide Order No. 29–B (Amendment concerning the administrative approval of injectivity tests and pilot projects in order to determine the feasibility of proposed en-

hanced recovery projects) (June 20, 1985, effective July 1, 1985).

(4) (i) Statewide Order adopting rules and regulations pertaining to the use of salt dome cavities (i.e., storage chambers) for storage of liquid and/or gaseous hydrocarbons, etc., Statewide Order No. 29–M (July 6, 1977, effective July 20, 1977);

(ii) Supplement to Statewide Order No. 29–M (October 2, 1978);

(iii) Second Supplement to Statewide Order No. 29–M (June 8, 1979).

(b)(1) The Memorandum of Agreement (Class I, III, IV, and V wells) between EPA Region VI and the Louisiana Department of Natural Resources, Office of Conservation, signed by the EPA Regional Administrator on March 17, 1982 and amended by Addendum 1 and Addendum 2 on November 3, 1989;

(2) The Memorandum of Agreement (Class II wells) between EPA Region VI and the Louisiana Department of Natural Resources, Office of Conservation, signed by the EPA Regional Administrator on March 17, 1982.

(c) *Statement of legal authority.* (1) Letter from Attorney General of Louisiana to EPA, ''Re: Louisiana Underground Injection Control Program Authorization for State of Louisiana'' (Class I, III, IV and V Wells), January 13, 1982, (10 pages);

(2) Letter from Attorney General of Louisiana to EPA, ''Re: Louisiana Underground Injection Control Program Authorization for State of Louisiana'' (Class II Wells), January 13, 1982 (5 pages).

(3) Letter from Attorney General of Louisiana to EPA, ''Re: Class I Hazardous Waste Injection Well Regulatory Program; Attorney General's Statement, October 9, 1989 (9 pages);

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 56 FR 9415, Mar. 6, 1991]

§ 147.951 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Louisiana is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Louisiana is November 25, 1988.

[53 FR 43087, Oct. 25, 1988, as amended at 56 FR 9415, Mar. 6, 1991]

Subpart U—Maine

§ 147.1000 State-administered program.

The UIC program for all classes of wells in the State of Maine, except those on Indian lands, is the program administered by the Maine Department of Environmental Protection approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on August 25, 1983 (48 FR 38641); the effective date of this program is September 26, 1983. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made part of the applicable UIC program under the SDWA for the State of Maine. This incorporation by reference was approved by the Director of the OFR on June 25, 1984.

(1) Maine Revised Statutes Annotated title 38, sections 361–A, 363–B, 413, 414, 414–A, 420, and 1317–A (1978);

(2) Rules to Control the Subsurface Discharge of Pollutants by Well Injection, Rules of the Department of Environmental Protection, Chapter 543 (adopted June 22, 1983, effective July 4, 1983).

(b) The Memorandum of Agreement between EPA Region I and the Maine Department of Environmental Protection, signed by the EPA Regional Administrator on May 16, 1983.

(c) *Statement of legal authority.* Letter from Attorney General of Maine to EPA Regional Administrator, ''Re: Attorney General's Statement: Maine Underground Injection Control Program Primacy Application,'' June 30, 1983.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43088, Oct. 25, 1988; 56 FR 9415, Mar. 6, 1991]

§ 147.1001 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Maine is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Maine is November 25, 1988.

[53 FR 43088, Oct. 25, 1988, as amended at 56 FR 9416, Mar. 6, 1991]

Subpart V—Maryland

§ 147.1050 State-administered program—Class I, II, III, IV, and V wells.

The UIC program for Class I, II, III, IV, and V wells in the State of Maryland, except those wells on Indian lands, is the program administered by the Maryland Department of the Environment approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FR on April 19, 1984 (49 FR 15553); the effective date of this program is June 4, 1984. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Maryland. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224. Copies may be inspected at the Environmental Protection Agency, Region III, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(1) Code of Maryland Regulations, Title 26, Subtitle 08, Chapter 07 promulgated and effective as of March 1, 1989;

(2) Code of Maryland Regulations, Title 26, Subtitle 08, Chapter 01, promulgated and effective as of March 1, 1989;

(3) Code of Maryland Regulations, Title 26, Subtitle 08, Chapter 02, promulgated and effective as of March 1, 1989;

(4) Code of Maryland Regulations, Title 26, Subtitle 08, Chapter 03, promulgated and effective as of March 1, 1989;

(5) Code of Maryland Regulations, Title 26, Subtitle 08, Chapter 04, promulgated and effective as of March 1, 1989;

(6) Code of Maryland Regulations, Title 26, Subtitle 13, Chapter 05, section .19, promulgated and effective as of August 1, 1989;

(7) Code of Maryland Regulations, Title 26, Subtitle 01, Chapter 02, promulgated and effective as of March 1, 1989;

(8) Code of Maryland Regulations, Title 26, Subtitle 01, Chapter 04, promulgated and effective as of March 1, 1989.

(b) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region III and the Maryland Department of the Environment, as submitted on August 2, 1983, and revised on February 16, 1984.

(c) *Statement of legal authority.* Statement from the Maryland Attorney General on the Underground Injection Control Program, as submitted on August 2, 1983, and revised on February 16, 1984.

(d) *Program Description.* The Program Description and other materials submitted as part of the application or as supplements thereto.

[56 FR 9416, Mar. 6, 1991]

§§ 147.1051—147.1052 [Reserved]

§ 147.1053 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Maryland is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Maryland is November 25, 1988.

[53 FR 43088, Oct. 25, 1988, as amended at 56 FR 9416, Mar. 6, 1991]

§§ 147.1054—147.1099 [Reserved]

Subpart W—Massachusetts

§ 147.1100 State-administered program.

The UIC program for all classes of wells in the State of Massachusetts, except those on Indian lands, is the program administered by the Massachusetts Department of Environmental Protection, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on November 23, 1982 (47 FR 52705); the effective date of this program is December 23, 1982. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Massachusetts. This incorporation by reference was ap-

proved by the Director of the Federal Register on June 25, 1984.

(1) Massachusetts General Laws Annotated chapter 21, sections 27, 43, and 44 (West 1981);

(2) Code of Massachusetts Regulations, title 310, sections 23.01–23.11 as amended April 26, 1982.

(b) The Memorandum of Agreement between EPA Region I and the Massachusetts Department of Environmental Quality Engineering, signed by the EPA Regional Administrator on August 18, 1982.

(c) *Statement of legal authority.* ''Underground Injection Control Program—Attorney General's Statement for Class I, II, III, IV and V Injection Wells,'' signed by Assistant Attorney General for Attorney General of Massachusetts, May 13, 1982.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43088, Oct. 25, 1988]

§ 147.1101 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Massachusetts is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Massachusetts is November 25, 1988.

[53 FR 43088, Oct. 25, 1988, as amended at 56 FR 9416, Mar. 6, 1991]

Subpart X—Michigan

§ 147.1150 State-administered program. [Reserved]

§ 147.1151 EPA-administered program.

(a) *Contents.* The UIC program for the State of Michigan, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program for all lands in Michigan, including Indian lands, is June 25, 1984.

[52 FR 17681, May 11, 1987, as amended at 56 FR 9416, Mar. 6, 1991]

§ 147.1152 Aquifer exemptions. [Reserved]

§ 147.1153 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.

Maximum injection pressure. The owner or operator shall limit injection pressure to the lesser of:

(a) A value which will not exceed the operating requirements of § 144.28(f)(3) (i) or (ii) as applicable; or

(b) A value for well head pressure calculated by using the following formula:

$$Pm=(0.800 \cdot 0.433\ Sg)d$$

where

Pm=injection pressure at the well head in pounds per square inch
Sg=specific gravity of injected fluid (unitless)
d=injection depth in feet.

§ 147.1154 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* (1) To meet the operating requirements of § 144.28(f)(3)(ii) (A) and (B) of this chapter, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure; or

(ii) May inject at pressures greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating provided he submits a request in writing to the Regional Administrator, and demonstrates to the satisfaction of the Regonal Administrator that such injection pressure will not violate the requirement of § 144.28(f)(3)(ii) (A) and (B). The Regional Administrator may grant such a request after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter.

(2) Prior to such time as the Regional Administrator establishes field rules for maximum injection pressure based on data provided pursuant to paragraph (a)(2)(ii) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Regional Administrator which defines the fracture pressure of

the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission. The data shall be submitted to the Regional Administrator within 1 year following the effective date of this program.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage will may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall comply with paragraphs (b) (1) through (4) of this section, when required by the regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may specify other requirements in addition to or in lieu of the requirements set forth in paragraphs (b) (1) through (3) of this section, as needed to protect USDWs.

§ 147.1155 Requirements for all wells.

(a) *Area of review.* Notwithstanding the alternatives presented in § 146.6 of this chapter, the area of review for Class II wells shall be a fixed radius as described in § 146.6(b) of this chapter.

(b) *Tubing and packer.* The owner or operator of an injection well injecting salt water for disposal shall inject through tubing and packer. The owner of an existing well must comply with this requirement within one year of the effective date of this program.

Supbart Y—Minnesota

§ 147.1200 State-administered program. [Reserved]

§ 147.1201 EPA-administered program.

(a) *Contents.* The UIC program for the State of Minnesota is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Minnesota is: June 11, 1984.

[49 FR 20197, May 11, 1984, as amended at 56 FR 9416, Mar. 6, 1991]

§ 147.1202 Aquifer exemptions. [Reserved]

§ 147.1210 Requirements for Indian lands.

(a) *Purpose and scope.* This section sets forth additional requirements that apply to injection activities on Indian lands in Minnesota.

(b) *Requirements.* Notwithstanding the other requirements of this subpart, for Indian lands described in paragraph (a) of this section, no owner or operator shall construct, operate, maintain, or convert any Class I, II, III, or IV well. The UIC program for Class V wells on such Indian Lands is administered by EPA, and consists of the applicable requirements of 40 CFR parts 124, 144, and 146. In addition, no owner or operator shall abandon a well without the approval of the Regional Administrator.

(c) *Effective date.* The effective date of the UIC program requirements for Indian lands in Minnesota is December 30, 1984.

[49 FR 45307, Nov. 15, 1984]

Subpart Z—Mississippi

§ 147.1250 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV and V wells in the State of Mississippi, except those on Indian lands, is the program administered by the Mississippi Department of Natural Resources approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on August 25, 1983 (48 FR 38641); the effective date of this program is September 26, 1983. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Mississippi. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Mississippi Air and Water Pollution Control Law, Mississippi Code Annotated sections 49–17–1 through 49–17–29 (1972) and Supp. 1983);

(2) Mississippi Department of Natural Resources, Bureau of Pollution Control, Underground Injection Control Program Regulations (adopted February 11, 1982);

(3) Mississippi Department of Natural Resources, Bureau of Pollution Control, State of Mississippi Wastewater Permit Regulations for National Pollutant Discharge Elimination System (NPDES), Underground Injection Control (UIC), and State Operating Permits (adopted May 1, 1974; amended February 11, 1982).

(b) The Memorandum of Agreement between EPA Region IV and the Mississippi Department of Natural Resources, signed by the EPA Regional Administrator on February 8, 1983.

(c) *Statement of legal authority.* (1) Letter from Attorney General of Mississippi (by Special Assistant Attorney General) to Executive Director, Mississippi Department of Natural Resources, ''Re: Mississippi Department of Natural Resources, Bureau of Pollution Control, State Underground Injection Control (UIC) Program; Statement of the Attorney General of the State of Mississippi,'' December 3, 1981;

(2) Letter from Attorney General of Mississippi (by Special Assistant Attorney General) to Executive Director, Mississippi Department of Natural Resources, ''Re: Authority to Regulate and Take Samples from Underground Injection Systems,'' October 18, 1982;

(3) Letter from Attorney General of Mississippi (by Special Assistant Attorney General) to Regional Administrator, EPA Region IV, ''Re: Public Participation in State Enforcement Actions, UIC Program,'' June 10, 1983.

(d) The Program Description and any other materials submitted as part of the application or supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43088, Oct. 25, 1988]

§ 147.1251 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Mississippi, other than those on Indian lands, is the program administered by the State Oil and Gas Board of Mississippi approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on March 2, 1989; the effective date of this program is March 2, 1989. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) Incorporation by reference. The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Mississippi. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a).

(1) Mississippi Code Annotated, section 5–9–9 (Supp. 1988).

(2) Mississippi Code Annotated, sections 53–1–1 through 53–1–47, inclusive and sections 53–1–71 through 53–1–77, inclusive (1972 and Supp. 1988).

(3) Mississippi Code Annotated, sections 53–3–1 through 53–3–165, inclusive (1972 and Supp. 1988).

(4) State Oil and Gas Board Statewide Rules and Regulations, Rules 1 through 65, inclusive (Aug. 1, 1987, as amended, Sept. 17, 1987).

(b) The Memorandum of Agreement between EPA Region IV and the State Oil and Gas Board of Mississippi signed by the Regional Administrator on October 31, 1988.

(c) Statement of legal authority. Statement from the Attorney General signed on October 1, 1987 with amendments to the Statement signed August 5, 1988 and September 15, 1988 by the Special Assistant Attorney General.

(d) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[54 FR 8735, Mar. 2, 1989]

§ 147.1252 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Mississippi is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program on Indian lands is November 25, 1988.

[53 FR 8735, Mar. 2, 1989, as amended at 56 FR 9416, Mar. 6, 1991]

Subpart AA—Missouri

147.1300 State-administered program.

The UIC program for all classes of wells in the State of Missouri, except those on Indian lands, is administered by the Missouri Department of Natural Resources, approved by EPA pursuant to section 1422 and 1425 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on December 2, 1983 (48 FR 54349); the effective date of this program is December 2, 1983). This program consists of the following elements, as

submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Missouri. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Vernon's Annotated Missouri Statutes sections 259.010 to 259.240 (Supp. 1984);

(2) Missouri Code of State Regulations, title 10, division 50, chapters 1 and 2 (June 1984);

(3) Vernon's Annotated Missouri Statutes chapter 204, §§ 204.006 through 204.470 (1983 and Cumm. Supp. 1990).

(b) The Memorandum of Agreement between EPA Region VII and the Missouri Department of Oil and Gas, signed by the EPA Regional Administrator on December 3, 1982.

(c) *Statement of legal authority.* (1) Opinion Letter No. 63 and attached Memorandum Opinion, signed by Attorney General of Missouri, March 16, 1982;

(2) Addendum to Opinion Letter No. 63 (1982), signed by Attorney General of Missouri, October 28, 1982.

(3) Opinion No. 127–83, signed by Attorney General of Missouri, July 11, 1983.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43088, Oct. 25, 1988; 56 FR 9416, Mar. 6, 1991]

§ 147.1301 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Missouri, other than those on Indian lands, is the program administered by the Missouri Department of Natural Resources, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on November 2, 1984; the effective date of this program is July 31, 1985. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Missouri. This incorporation by reference was approved by the Director of the Federal Register effective July 31, 1985.

(1) Revised Statutes of the State of Missouri, Volume 2, sections 204.016, 204.026, 204.051, 204.056 and Volume V, section 577.155 (1978 and Cumm. Supp. 1984);

(2) Missouri Code of State Regulations, title 10, division 20, Chapter 6, sections 20–6.010, 20–6.020, 20–6.070, 20–6.080, 20–6.090, and title 10, division 20, Chapter 7, section 20–7.031 (1977, amended 1984).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference except for select sections identified in paragraph (a) of this section, are also part of the approved State-administered program.

(1) Revised Statutes of the State of Missouri, chapters 204, 260, 536, 557, 558 and 560; sections 640.130.1 and 1.020 (1978 and Cumm. Supp. 1984);

(2) Rule 52.12 Vernon's Annotated Missouri Rules (1978);

(3) Missouri Code of State Regulations, title 10, division 20, Chapters 1 through 7 (1977, amended 1984).

(c) The Memorandum of Agreement between EPA Region VII and the Missouri Department of Natural Resources, signed by the EPA Regional Administrator on October 10, 1984.

(d) *Statement of Legal Authority.* Opinion No. 123–84, signed by Attorney General of Missouri, September 24, 1984. Amended April 2, 1985.

(e) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[50 FR 28942, July 17, 1985]

§ 147.1302 Aquifer exemptions. [Reserved]

§ 147.1303 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Missouri is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 145, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program for Indian lands is November 25, 1988.

[53 FR 43088, Oct. 25, 1988, as amended at 56 FR 9417, Mar. 6, 1991]

Subpart BB—Montana

§ 147.1350 State-administered programs—Class II wells.

The UIC program for Class II injection wells in the State of Montana, except for those in Indian Country, is the program administered by the Mon-

tana Board of Oil and Gas Conservation (MBOGC) approved by the EPA pursuant to Section 1425 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on November 19, 1996; the effective date of this program is November 19, 1996. This program consists of the following elements as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made part of the applicable UIC program under the SDWA for the State of Montana. This incorporation by reference was approved by the Director of the FR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the Montana Board of Oil and Gas Conservation, 2535 St. Johns Avenue, Billings, Montana, 59102. Copies may be inspected at the Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C.

(1) Montana Statutory Requirements Applicable to the Underground Injection Control Program, August, 1996.

(2) Montana Regulatory Requirements Applicable to the Underground Injection Control Program, August, 1996.

(b) *Memorandum of Agreement (MOA).* (1) The MOA between EPA Region VIII and the MBOGC signed by the Acting EPA Regional Administrator on June 9, 1996.

(2) Letter dated May 24, 1996, from the Administrator of the MBOGC and the attached addendum (Addendum No. 1–96) to the MOA between MBOGC and EPA Region VIII, signed by the Acting EPA Regional Administrator on August 14, 1996.

(c) *Statement of legal authority.* (1) Letter from the Montana Attorney General to the Regional Administrator dated August 1, 1995.

(2) MBOGC independent counsel's certification of Montana's UIC program for Class II wells dated July 24, 1995.

(3) Letter dated March 8,1996, from MBOGC independent counsel to USEPA, Region VIII; ''Re: EPA comments of November 29, 1995, on Montana Class II primacy application.''

(4) Letter dated March 8, 1996, from the Administrator of the MBOGC and the attached proposed replacement language for the MOA; ''Re: Responses to EPA comments on Montana Class II Primacy Application.''

(d) *Program Description.* The Program Description and any other materials submitted as part of the application or as supplemented thereto:

(1) Application and accompanying materials for approval of Montana's UIC program for Class II wells submitted by the Governor of Montana, August 3, 1995.

(2) [Reserved]

[61 FR 58933, Nov. 19, 1996]

§ 147.1351 EPA-administered program.

(a) *Contents.* The UIC program in the State of Montana for Class I, III, IV, and V wells, and for all Classes of wells in Indian Country is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on all lands in Montana, including all Indian lands, is June 25, 1984.

[52 FR 17681, May 11, 1987, as amended at 56 FR 9417, Mar. 6, 1991; 61 FR 58933, Nov. 19, 1996]

§ 147.1352 Aquifer exemptions.

Those portions of aquifers within one-quarter mile of existing Class II wells are exempted for the purpose of Class II injection activities only.

NOTE: A complete listing of the exemptions and their location is available for review in the EPA Regional Office, 1860 Lincoln Street, Denver, Colorado. An updated list of exemptions will be maintained in the Regional Office.

§ 147.1353 Existing Class I, II (except enhanced recovery hydrocarbon storage) and III wells authorized by rule.

Maximum injection pressure. The owner or operator shall limit injection pressure to the lesser of:

(a) A value which will not exceed the operating requirements of § 144.28(f)(3) (i) or (ii) as applicable or

(b) A value for well head pressure calculated by using the following formula:

Pm=(0.733 - 0.433 Sg)d

where

Pm=injection pressure at the well head in pounds per square inch

Sg=specific gravity of inject fluid (unitless)

d=injection depth in feet.

§ 147.1354 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* (1) To meet the operating requirements of § 144.28(f)(3)(ii) (A) and (B) of this chapter, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure; or

(ii) May inject at pressures greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating provided he submits a request in writing to the Regional Administrator, and demonstrates to the satisfaction of the Regional Administrator that such injection pressure will not violate the requirement of § 144.28(f)(3)(ii) (A) and (B). The Regional Administrator may grant such a request after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter.

(2) Prior to such time as the Regional Administrator established rules for maximum injection pressure based on data provided pursuant to paragraph (ii) below the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Regional Administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission. The data shall be submitted to the Regional Administrator within 1 year of the effective date of this program.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall when required by the Regional Administrator:

(1) Isolate all USDWs by placing cement between the outermost casing and the well bore as follows:

(i) If the injection well is east of the 108th meridian, cement the outermost casing from a point 50 feet into a major shale formation underlying the uppermost USDW to the surface. For the purpose of this paragraph, major shale formations are defined as the Bearpaw, Clagget, and Colorado formations.

(ii) If the injection well is west of the 108th meridian, cement the outermost casing to a depth of 1,000 feet, or to the base of the lowermost USDW in use as a source of drinking water whichever is deeper. The Regional Administrator may allow an owner or operator to cement to a lesser depth if he can demonstrate to the satisfaction of the Regional Administrator that no USDW will be affected by the injection facilities.

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deteriortion from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may specify other requirements in addition to or in lieu of the requirements set forth in paragraphs (b) (1) through (3) of this section, as needed to protect USDWs.

§ 147.1355 Requirements for all wells.

(a) *Area of review.* Notwithstanding the alternatives presented in § 146.6 of this chapter, the area of review shall be a fixed radius as described in § 146.06(b) of this chapter.

(b) The applicant must give separate notice of intent to apply for a permit to each owner or tenant of the land within one-quarter mile of the site. This requirement may be waived by the Regional Administrator where individual notice to all land owners and tenants would be impractical. The addresses of those to whom notice is given, and a description of how notice was given, shall be submitted with the permit application. The notice shall include:

(1) Name and address of applicant;

(2) A brief description of the planned injection activities, including well location, name and depth of the injection zone, maximum injection pressure and volume, and fluid to be injected;

(3) EPA contact person; and

(4) A statement that opportunity to comment will be announced after EPA prepares a draft permit.

(c) Owners and operators on or within one-half mile of Indian lands shall provide notice as specified in paragraph (b) of this section, except that such notice shall be provided within a one-half mile radius of the site.

APPENDIX A TO SUBPART BB OF PART 147—STATE REQUIREMENTS INCORPORATED BY REFERENCE IN SUBPART BB OF PART 147 OF THE CODE OF FEDERAL REGULATIONS

The following is an informational listing of state requirements incorporated by reference in Subpart

BB of part 147 of the Code of Federal Regulations:

Subpart BB—Montana

(a) The statutory provisions include:

(1) Montana Code annotated, 1995, Title 2, Chapter 15:

Section 2–15–121. Allocation for administrative purposes only.

Section 2–15–124. Quasi-judicial boards.

Section 2–15–3303. Board of oil and gas conservation-composition—allocation—quasi-judicial.

(2) Montana Code annotated, 1995, Title 82, Chapter 10:

Section 82–10–101. Action for accounting for royalty.

Section 82–10–102. Remedy not exclusive.

Section 82–10–103. Obligation to pay royalties as essence of contract-interest.

Section 82–10–104. Payment of royalties-form of record required.

Section 82–10–105 through 82–10–109 reserved.

Section 82–10–110. Division order-definition-effect.

Section 82–10–201. Authorization for lease and terms-land not subject to leasing.

Section 82–10–202. Acreage pooling.

Section 82–10–203. Interference with normal use of land prohibited.

Section 82–10–204. Lease of acquired oil and gas interests.

Section 82–10–301. Definitions.

Section 82–10–302. Policy.

Section 82–10–303. Use of eminent domain to acquire underground reservoirs.

Section 82–10–304. Certificate of board required prior to use of eminent domain.

Section 82–10–305. Proceedings.

Section 82–10–401. Notice required before abandonment of well-owner's option.

Section 82–10–402. Inventory of abandoned wells and seismic operations-reclamation procedures.

Section 82–10–501. Purpose-legislative findings.

Section 82–10–502. Definitions.

Section 82–10–503. Notice of drilling operations.

Section 82–10–504. Surface damage and disruption payments-penalty for late payment.

Section 82–10–505. Liability for damages to property.

Section 82–10–506. Notification of injury.

Section 82–10–0507. Agreement—offer of settlement.

Section 82–10–508. Rejection—legal action.

Section 82–10–509 and 82–10–510. Reserved.

Section 82–10–511. Remedies cumulative.

(3) Montana Code annotated, 1995, Title 82, Chapter 11:

Section 82–11–101. Definitions.

Section 82–11–102. Oil or gas wells not public utilities.

Section 82–11–103. Lands subject to law.

Section 82–11–104. Construction-no conflict with board of land commissioners' authority.

Section 82–11–105 through 82–11–110 reserved.

Section 82–11–111. Powers and duties of board.

Section 82–11–112. Intergovernmental cooperation.

Section 82–11–113. Role of board in implementation of national gas policy.

Section 82–11–114. Appointment of examiners.

Section 82–11–115. Procedure to make determinations.

Section 82–11–116. Public access.

Section 82–11–117. Confidentiality of records.

Section 82–11–118. Fees for processing applications.

Section 82–11–119 through 82–11–120 reserved.

Section 82–11–121. Oil and gas waste prohibited.

Section 82–11–122. Notice of intention to drill or conduct seismic operations-notice to surface owner.

Section 82–11–123. Requirements for oil and gas operations.

Section 82–11–124. Requirement relating to waste prevention.

Section 82–11–125. Availability of cores or chips, cuttings, and bottom-hole temperatures to board.

Section 82–11–126. Availability of facilities to bureau of mines.

Section 82–11–127. Prohibited activity.

Section 82–11–128 through 82–11–130 reserved.

Section 82–11–131. Privilege and license tax.

Section 82–11–132. Statements to treasurer and payment of tax.

Section 82–11–133. Penalty for late payment.

Section 82–11–134. Permit fees.

Section 82–11–135. Money earmarked for board expenses.

Section 82–11–136. Expenditure of funds from bonds for plugging wells.

Section 82–11–137. Class II injection well operating fee.

Section 82–11–138 through 82–11–140 reserved.

Section 82–11–141. Administrative procedure.

Section 82–11–142. Subpoena power-civil actions.

Section 82–11–143. Rehearing.

Section 82–11–144. Court review.

Section 82–11–145. Injunction or restraining order.
Section 82–11–146. Appeal.
Section 82–11–147. Violations.
Section 82–11–148. Criminal penalties.
Section 82–11–149. Civil penalties.
Section 82–11–150. Legal assistance.
Section 82–11–151. Emergencies-notice and hearing.
Section 82–11–152 through 82–11–160 reserved.
Section 82–11–161. Oil and gas production damage mitigation account-statutory appropriation.
Section 82–11–162. Release of producing oil or gas well from drilling bond-fee.
Section 82–11–163. Landowner's bond on noncommercial well.
Section 82–11–164. Lien created.
Section 82–11–165 through 82–11–170 reserved.
Section 82–11–171. Terminated.
Section 82–11–201. Establishment of well spacing units.
Section 82–11–202. Pooling of interest within spacing unit.
Section 82–11–203. Pooling agreements not in violation of antitrust laws.
Section 82–11–204. Hearing on operation of pool as unit.
Section 82–11–205. Board order for unit operation-criteria.
Section 82–11–206. Terms and conditions of plan for unit operations.
Section 82–11–207. Approval of plan for unit operations by persons paying costs.
Section 82–11–208. Board orders-amendment.
Section 82–11–209. Units established by previous order.
Section 82–11–210. Unit operations-less than whole of pool.
Section 82–11–211. Operations considered as done by all owners in unit.
Section 82–11–212. Property rights and operator's lien.
Section 82–11–213. Contract not terminated by board order.
Section 82–11–214. Title to oil and gas rights not affected by board order.
Section 82–11–215. Unit operation not restraint of trade.
Section 82–11–216. No creation of relationship between parties in unit.
Section 82–11–301. Authorization to join interstate compact for conservation of oil and gas.
Section 82–11–302. Interstate oil and gas compact.
Section 82–11–303. Extension of expiration date.
Section 82–11–304. Governor as member of Interstate Oil Compact Commission.
Section 82–11–305. Limitation on power of representative.
Section 82–11–306. Expenses of representative.

(b) The regulatory provisions include: Administrative Rules of Montana Board of Oil and Gas Conservation, Chapter 22, revised March 1996:

Rule 36.22.101. Organizational Rule.
Rule 36.22.201. Procedural Rules.
Rule 36.22.202. Environmental Policy Act Procedural Rules.
Rule 36.22.301. Effective Scope of Rules.
Rule 36.22.302. Definitions.
Rule 36.22.303. Classification of Wildcat or Exploratory Wells.
Rule 36 22.304. Inspection of Record, Properties, and Wells.
Rule 36.22.305. Naming of Pools.
Rule 36.22.306. Organization of Reports.
Rule 36.22.307. Adoption of Forms.
Rule 36.22.308. Seal of Board.
Rule 36.22.309. Referral of Administrative Decisions.
Rule 36.22.401. Office and Duties of Petroleum Engineer.
Rule 36.22.402. Office and Duties of Administrator.
Rule 36.22.403. Office and Duties of Geologist.
Rule 36.22.501. Shot Location Limitations.
Rule 36.22.502. Plugging and Abandonment.
Rule 36.22.503. Notification.
Rule 36.22.504. Identification.
Rule 36.22.601. Notice of Intention and Permit to Drill.
Rule 36.22.602. Notice of Intention to Drill and Application for Permit to Drill.
Rule 36.22.603. Permit Fees.
Rule 36.22.604. Permit Issuance - Expiration - Extension.
Rule 36.22.605. Transfer of Permits.
Rule 36.22.606. Notice and Eligibility Statement for Drilling or Recompletion in Unit Operations.
Rule 36.22.607. Drilling Permits Pending Special Field Rules.
Rule 36.22.701. Spacing Units - General.
Rule 36.22.702. Spacing of Wells.
Rule 36.22.703. Horizontal Wells.
Rule 36.22.1001. Rotary Drilling Procedure.
Rule 36.22.1002. Cable Drilling Procedure.
Rule 36.22.1003. Vertical Drilling Required Deviation.
Rule 36.22.1004. Dual Completion of Wells.
Rule 36.22.1005. Drilling Waste Disposal and Surface Restoration.
Rules 36.22.1006 through 36.22.1010. Reserved.
Rule 36.22.1011. Well Completion and Recompletion Reports.
Rule 36.22.1012. Samples of Cores and Cuttings.
Rule 36.22.1013. Filing of Completion Reports, Well Logs, Analyses, Reports, and Surveys.

Rule 36.22.1014. Blowout Prevention and Well Control Equipment.
Rule 36.22.1101. Fire Hazard Prevention.
Rule 36.22.1102. Fire Walls Required.
Rule 36.22.1103. Notification and Report of Emergencies and Undesirable Incidents.
Rule 36.22.1104. Control and Cleanup.
Rule 36.22.1105. Solid Waste.
Rule 36.22.1201. Surface Equipment.
Rule 36.22.1202. Identification.
Rule 36.22.1203. Chokes Required.
Rule 36.22.1204. Separators Required.
Rule 36.22.1205. Vacuum Pumps Prohibited.
Rule 36.22.1206. Tubing Required.
Rule 36.22.1207. Earthen Pits and Open Vessels.
Rule 36.22.1208. Producing from Different Pools Through the Same Casing.
Rules 36.22.1209 through 36.22.1212. Reserved.
Rule 36.22.1213. Reservoir or Pool Surveys.
Rule 36.22.1214. Subsurface Pressure Tests.
Rule 36.22.1215. Stabilized Production Test.
Rule 36.22.1216. Gas Oil Ratio Tests.
Rule 36.22.1217. Water Production Report.
Rule 36.22.1218. Gas to be Metered.
Rule 36.22.1219. Gas Waste Prohibited.
Rule 36.22.1220. Associated Gas Flaring Limitation—Application to exceed—Board Review and Action.
Rule 36.22.1221. Burning of Waste Gas Required.
Rule 36.22.1222. Hydrogen Sulfide Gas.
Rule 36.22.1223. Fencing, Screening, and Netting of Pits.
Rules 36.22.1224 and 36.22.1425. Reserved.
Rule 36.22.1226. Disposal of Water.
Rule 36.22.1227. Earthen Pits and Ponds.
Rule 36.22.1228. Disposal by Injection.
Rule 36.22.1229. Water Injection and Gas Repressuring.
Rule 36.22.1230. Application Contents and Requirements.
Rule 36.22.1231. Notice of Application Objections.
Rule 36.22.1232. Board Authorization.
Rule 36.22.1233. Notice of Commencement or Discontinuance—Plugging of Abandoned Wells.
Rule 36.22.1234. Record Required.
Rules 36.22.1235 through 36.22.1239. Reserved.
Rule 36.22.1240. Report of Well Status Change.
Rule 36.22.1241. Service Company Reports.
Rule 36.22.1242. Reports by Producers.
Rule 36.22.1243. Reports from Transporters, Refiners, and Gasoline or Extraction Plants.
Rule 36.22.1244. Producer's Certificate of Compliance.
Rule 36.22.1245. Illegal Production.
Rule 36.22.1301. Notice and Approval of Intention to Abandon Report.
Rule 36.22.1302. Notice of Abandonment.
Rule 36.22.1303. Well Plugging Requirement.
Rule 36.22.1304. Plugging Methods and Procedure.
Rule 36.22.1305. Exception for Fresh Water Wells.
Rule 36.22.1306. Approval for Pulling Casing and Reentering Wells.
Rule 36.22.1307. Restoration of Surface.
Rule 36.22.1308. Plugging and Restoration Bond.
Rule 36.22.1309. Subsequent Report of Abandonment.
Rule 36.22.1401. Definitions.
Rule 36.22.1402. Underground Injection.
Rule 36.22.1403. Application Contents and Requirements Rules.
Rule 36.22.1404 and 36.22.1405. Reserved.
Rule 36.22.1406. Corrective Action.
Rule 36.22.1407. Signing the Application.
Rule 36.22.1408. Financial Responsibility.
Rule 36.22.1409. Hearings.
Rule 36.22.1410. Notice of Application.
Rule 36.22.1411. Board Authorization.
Rules 36.22.1412 and 36.22.1413. Reserved.
Rule 36.22.1414. Notice of Commencement or Discontinuance—Plugging of Abandoned Wells.
Rule 36.22.1415. Records Required.
Rule 36.22.1416. Mechanical Integrity.
Rule 36.22.1417. Notification of Tests—Reporting Results.
Rule 36.22.1418. Exempt Aquifers.
Rule 36.22.1419. Tubingless Completions.
Rules 36.22.1420 and 36.22.1421. Reserved.
Rule 36.22.1422. Permit Conditions.
Rule 36.22.1423. Injection Fee—Well Classification.
Rule 36.22.1601. Who May Apply for Determination.
Rule 36.22.1602. Application Requirements and Contents.
Rule 36.22.1603. Documents and Technical Data Supporting Application.
Rule 36.22.1604. Docket Number.
Rule 36.22.1605. List of Applications—Public Access.
Rule 36.22.1606. Objections to Applications.
Rule 36.22.1607. Deadlines for Action Determinations.
Rule 36.22.1608. Deficient Applications.
Rule 36.22.1609. Board Action on Applications.
Rule 36.22.1610. Special Findings and Determinations New Onshore Production Wells Under Section 103.
Rule 36.22.1611. Special Findings and Determinations Stripper Well Production.

[61 FR 58934, Nov. 19, 1996]

Subpart CC—Nebraska

§ 147.1400 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Nebraska, except those on Indian lands, is the program administered by the Nebraska Oil and Gas Conservation Commission, approved by EPA pursuant to section 1425 of the SDWA.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Nebraska. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Rules and Regulations of the Nebraska Oil and Gas Conservation Commission, Rules 1 through 6 (as published by the Commission, May 1981);

(2) Revised Statutes of Nebraska, sections 57–903 and 57–906 (Reissue 1988).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference except for select sections identified in paragraph (a) of this section, are also part of the approved state-administered program:

(1) Chapter 57, Oil and Gas Conservation, Revised Statutes of Nebraska sections 57–901 through 57–922 (Reissue 1985).

(c) The Memorandum of Agreement between EPA Region VII and the Nebraska Oil and Gas Conservation Commission, signed by the EPA Regional Administrator on July 12, 1982.

(d) *Statement of legal authority.* (1) ''Nebraska Underground Injection Control Program, Attorney General's Statement for Class II Wells,'' signed by Assistant Attorney General for Attorney General of Nebraska, as submitted with ''State of Nebraska Request for Administration of UIC Program,'' January 23, 1982;

(2) ''Re: Nebraska Underground Injection Control Program, Addendum to Attorney General's Statement for Class II Wells,'' signed by Assistant Attorney General for Attorney General of Nebraska,'' undated.

(e) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 52 FR 17681, May 11, 1987; 56 FR 9417, Mar. 6, 1991]

§ 147.1401 State administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Nebraska, except those on Indian lands, is the program administered by the Nebraska Department of Environmental Control, approved by EPA pursuant to section 1422 of the SDWA.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Nebraska. This incorporation by reference was approved by the Director of the Federal Register effective June 26, 1984.

(1) Nebraska Environmental Protection Act, Revised Statutes of Nebraska sections 81–1502, 81–1506, 81–1519, and 81–1520 (Reissue 1987);

(2) Nebraska Department of Environmental Control, Title 122—Rules and Regulations for Underground Injection and Mineral Production Wells, Effective Date: February 16, 1982, Amended Dates: November 12, 1983, March 22, 1984; as amended by amendment approved by the Governor on January 2, 1989.

(b) *Other laws.* The following statutes and regulations although not incorporated by reference, also are part of the approved State-administered program:

(1) Nebraska Environmental Protection Act, Nebraska Revised Statutes sections 81–1502, 81–1506, 81–1519, and 81–1520 (Reissue 1987 and Cumm. Supp. 1988);

(c)(1) The Memorandum of Agreement between EPA Region VII and the Nebraska Department of Environmental Control, signed by the EPA Regional Administrator on July 12, 1982.

(2) Addendum to Underground Injection Control Memorandum of Agreement signed by the EPA Regional Administrator on July 12, 1982.

(3) Amendments to the Memorandum of Agreement signed by the EPA Regional Administrator on November 22, 1983.

(d) *Statement of legal authority.* (1) ''Nebraska Underground Injection Control Program, Attorney General's Statement for Class I, III, IV, and V Wells'', signed by Assistant Attorney General for Attorney General of Nebraska, as submitted with ''State of Nebraska Request for Administration of UIC Program, January 28, 1982;

(2) Letter from Attorney General (of Nebraska), by Assistant Attorney General, to Director, (Nebraska) Department of Environmental Control, August 7, 1981;

(3) Letter from Attorney General (of Nebraska), by Assistant Attorney General, to Director, (Nebraska) Department of Environmental Control, April 29, 1982;

(4) Letter from Attorney General (of Nebraska), by Assistant Attorney General, to Legal Counsel, (Nebraska) Department of Environmental Control, October 18, 1983.

(e) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

(42 U.S.C. 1422)

[49 FR 24134, June 12, 1984, as amended at 52 FR 17681, May 11, 1987; 56 FR 9417, Mar. 6, 1991]

§ 147.1402 Aquifer exemptions. [Reserved]

§ 147.1403 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Nebraska is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian Lands in Nebraska is June 25, 1984.

[52 FR 17681, May 11, 1987, as amended at 56 FR 9417, Mar. 6, 1991]

Subpart DD—Nevada

§ 147.1450 State-administered program.

The UIC program for all classes of underground injection wells in the State of Nevada, other than those on Indian lands, is the program administered by the Nevada Division of Environmental Protection approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on February 18, 1988; the effective date of this program is October 5, 1988. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Nevada. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 201 South Fall Street, Carson City, Nevada 89710.

Copies may be inspected at the Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, California 99105, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(1) Nevada Revised Statutes [NRS], Volume 25, Chapters 445.131 through 445.354, Inclusive. 1987.

(2) Nevada Revised Statutes [NRS], Volume 29, Chapters 534A.010 through 534A.090, Inclusive. 1987.

(3) Nevada Revised Statutes [NRS], Volume 28, Chapters 522.010 through 522.190, Inclusive. 1987.

(4) Nevada Administrative Code [NAC], Underground Injection Control Regulations, Sections 1 through 96.1, Inclusive. July 22, 1987, revised September 3, 1987 (amending NAC Chapter 445).

(5) Nevada Administrative Code [NAC], Regulations and Rules of Practice and Procedure adopted Pursuant to NRS 534A, Sections 1 through 69, Inclusive. November 12, 1985 (amending NAC Chapter 534A).

(6) Nevada Administrative Code [NAC], Regulations and Rules of Practice and Procedure adopted Pursuant to NRS 522.010 through 522.625, Inclusive. July 22, 1987 (amending NAC Chapter 522).

(b) The Memorandum of Agreement between EPA Region 9 and the Nevada Department of Conservation and Natural Resources signed by the EPA Regional Administrator on April 6, 1988.

(c) *Statement of Legal Authority.* Statement and Amendment to the Statement from the Attorney General of the State of Nevada, signed on July 22, 1987 and November 6, 1987 respectively, by the Deputy Attorney General.

(d) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[53 FR 39089, Oct. 5, 1988]

§ 147.1451 EPA administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Nevada is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for Indian lands in Nevada is June 25, 1984.

[53 FR 43088, Oct. 25, 1988, as amended at 56 FR 9417, Mar. 6, 1991]

§ 147.1452 Aquifer exemptions. [Reserved]

§ 147.1453 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.

Maximum injection pressure. The owner or operator shall limit injection pressure to the lesser of:

(a) A value which will not exceed the operating requirements of § 144.28(f)(3) (i) or (ii) as applicable; or

(b) A value for well head pressure calculated by using the formula:

$$Pm=(0.733–0.433\ Sg)d$$

where

Pm=injection pressure at the wellhead in pounds per square inch
Sg=specific gravity of injected fluid (unitless)
d=injection depth in feet.

§ 147.1454 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* (1) To meet the operating requirements of § 144.28(f)(3)(ii) (A) and (B) of this chapter, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure; or

(ii) May inject at pressures greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating provided he submits a request in writing to the Regional Administrator, and demonstrates to the satisfaction of the Regional Administrator that such injection pressure will not violate the requirement of § 144.28(f)(3)(ii) (A) and (B). The Regional Administrator may grant such a request after notice, opportunity for comment, and opportunity for public hearing, according to the provisions of part 124, subpart A of this chapter.

(2) Prior to such time as the Regional Administrator establishes field rules for maximum injection pressure based on data provided pursuant to paragraph (a)(2)(ii) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Regional Administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission. The data shall be submitted to the Regional Administrator within one year following the effective date of this program.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall comply with paragraphs (b) (1) through (4) of this section, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may specify other requirements in addition to or in lieu of the requirements set forth in paragraphs (b) (1) through (3) of this section, as needed to protect USDWs.

Subpart EE—New Hampshire

§ 147.1500 State-administered program.

The UIC program for all classes of wells in the State of New Hampshire, except those wells on Indian lands, is the program administered by the New Hampshire Department of Environmental Services, approved by the EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FR on September 21, 1982 (47 FR 41561); the effective date of this program is October 21, 1982. This program consists of the following elements:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of New Hampshire. This incorporation by reference was

approved by the Director of the Federal Register on June 25, 1984.

(1) New Hampshire Revised Statutes Annotated section 149:8 III(a) (1978);

(2) New Hampshire Code of Administrative Rules, Part Wc 410 (Protection of Groundwaters of the State, sections Ws 410.1 through Ws 410.16) (Issue Ws 3–82).

(b)(1) The Memorandum of Agreement between EPA Region I and the New Hampshire Water Supply and Pollution Control Commission, signed by the EPA Regional Administrator on August 23, 1982;

(2) Amendment No. 1 to the Memorandum of Agreement, signed by the EPA Regional Administrator on July 16, 1982.

(c) *Statement of legal authority*. (1) Letter from Attorney General of New Hampshire to Regional Administrator, EPA Region I, ''Re: Attorney General's Statement—Underground Injection Control Program,'' March 23, 1982;

(2) Letter from Attorney General of New Hampshire to Regional Administrator, EPA Region I, ''Re: Attorney General's Statement—Underground Injection Control Program,'' July 1, 1982.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43088, Oct. 25, 1988; 56 FR 9417, Mar. 6, 1991]

§ 147.1501 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of New Hampshire is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in New Hampshire is November 25, 1988.

[53 FR 43088, Oct. 25, 1988, as amended at 56 FR 9417, Mar. 6, 1991]

Subpart FF—New Jersey

§ 147.1550 State-administered program.

The UIC program for all classes of wells in the State of New Jersey, except those on Indian lands, is the program administered by the New Jersey Department of Environmental Protection, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the Federal Register on July 15, 1983 (48 FR 32343); the effective date of this program is August 15, 1983. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of New Jersey. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Water Pollution Control Act, New Jersey Statutes Annotated sections 58:10A–1 through 58:10A–20 (West 1982 and Supp. 1990);

(2) New Jersey Administrative Code, sections 7:14A–1.1 through 1.9 (subchapter 1), 7:14A–2.1 through 2.15 (subchapter 2), 7:14A–5.1 through 5.17, (subchapter 5) (amended March 1988).

(b)(1) The Memorandum Agreement between EPA Region II and the New Jersey Department of Environmental Protection, signed by the EPA Regional Administrator on September 9, 1982;

(2) Letter from Commissioner, New Jersey Department of Environmental Protection, to Regional Administrator, EPA Region II, March 21, 1983.

(c) *Statement of legal authority.* (1) Letter from Attorney General of New Jersey (by Deputy Attorney General) to Commissioner, Department of Environmental Protection, ''Re: New Jersey Pollutant Discharge Elimination System—Underground Injection Control,'' February 9, 1982;

(2) Letter from Attorney General of New Jersey (by Deputy Attorney General) to Commissioner, Department of Environmental Protection, ''Re: New Jersey Pollutant Discharge Elimination System—Underground Injection Control,'' April 15, 1983 (six pages);

(3) Letter from Attorney General of New Jersey (by Assistant Attorney General) to Commissioner, Department of Environmental Protection, ''Re: New Jersey Pollutant Discharge Elimination System—Underground Injection Control,'' April 15, 1983 (two pages).

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43089, Oct. 25, 1988; 56 FR 9417, Mar. 6, 1991]

§ 147.1551 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of New Jersey is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart.

Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in New Jersey is November 25, 1988.

[53 FR 43089, Oct. 25, 1988, as amended at 56 FR 9417, Mar. 6, 1991]

Subpart GG—New Mexico

§ 147.1600 State-administered program—Class II wells.

The UIC program for Class II wells in the State of New Mexico, except for those on Indian lands, is the program administered by the New Mexico Energy and Minerals Department, Oil Conservation Division, approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on February 5, 1982 (47 FR 5412); the effective date of this program is March 7, 1982. This program consists of the following elements as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of New Mexico. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Oil and Gas Act, New Mexico Statutes Annotated sections 70–2–1 through –36 (1978);

(2) *State of New Mexico Energy and Mineral Department, Oil Conservation Division—Rules and Regulations* (dated 10–1–78), sections B–3, I–701 through I–708, M–1100 through M–1121.

(b)(1) The Memorandum of Agreement between EPA Region VI and the New Mexico Energy and Minerals Department, Oil Conservation Division, signed by the EPA Regional Administrator on December 10, 1981;

(2) Addendum No. 1 to the Memorandum of Agreement, signed by the EPA Regional Administrator on June 28, 1982;

(3) Addendum No. 2 to the Memorandum of Agreement, signed by the EPA Regional Administrator on November 18, 1982;

(4) Letter from Director, Oil Conservation Division, New Mexico Energy and Minerals Department, and Assistant Attorney General of New Mexico, to Regional Administrator, EPA Region VI, November 6, 1981.

(c) *Statement of legal authority.* ''Statement of Legal Authority of the State of New Mexico by and through its Oil Conservation Division of the Energy and Mines Department to conduct an Underground Injection Control Program,'' signed by Assistant Attorney General and General Counsel to the Oil Conservation Division.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43089, Oct. 25, 1988]

§ 147.1601 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V injection wells in the State of New Mexico, except for those on Indian lands, is the program administered by the New Mexico Water Quality Control Commission, the Environmental Improvement Division, and the Oil Conservation Division, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on July 11, 1983 (48 FR 31640); the effective date of this program is August 10, 1983. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of New Mexico. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) New Mexico Water Quality Control Commission Regulations (WQCC 82–1) sections 1–100 through 5–300 (September 20, 1982).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference, are also part of the approved State-administered UIC program:

(1) Water Quality Act, New Mexico Statutes Annotated sections 74–6–1 through 74–6–13 (1978 and Supp. 1982);

(2) Geothermal Resources Conservation Act, New Mexico Statutes Annotated sections 71–5–1 through 71–5–24 (1978 and Supp. 1982);

(3) Surface Mining Act, New Mexico Statutes Annotated sections 69–25A–1 through 69–25A–35 (1978 and Supp. 1980).

(c)(1) The Memorandum of Agreement between EPA Region VI and the New Mexico Water Quality Control Commission, the Environmental Improvement Division, and the Oil Conservation Division, signed by the EPA Regional Administrator on April 13, 1983;

(2) Letter from the Director, Environmental Improvement Division and the Director, Oil Conservation Division, to Regional Administrator, EPA Region IV, ''Re: New Mexico Underground Injection Control Program—Clarification,'' February 10, 1983.

(d) *Statement of legal authority.* ''Attorney General's Statement,'' signed by the Assistant Attorney General for the Environmental Improvement Division, the Assistant Attorney General for Oil Conservation Division, and the Deputy Attorney General, Civil Division, Counsel for the Mining and Minerals Division, undated, submitted December 8, 1982.

(e) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43089, Oct. 25, 1988]

§ 147.1603 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in New Mexico is administered by EPA. The program consists of the requirements set forth at Subpart HHH of this part. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in New Mexico is November 25, 1988.

[53 FR 43089, Oct. 25, 1988]

Subpart HH—New York

§ 147.1650 State-administered program. [Reserved]

§ 147.1651 EPA-administered program.

(a) *Contents.* The UIC program for the State of New York, including all Indian lands, is administered by EPA. The program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for New York for all injection activities except those on lands of the Seneca Indian Tribe is June 25, 1984. The effective date for the UIC program for the lands of the Seneca Indian Tribe is November 25, 1988.

[53 FR 43089, Oct. 25, 1988; 54 FR 10616, Mar. 14, 1989, as amended at 56 FR 9417, Mar. 6, 1991]

§ 147.1652 Aquifer exemptions.

(a) This section identifies any aquifer or their portions exempted in accordance with §§ 144.7(b) and 146.4 of this chapter at the time of program promulgation. EPA may in the future exempt other aquifers or portions, according to applicable procedures, without codifying such exemptions in this section. An updated list of exemptions will be maintained in the Regional office.

(b) The following portions of aquifers are exempted in accordance with the provisions of §§ 144.7(b) and 146.4 of this chapter for Class II injection activities only:

(1) The Bradford First, Second, and Third Sand Members and the Kane Sand Member in the Bradford Field in Cattaraugus County.

(2) The Chipmunk Oil field in Cattaraugus County.

§ 147.1653 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.

Maximum injection pressure. The owner or operator shall limit injection pressure to the lesser of:

(a) A value which will not exceed the operating requirements of § 144.28(f)(3) (i) or (ii) as applicable; or

(b) A value for well head pressure calculated by using the following formula:

$$Pm=(0.733 \cdot 0.433\ Sg)d$$

where

Pm=injection pressure at the well head in pounds per square inch
Sg=specific gravity of inject fluid (unitless)
d=injection depth in feet.

§ 147.1654 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* (1) To meet the operating requirements of § 144.28(f)(3)(ii) (A) and (B) of this chapter, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure, or

(ii) May inject at pressures greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating provided he submits a request in writing to the Regional Administrator, and demonstrates to the satisfaction of the Regional Administrator that such injection pressure will not violate the requirement of § 144.28(f)(3)(ii) (A) and (B). The Regional Administrator may grant such a request after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter.

(2) Prior to such time as the Regional Administrator establishes rules for maximum injection pressure based on data provided pursuant to paragraph (a)(2)(ii) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Regional Administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission. The data shall be submitted to the Regional Administrator within one year of the effective date of this program.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall comply with paragraphs (b) (1) through (4) of this section, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(iii) For wells as described in § 146.8(b)(3)(ii), installing a smaller diameter pipe inside the existing injection tubing and setting it on an appropriate packer; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 50 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may specify other requirements in addition to or in lieu of the requirements set forth in paragraphs (b) (1) through (3) of this section as needed to protect USDWs.

§ 147.1655 Requirements for wells authorized by permit.

(a) The owner or operator of a Class I well authorized by permit shall install or shall ensure that the well has:

(1) Surface casing present;

(i) Extending from the surface to a depth at least 50 feet below the base of the lowermost USDW; and

(ii) Cemented back to the surface by recirculating the cement; and

(2) Long string casing and tubing;

(i) Extending to the injection zone; and

(ii) Cemented back to 50 feet above the base of the next largest casing string.

(b) The owner or operator of a new Class II well authorized by permit shall:

(1) Install surface casing from the surface to at least 50 feet below the base of the lowermost USDW.

(2) Cement the casing by recirculating to the surface or by using no less than 120% of the calculated annular volume.

(3) For new enhanced recovery wells, install tubing or long string casing extending to the injection zone.

(4) For new salt water disposal wells, install long string casing and tubing extending to the injection zone.

(5) Isolate any injection zone by placing sufficient cement to fill the calculated volume to a point 50 feet above the injection zone.

(c) The Regional Administrator may specify casing and cementing requirements other than those listed in paragraphs (a) and (b) of this section on a case by case basis as conditions of the permit.

Subpart II—North Carolina

§ 147.1700 State-administered program.

The UIC program for all classes of wells in the State of North Carolina, except those wells on Indian lands, is the program administered by the North Carolina Department of Environment, Health and Natural Resources approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on April 19, 1984 (49 FR 15553); the effective date of this program is April 19, 1984. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of North Carolina. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the North Carolina Department of Environment, Health and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611.

Copies may be inspected at the Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(1) Administrative Procedure Act, N.C. GEN. STAT. 150B–1 through 150B–64 (1987 and Cumm. Supp. 1989);

(2) North Carolina Well Construction Act, N.C. GEN. STAT. §§ 87–83 through 87–99 (1989 and Cumm. Supp. 1989);

(3) Water and Air Resources, N.C. GEN. STAT. §§ 143–211 through 143–215.10 (1987 and Cumm. Supp. 1989);

(4) Solid Waste Management, N.C. GEN. STAT. §§ 130A–290 through 130A–309.03 (1989);

(5) North Carolina Drinking Water Act, N.C. GEN. STAT. §§ 130A–311 through 130A–332 (1989);

(6) Sanitary Sewage Systems, N.C. GEN. STAT. §§ 130A–333 through 130A–335 (1989).

(b) *Other laws.* The following rules and regulations, although not incorporated by reference, are also part of the approved State-administered program:

(1) N.C. ADMIN. CODE, Title 15, r. 02L.0100 *et seq.* Groundwater Classification and Standards: General Considerations (September 22, 1988);

(2) N.C. ADMIN. CODE, Title 15, r. 02L.0100 *et seq.* Criteria and Standards Applicable to Injection Wells (September 22, 1988).

(c) *Memorandum of Agreement.* The Memorandum of Agreement between the State of North Carolina and EPA Region IV, signed March 1, 1984.

(d) *Statement of legal authority.* (1) Underground Injection Control Program, Attorney General's Statement (June 15, 1982);

(2) Amendment to Underground Injection Control Program, Attorney General's Statement (February 9, 1984).

(e) *Program Description.* The Program Description and other materials submitted as part of the application or as supplements thereto.

[56 FR 9417, Mar. 6, 1991]

§§ 147.1701—147.1702 [Reserved]

§ 147.1703 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of North Carolina is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in North Carolina is November 25, 1988.

[53 FR 43089, Oct. 25, 1988, as amended at 56 FR 9418, Mar. 6, 1991]

§§ 147.1704—147.1749 [Reserved]

Subpart JJ—North Dakota

§ 147.1750 State-administered program—Class II wells.

The UIC program for Class II wells in the State of North Dakota, except those on Indian lands, is the program administered by the North Dakota Industrial Commission, approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on August 23, 1983 (48 FR 38237); the effective date of this program is September 24, 1983. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of North Dakota. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) North Dakota Century Code, Chapter 38–08 (Control of Gas and Oil Resources, 1987 and Supp. 1989);

(2) North Dakota Administrative Code, Chapter 43–02–05 (Underground Injection Control, as published in *Statutes and Rules for the Conservation of Oil and Gas,* North Dakota Industrial Commission, revised effective November 1, 1987);

(3) North Dakota Administrative Code, Chapter 43–02–03 (General Rules, as published in *Statutes and Rules for the Conservation of Oil and Gas,* North Dakota Industrial Commission, revised effective November 1, 1987).

(b) The Memorandum of Agreement between EPA Region VIII and the North Dakota Industrial Commission, Oil and Gas Division, signed by the EPA Regional Administrator on June 16, 1983, as amended September 7, 1989.

(c) *Statement of legal authority.* ''Underground Injection Control Program Attorney General's Statement,'' as submitted with the North Dakota Underground Injection Control Program Primacy Application for Class II Injection Wells, transmitted by the Governor on July 15, 1982 (16 pages).

(d) The Program Description and other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43089, Oct. 25, 1988; 56 FR 9418, Mar. 6, 1991]

§ 147.1751 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV, and V wells in the State of North Dakota, except those on Indian lands, is the program administered by the North Dakota Department of Health, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on September 21, 1984; the effective date of this program is October 5, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of North Dakota. This incorporation by reference was approved by the Director of the Federal Register effective October 5, 1984.

(1) North Dakota Century Code Sections 38–12–01, 38–12–03 (1980);

(2) North Dakota Century Code, Sections 61–28–02 and 61–28–06 (1989);

(3) North Dakota Administrative Code Sections 33–25–01–01 through 33–25–01–18 (North Dakota State Health Department Underground Control Program) (1983);

(4) North Dakota Administrative Code, Chapter 43–02–02 (Subsurface Mineral Exploration and Development) (August 1986), and Chapter 43–02–02.1 (Underground Injection Control Program) (March 1, 1984);

(5) North Dakota Administrative Code Sections 43–02–02–1–01 through 43–02–02–1–18 (North Dakota Geological Survey—Undergound Injection Control Program) (1984);

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference, also are part of the approved State-administered program;

(1) North Dakota Environmental Law Enforcement Act of 1975, North Dakota Century Code Sections 32–40–01 to 32–40–11 (1976);

(2) North Dakota Century Code, Ch. 38–12 (Regulation, Development, and Production of Subsurface Minerals) (1979);

(3) North Dakota Century Code Chapter 61–28 (Control, Prevention and Abatement of Pollution of Surface Waters) (1989);

(4) North Dakota Administrative Code Article 33–22 (Practice and Procedure) (1983).

(c) The Memorandum of Agreement between EPA Region VIII and the North Dakota Department of Health, signed by the EPA Regional Administrator on May 18, 1984.

(d) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[49 FR 37066, Sept. 21, 1984, as amended at 56 FR 9418, Mar. 6, 1991]

§ 147.1752 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of North Dakota is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in North Dakota is November 25, 1988.

[53 FR 43089, Oct. 25, 1988, as amended at 56 FR 9418, Mar. 6, 1991]

Subpart KK—Ohio

§ 147.1800 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Ohio, except for those on Indian lands, is the program administered by the Ohio Department of Natural Resources, approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on August 23, 1983 (48 FR 38238); the effective date of this program is September 22, 1983. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Ohio. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Ohio Revised Code Annotated, sections 1509.01 through 1509.22 (Page 1978 and Supp. 1982);

(2) Rules of the Division of Oil and Gas, Ohio Administrative Code sections 1501:91–01, through 1501: 9–11–13 (1983).

(b) The Memorandum of Agreement between EPA Region V and the Ohio Department of Natural Resources.

(c) *Statement of legal authority.* ''Underground Injection Control Program—Attorney General's Statement,'' signed by the Assistant Attorney General, Chief, Environmental Law Section, for the Attorney General of Ohio, September 30, 1982.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43089, Oct. 25, 1988]

§ 147.1801 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Ohio, other than those on Indian lands, is the program administered by the Ohio Department of Natural Resources and the Ohio Environmental Protection Agency, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on November 29, 1984; the effective date of this program is January 14, 1985. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Ohio. This incorporation by reference was approved by the Director of the FEDERAL REGISTER effective January 14, 1985.

(1) Ohio Revised Code Annotated, sections 1509.01, 1509.03, 1509.221 (Supp. 1983);

(2) Rules of the Division of Oil and Gas, Ohio Administrative Code, sections 1501:9–7–01 through 7–14 (1984);

(3) Ohio Revised Code Annotated, sections 6111.04, 6111.043, 6111.044 (Supp. 1983);

(4) Rules of the Ohio Environmental Protection Agency, Ohio Administrative Code, sections 3745–34–01 through 34–41; 3745–9–01 through 9–11 (Director Ohio EPA Order, June 18, 1984).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference, also are part of the approved State-administered program:

(1) Ohio Revised Code, Chapter 119 (1978 Replacement Part);

(2) Ohio Code Supplement, sections 6111.041, 6111.042, 6111.045 (Supp. 1982).

(c) (1) The Memorandum of Agreement between EPA Region V and the Ohio Department of Natural Resources, signed by the EPA Regional Administrator on March 30, 1984;

(2) Memorandum of Agreement between the Ohio Department of Natural Resources and the Ohio Environmental Protection Agency, Related to the Underground Injection Control Program for the State of Ohio, signed August 1, 1984.

(d) *Statement of legal authority.* Statement from Attorney General of the State of Ohio, by Senior Assistant Attorney General, ''Underground Injection Control Program—Attorney General's Statement,'' July 25, 1984.

(e) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[49 FR 46897, Nov. 29, 1984]

§ 147.1802 Aquifer exemptions. [Reserved]

§ 147.1803 Existing Class I and III wells authorized by rule—maximum injection pressure.

The owner or operator shall limit injection pressure to the lesser of:

(a) A value which will not exceed the operating requirements of § 144.28(f)(3)(i); or

(b) A value for well head pressure calculated by using the following formula:

$$Pm = (0.8—0.433\ Sg)\ d$$

where

Pm = injection pressure at the well head in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet.

[49 FR 45308, Nov. 15, 1984]

§ 147.1805 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Ohio is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Ohio is November 25, 1988.

[53 FR 43089, Oct. 25, 1988, as amended at 56 FR 9418, Mar. 6, 1991]

Subpart LL—Oklahoma

§ 147.1850 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Oklahoma, except those on Indian lands, is the program administered by the Oklahoma State Department of Health, approved by EPA pursuant to SDWA section 1422. Notice of this approval was published in the FEDERAL REGISTER on June 24, 1982 (47 FR 27273). The effective date of this program is July 24, 1982. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Oklahoma. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Oklahoma Statutes title 63 sections 1–901, 1–903 (1981);

(2) Oklahoma Controlled Industrial Waste Disposal Act, Oklahoma Statute Annotated title 63 sections 1–2002, 1–2014 (West Supp. 1983–1984);

(3) *Regulations.* [Reserved]

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference except for select sections identified in paragraph (a) of this section, are also part of the approved State-administered UIC program:

(1) Oklahoma Open Meeting Act, Oklahoma Statutes title 25 sections 301 through 314 (Supp. 1978);

(2) Oklahoma Statutes Annotated title 63 sections 1–101 to 1–114, 1–901 to 1–911, 1–1601 *et seq.,* 1–1701, 1–2001 to 1–2014 (West 1973 and Supp. 1982);

(3) Oklahoma Statutes Annotated title 75 sections 301 to 327 (West 1976 and Supp. 1982).

(c) (1) The Memorandum of Agreement between EPA Region VI and the Oklahoma State Department of Health, signed by the EPA Regional Administrator on April 13, 1982;

(2) Memorandum of Understanding between the Oklahoma State Department of Health and the Oklahoma Corporation Commission (OCC), signed by members of the OCC on February 12, 1982;

(3) Memorandum of Understanding between the Oklahoma State Department of Health and the Oklahoma Department of Mines (ODM), signed by the Deputy Chief Mine Inspector, ODM, on February 15, 1982.

(d) *Statement of legal authority.* Letter from Attorney General of Oklahoma to Commissioner of Health, Oklahoma State Department of Health, ''Re: Statement and Memorandum of Law Concerning the Authority for the Oklahoma State Department of Health's Underground Injection Control Program,'' February 12, 1982.

(e) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43090, Oct. 25, 1988]

§ 147.1851 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Oklahoma, including the lands of the Five Civilized Tribes, but not including those on other Indian lands, is the program administered by the Oklahoma Corporation Commission approved by EPA pursuant to SDWA section 1425. Notice of this approval was published in the FEDERAL REGISTER on December 2, 1981 (46 FR 58588). This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* [Reserved]

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference, are also part of the approved State-administered UIC program:

(1) Oklahoma Statutes, title 17 sections 51–53; title 52 sections 86.1–86.5, 139–153, 243, 307–318.1 (1971).

(2) OCC–OGR Rules No. 1–101–3–303.

(c) (1) The Memorandum of Agreement between EPA Region VI and the Oklahoma Corporation Commission, signed by the EPA Regional Administrator on April 13, 1981;

(2) Letter from the Manager, Underground Injection Control, Oklahoma Corporation Commission, to EPA, June 18, 1981.

(d) *Statement of legal authority.* ''Statement of Legal Authority of the Oklahoma Corporation Commission to Conduct an Underground Injection Control Program,'' (Part IV, pages 30–41 of ''State of Oklahoma Primacy Application for Authority to Regulate Class II Injection Wells,'' submitted April 14, 1981), signed by the Conservation Attorney, Counsel to the Director and the Oklahoma Corporation Commission.

(e) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43090, Oct. 25, 1988]

§ 147.1852 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all wells on Indian lands in Oklahoma, except Class II wells on the lands of the Five Civilized Tribes, is administered by EPA. The UIC program for Class II wells on the Osage Mineral Reserve consists of the requirements set forth in subpart GGG of this part. The UIC program for all other wells on Indian lands consists of the requirements set forth in subpart III of this part. Injection well owners and operators and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for UIC program for Class II wells on the Osage Mineral Reserve is December 30, 1984. The effective date for the UIC program for all other wells on Indian lands is November 25, 1988.

[53 FR 43090, Oct. 25, 1988]

Subpart MM—Oregon

§ 147.1900 State-administered program.

The UIC program for all classes of wells in the State of Oregon, except those on Indian lands, is administered by the Oregon Department of Environmental Quality, approved by EPA pursuant to section 1422 and section 1425 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on September 25, 1984; the effective date of this program is October 9, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Oregon. This incorporation by reference was approved by the Director of the FEDERAL REGISTER effective October 9, 1984.

(1) Oregon Revised Statutes, Title 16, chapter 164, section 164.785; Title 36, chapter 468, sections 468.005, 468.065 to 468.070, 468.700 to 468.815; Title 43, chapter 520 sections 520.005, 520.095, 520.155—520.330 (1983);

(2) Oregon Administrative Rules, Chapter 340, Division 44, sections 340–44–005 through 340–44–055 (October 1983); Chapter 340, Division 45, sections 340–45–005 through 340–45–075 (January 1990); Chapter 632, Division 10, sections 632–10–002 through 632–10–235 (May 1986); Chapter 632, Division 20, sections 632–20–005 through 632–20–180 (May 1984).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference, also are part of the approved State-administered program:

(1) Oregon Revised Statutes, Chapter 183 (1987); 192.420, 192.500, 459.460(3), 468.005 through 468.605, and 468.780 through 468.997; Chapters 516 and 522 (1983);

(2) Oregon Administrative Rules, chapter 137, Div. 3 (July 1982); chapter 340, Div. 11 (April 1988); chapter 340, Div. 12 (March 1989); chapter 340, Div. 14 (November 1983); chapter 340, Div. 52 (November 1983); chapter 632, Div. 1 (June 1980); chapter 632, Div. 20 (January 1981).

(c)(1) The Memorandum of Agreement between EPA Region X and the Oregon Department of Environmental Quality, signed by the EPA Regional Administrator on May 3, 1984.

(d) *Statement of legal authority.* (1) ''Underground Injection Control Program Legal Counsel's Statement,'' October 1983, signed by the Assistant Attorney General, Oregon;

(2) Opinion of the Attorney General, Oregon, 35 Op. Attorney General 1042 (1972).

(e) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[49 FR 37594, Sept. 25, 1984, as amended at 53 FR 43090, Oct. 25, 1988; 56 FR 9418, Mar. 6, 1991]

§ 147.1901 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Oregon is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Oregon is November 25, 1988.

[53 FR 43090, Oct. 25, 1988, as amended at 56 FR 9419, Mar. 6, 1991]

Subpart NN—Pennsylvania

§ 147.1950 State-administered program. [Reserved]

§ 147.1951 EPA-administered program.

(a) *Contents.* The UIC program for the State of Pennsylvania, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is November 25, 1988. The effective date for the UIC program for the rest of Pennsylvania is June 25, 1984.

[53 FR 43090, Oct. 25, 1988, as amended at 56 FR 9419, Mar. 6, 1991]

§ 147.1952 Aquifer exemptions.

(a) This section identifies any aquifers or their portions exempted in accordance with §§ 144.7(b) and 146.4 of this chapter at the time of program promulgation. EPA may in the future exempt other aquifers or portions, according to applicable procedures, without codifying such exemptions in this section. An updated list of exemptions will be maintained in the Regional office.

(b) Those portions of the following oil bearing aquifers, which would otherwise meet the definition of a USDW, are exempted in accordance with the provisions of §§ 144.7(b) and 146.4 of this

chapter for Class II enhanced recovery injection activities only.

(1) The Sugar Run and Bradford series of oil producing sands of the Bradford Field, in McKean County; including the Bradford, West Branch, Stack, Bennett Brook, Marilla Brook, Brooder Hollow, Cyclone, Minard Run, Minard Run School, and Sugar Run (or Watsonville) Pools.

(2) The Bradford Third oil producing sand of the Guffey Field in McKean County.

(3) The Bradford series of oil producing sands of the Lewis Run Field in McKean County.

(4) The Bradford series of oil producing sands of the Windfall Field and Kings Run Pool in McKean County.

(5) The Red Valley member of the Second Sand formation of the Venango Group of oil producing sands in the Foster-Reno Field in Venango County; including the Foster, Bully Hill, Victory, Bredinsburg, Egypt Corners, Reno, Monarch Park and Seneca Pools.

(6) The Glade and Clarendon oil producing sands of the Morrison Run Field and Elk Run Pool in Warren County.

(7) The Clarendon and Glade oil producing sands of the Clarendon Field in Warren County.

(8) The Bradford Third oil producing sand in the Shinglehouse Field, including the Kings Run, Janders Run and Ceres Pools in Potter and McKean Counties.

§ 147.1953 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.

Maximum injection pressure. The owner or operator shall limit injection pressure to the lesser of:

(a) A value which will not exceed the operating requirements of § 144.28(f)(3) (i) or (ii) as applicable or

(b) A value for well head pressure calculated by using the following formula:

$$Pm=(0.733—0.433\ Sg)d$$

where

Pm=injection pressure at the well head in pounds per square inch
Sg=specific gravity of injection fluid (unitless)
d=injection depth in feet.

§ 147.1954 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* (1) To meet the operating requirements of § 144.28(f)(3)(ii) (A) and (B) of this chapter, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure; or

(ii) May inject at pressures greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating provided he submits a request in writing to the Regional Administrator, and demonstrates to the satisfaction of the Regional Administrator that such injection pressure will not violate the requirement of § 144.28(f)(3)(ii) (A) and (B). The Regional Administrator may grant such a request after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter.

(2) Prior to such time as the Regional Administrator establishes rules for maximum injection pressure based on data provided pursuant to paragraph (a)(2)(ii) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Regional Administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission. The information shall be submitted to the Regional Administrator within one year of the effective date of this regulation.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall comply with paragraphs (b) (1) through (4) of this section, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(iii) For wells as described in § 146.8(b)(3)(ii), installing a smaller diameter pipe inside the existing injection tubing and setting it on an appropriate packer; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 50 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may specify other requirements in addition to or in lieu of the requirements set forth in paragraphs (b) (1) through (3) of this section as needed to protect USDWs.

§ 147.1955 Requirements for wells authorized by permit.

(a) The owner or operator of a Class I well authorized by permit shall install or shall ensure that the well has:

(1) Surface casing present;

(i) Extending from the surface to a depth at least 50 feet below the base of the lowermost USDW; and

(ii) Cemented back to the surface by recirculating the cement; and

(2) Long string casing and tubing;

(i) Extending to the injection zone; and

(ii) Cemented back to 50 feet above the base of the next largest casing string.

(b) The owner or operator of a new Class II well authorized by permit shall:

(1) Install surface casing from the surface to at least 50 feet below the base of the lowermost USDW.

(2) Cement the casing by recirculating to the surface or by using no less than 120% of the calculated annular volume.

(3) For new enhanced recovery wells, install tubing or long string casing extending to the injection zone.

(4) For new salt water disposal wells, install long string casing and tubing extending to the injection zone.

(5) Isolate any injection zone by placing sufficient cement to fill the calculated volume to a point 50 feet above the injection zone.

(c) The Regional Administrator may specify casing and cementing requirements other than those listed in paragraphs (a) and (b) of this section on a case by case basis as conditions of the permit.

Subpart OO—Rhode Island

§ 147.2000 State-administered program—Class I, II, III, IV, and V wells.

The UIC program for all classes of wells in Rhode Island, except those on Indian lands, is the program administered by the Rhode Island Department of Environmental Management, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on August 1, 1984; the effective date of this program is August 15, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Rhode Island. This incorporation by reference was approved by the Director of the Federal Register effective August 15, 1984.

(1) Rhode Island Gen. Laws sections 46–12–1, 46–12–5, and 46–12–28 (Supp. 1983);

(2) ''Underground Injection Control Program Rules and Regulations.'' State of Rhode Island and Providence Plantations Department of Environmental Management. Division of Water Resources (as received by the Secretary of State, May 21, 1984).

(b) *Other laws.* The following statutes and regulations although not incorporated by reference, also are part of the approved State-administered program:

(1) Rhode Island General Laws, Section 10–20–1 *et seq.,* entitled ''State Environmental Rights'';

(2) Rhode Island General Laws, Section 23–19.1–1 *et seq.,* entitled ''Hazardous Waste Management'';

(3) Rhode Island General Laws, Section 42–17.1 *et seq.,* entitled ''Department of Environmental Management'';

(4) Rhode Island General Laws, Section 42–35–1 *et seq.,* entitled ''Administrative Procedures'';

(5) Rhode Island General Laws, Section 46–12–1 *et seq.,* entitled ''Water Pollution'';

(6) Hazardous Waste Management Facility Operating Permit Rules and Regulations—Landfills, at last amended November 2, 1981 (hereinafter referred to as the ''Hazardous Waste Regulation'');

(7) Water Quality Regulations for Water Pollution Control, effective November 19, 1981; and

(8) Administrative Rules of Practices and Procedure for Department of Environmental Management, effective November 12, 1980.

(c) (1) The Memorandum of Agreement between EPA Region I and the Rhode Island Department of Environmental Management, signed by the EPA Regional Administrator on March 29, 1984;

(2) Letter from Director, Rhode Island Department of Environmental Management, to Regional Administrator, EPA Region I, amending Section III, C of the Memorandum of Agreement, April 25, 1984.

(d) *Statement of legal authority.* Letter from Attorney General, State of Rhode Island and Provi-

dence Plantations, to Regional Administrator, EPA Region 1, ''Re: Attorney General's Statement, Underground Injection Control Program,'' January 17, 1984.

(e) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[49 FR 30699, Aug. 1, 1984, as amended at 53 FR 43090, Oct. 25, 1988]

§ 147.2001 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Rhode Island is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Rhode Island is November 25, 1988.

[53 FR 43090, Oct. 25, 1988, as amended at 56 FR 9419, Mar. 6, 1991]

Subpart PP—South Carolina

§ 147.2050 State-administered program.

The UIC program for all classes of wells in the State of South Carolina, except for those on Indian lands, is the program administered by the South Carolina Department of Health and Environmental Control, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on July 10, 1984; the effective date of this program is July 24, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of South Carolina. This incorporation by reference was approved by the Director of the Federal Register effective July 24, 1984.

(1) Pollution Control Act, S.C. Code Ann. Sections 48–1–10, 48–1–90, 48–1–100, 48–1–110 (Law. Co-op. 1976 and Supp. 1983).

(2) South Carolina Department of Health and Environmental Control, Ground-Water Protection Division, Underground Injection Control Regulations, R–61–87, Effective Date: June 24, 1983 Published in South Carolina State Register, Volume 7, Issue 6; Amended Date: March 23, 1984, as amended by notice in South Carolina State Register, Volume 8, Issue 3.

(b) *Other laws.* The following statutes and regulations although not incorporated by reference, also are part of the approved State-Administered program:

(1) Pollution Control Act, S.C. Code Ann. Sections 48–1–10 to 48–1–350 (Law. Co-op. 1976 and Supp. 1983).

(2) State Safe Drinking Water Act, S.C. Code Ann. Sections 44–55–10 to 44–55–100 (Law. Co-op. 1976 and Supp. 1983).

(3) Administrative Procedures Act, S.C. Code Ann. Sections 1–23–10 et seq., and 1–23–310 to 1–23–400 (Law. Co-op. 1976 and Supp. 1983).

(4) S.C. Code Ann. Sections 15–5–20, 15–5–200 (Law. Co-op. 1976 and Supp. 1983).

(c)(1) The Memorandum of Agreement between EPA Region IV and the South Carolina Department of Health and Environmental Control signed by the EPA Regional Administrator on May 29, 1984.

(d) *Statement of legal authority.* (1) ''Underground Injection Control Program, Attorney General's Statement for Class I, II, III, IV and VA and VB Wells,'' signed by the Attorney General of South Carolina on April 27, 1984.

(e) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[49 FR 28058, July 10, 1984, as amended at 53 FR 43090, Oct. 25, 1988]

§ 147.2051 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Rhode Island is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in South Carolina is November 25, 1988.

[53 FR 43090, Oct. 25, 1988, as amended at 56 FR 9419, Mar. 6, 1991]

Subpart QQ—South Dakota

§ 147.2100 State-administered program—Class II wells.

The UIC program for Class II wells in the State of South Dakota, except those on Indian lands, is the program administered by the South Dakota Department of Water and Natural Resources, approved by EPA pursuant to section 1425 of the

SDWA. Notice of this approval was published in the FEDERAL REGISTER on October 24, 1984; the effective date of this program is December 7, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of South Dakota. This incorporation by reference was approved by the Director of the Federal Register effective December 7, 1984.

(1) South Dakota Codified Laws, sections 45–9–2, 45–9–4, 45–9–11, 45–9–13, 45–9–14, 45–9–15 (1983).

(2) Administrative Rules of South Dakota, sections 74:10:02 through 74:10:07, 74:10:09, and 74:10:11 published by the South Dakota Code Commission, as revised through October 4, 1987.

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference, also are part of the approved State-administered program:

(1) South Dakota Codified Laws, Chapter 45–9 (sections not cited above) (1983); 1–26 (1981).

(c)(1) The Memorandum of Agreement between EPA Region VIII and the South Dakota Department of Water and Natural Resources, signed by the EPA Regional Administrator on July 18, 1984.

(d) *Statement of legal authority.* (1) ''Underground Injection Control Program for Class II Wells: Attorney General's Statement,'' signed by Mark V. Meierhery, Attorney General, South Dakota, on January 16, 1984.

(e) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[50 FR 7061, Feb. 20, 1985, as amended at 56 FR 9419, Mar. 6, 1991]

§ 147.2101 EPA-administered program—Class I, III, IV and V wells and all wells on Indian lands.

(a) *Contents.* The UIC program for all Class I, III, IV, and V wells, including those on Indian lands, and for Class II wells on Indian lands in the state of South Dakota is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Class I, III, IV and V wells on all lands in South Dakota, including Indian lands, and for Class II wells on Indian lands only, is December 30, 1984.

[52 FR 17682, May 11, 1987, as amended at 56 FR 9419, Mar. 6, 1991]

§ 147.2102 Aquifer exemptions.

(a) This section identifies any aquifers or their portions exempted in accordance with §§ 144.7(b) and 146.4 of this chapter at the time of program promulgation. EPA may in the future exempt other aquifers or their portions, according to applicable procedures, without codifying such exemptions in this section. An updated list of exemptions will be maintained in the Regional office.

(b) Those portions of all aquifers located on Indian Lands, which meet the definition of USDW and into which existing Class II wells are injecting, are exempted within a ¼ mile radius of the well for the purpose of Class II injection activities only.

[49 FR 45308, Nov. 15, 1984]

§ 147.2103 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* (1) To meet the operating requirements of § 144.28(f)(3)(ii) (A) and (B) of this chapter, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comments, and opportunity for a public hearings, according to the provisions of part 124, subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure; or

(ii) May inject at a pressure greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating provided he submits a request in writing to the Regional Administrator, and demonstrates to the satisfaction of the Regional Administrator that such injection pressure will not violate the requirement of § 144.28(f)(3)(ii)(A) and (B). The Regional Administrator may grant such a request after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter.

(2) Prior to such time as the Regional Administrator establishes field rules for maximum injection pressure based on data provided pursuant to paragraph (a)(2)(ii) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit to the Regional Administrator data acceptable to the Regional administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirement of §§ 144.28(e) and 146.22, the owner or operator shall when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operation pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone; and/or

(4) Comply with other requirements which the Regional Administrator may specify in addition to or in lieu of the requirements set forth in paragraphs (b) (1) through (3) of this section as needed to protect USDWs.

[49 FR 45308, Nov. 15, 1984]

§ 147.2104 Requirements for all wells.

(a) The owner or operator converting an existing well to an injection well shall check the condition of the casing with one of the following logging tools;

(1) A pipe analysis log; or

(2) A caliper log.

(b) The owner or operator of a new injection well cased with plastic (PVC, ABS, or others) casings shall:

(1) Not construct a well deeper than 500 feet;

(2) Use cement and additives compatible with such casing material; and

(3) Cement the annular space above the injection intermal from the bottom of the blank casing to the surface.

(c) The owner or operator of a newly drilled well shall install centralizers as directed by the Regional Administrator.

(d) The owner or operator shall as required by the Regional Administrator:

(1) Protect USDWs by:

(i) Setting surface casing 50 feet below the lowermost USDW;

(ii) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(iii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure; and

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may approve alternate casing and cementing practices provided that the owner or operator demonstrates that such practices will adequately protect USDWs.

(e) *Area of review.* Notwithstanding the alternatives presented in § 146.6 of this chapter, the area of review shall be a fixed radius as described in § 146.6(b) of this chapter.

(f) The applicant must give separate notice of intent to apply for a permit to each owner of record of the land within one-quarter mile of the site. The addresses of those to whom notice is given and the description of how notice was given shall be submitted with the permit application. The notice shall include:

(1) The name and address of applicant;

(2) A brief description of the planned injection activities, including well location, name and depth of the injection zone, maximum injection pressure and volume, and fluid to be injected;

(3) The EPA contact person; and

(4) A statement that opportunity to comment will be announced after EPA prepares a draft permit.

This requirement may be waived by the Regional Administrator if he determines that individual notice to all land owners of record would be impractical.

[49 FR 45308, Nov. 15, 1984]

Subpart RR—Tennessee

§ 147.2150 State-administered program. [Reserved]

§ 147.2151 EPA-administered program.

(a) *Contents.* The UIC program for the State of Tennessee, including all Indian lands, is adminis-

tered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* Effective date for the UIC program on Indian lands is November 25, 1988. The effective date for the UIC program for the rest of Tennessee is June 25, 1984.

[53 FR 43090, Oct. 25, 1988, as amended at 56 FR 9419, Mar. 6, 1991]

§ 147.2152 Aquifer exemptions. [Reserved]

§ 147.2153 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.

Maximum injection pressure. The owner or operator shall limit injection pressure to the lesser of:

(a) A value which will not exceed the operating requirements of § 144.28(f)(3) (i) or (ii) as applicable or

(b) A value for well head pressure calculated by using the following formula:

$$Pm=(0.600 \cdot 0.433\ Sg)d$$

where

Pm=injection pressure at the well head in pounds per square inch
Sg=specific gravity of inject fluid (unitless)
d=injection depth in feet.

§ 147.2154 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* (1) To meet the operating requirements of § 144.28(f)(3)(ii) (A) and (B) of this chapter, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure; or

(ii) May inject at pressures greater than those specified in paragraph (a)(1)(i) of this section for the field or formation in which he is operating, provided he submits a request in writing to the Regional Administrator and demonstrates to the satisfaction of the Regional Administrator that such injection pressure will not violate the requirement of § 144.28(f)(3)(ii) (A) and (B). The Regional Administrator may grant such a request after notice, opportunity for comment, and opportunity for a public hearing, according to the provisions of part 124, subpart A of this chapter.

(2) Prior to such time as the Regional Administrator establishes rules for maximum injection pressure based on data provided pursuant to paragraph (a)(2)(ii) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Regional Administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission. The data shall be submitted to the Regional Administrator within one year of the effective date of this regulation.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall comply with paragraphs (b) (1) through (4) of this section, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may specify other requirements in addition to or in lieu of the requirements set forth in paragraphs (b) (1) through (3) of this section, as needed to protect USDWs.

§ 147.2155 Requirements for all wells—area of review.

Notwithstanding the alternatives presented in § 146.6 of this chapter, the area of review shall be a minimum fixed radius as described in § 146.6(b) of this chapter.

Subpart SS—Texas

§ 147.2200 State-administered program—Class I, III, IV, and V wells.

Requirements for Class I, III, IV, and V wells. The UIC program for Class I, III, IV, and V wells in the State of Texas, except for those wells on Indian lands, is the State-administered program approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published on January 6, 1982 (47 FR 618); the effective date of this program is February 7, 1982. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Texas. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Injection Well Act, Texas Water Code sections 27.002, 27.011 (Vernon Supp. 1984);

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference except for select sections identified in paragraph (a) of this section, are also part of the approved State-administered UIC program:

(1) Texas Water Code Annotated, Chapter 5 (Vernon 1972 and Supp. 1982);

(2) Injection Well Act, Texas Water Code Annotated, Chapter 27 (Vernon 1972 and Supp. 1982);

(3) Rules of Texas Department of Water Resources, Chapter 27; Rules of Texas Water Development Board, Chapter 22.

(c) The Memorandum of Agreement between EPA Region VI and the Texas Department of Water Resources, signed by the EPA Regional Administrator on October 11, 1981.

(d) *Statement of legal authority.* ''Underground Injection Control Program—Attorney General's Statement for Class I, III, IV, and V Injection Wells,'' signed by the Attorney General of Texas, June 11, 1981.

(e) The Program Description and any other materials submitted as part of the application or as supplements thereto.

(f) Certain Class V wells are under the UIC program of the Texas Railroad Commission approved on April 23, 1982, under the authorities cited in § 147.2201 of this part.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43091, Oct. 25, 1988]

§ 147.2201 State-administered program—Class II wells

The UIC program for Class II wells in the State of Texas, except for those wells on Indian lands, is the program administered by the Railroad Commission of Texas, approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on April 23, 1982 (47 FR 17488). The effective date of this program was May 23, 1982. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Texas. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Injection Well Act, Texas Water Code Annotated sections 27.031 and 27.033 (Vernon Supp. 1984);

(2) Texas Natural Resources Code Annotated sections 85.041, 85.045, 85.046 and 85.052 (Vernon 1978 and Supp. 1982);

(3) Rules Having Statewide General Application to Oil, Gas, and Geothermal Resource Operations, sections .051.02.02.000 to .051.02.02.080 (Railroad Commission of Texas, Oil and Gas Division, Revised 12–22–81), amended as follows:

(i) Amendment to 16 TAC section 3.9 (section .051.02.02.009) issued December 21, 1981, effective April 1, 1982;

(ii) Amendment to 16 TAC section 3.46 (section .051.02.02.046) issued December 21, 1981, effective April 1, 1982.

(iii) Amendment to 16 TAC section 3.71 (section .051.02.02.074) issued December 21, 1981, effective April 1, 1982.

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference, are also part of the approved State-administered UIC program:

(1) Texas Water Code, Chapters 26, 27 and 29 (Vernon 1972 and Supp. 1982);

(2) Texas Natural Resources Code, Chapters 81, 85–89, 91 and 141 (Vernon 1978 and Supp. 1982);

(3) General Rules of Practice and Procedure, Subchapters A–J (Railroad Commission of Texas, adopted November 24, 1975, revised December 1980).

(c)(1) The Memorandum of Agreement between EPA Region VI and the Railroad Commission of Texas, signed by the EPA Regional Administrator on March 24, 1982.

(2) Letter from Director of Underground Injection Control, Railroad Commission of Texas, to

Chief, Ground Water Protection Section, EPA Region VI, ''Re: Letter of Clarification—UIC Program Application,'' March 21, 1982.

(d) *Statement of legal authority.* ''Statement of Legal Authority of the Railroad Commission of Texas to conduct the Underground Injection Control Program,'' signed by Special Counsel, Railroad Commission of Texas, as submitted with ''State of Texas Underground Injection Control Program Application for Primacy Enforcement Authority,'' prepared by the Railroad Commission of Texas, January 15, 1982.

(e) The Program Description and any other materials submitted as part of the application or as supplements thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43091, Oct. 25, 1988]

§ 147.2205 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Texas is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the Indian lands program for the State of Texas is November 25, 1988.

[53 FR 43091, Oct. 25, 1988, as amended at 56 FR 9419, Mar. 6, 1991]

Subpart TT—Utah

§ 147.2250 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Utah, except those on Indian lands, is administered by the Utah Department of Health, Division of Environmental Health, approved by EPA pursuant to Section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on January 9, 1983 (47 FR 2321). The effective date of this program is February 10, 1983. Changes to Utah's regulations for Class I wells were made on May 15, 1990, in response to modification of national rules as promulgated by 53 FR 28188, July 26, 1988. Utah's rules were effective July 20, 1990. The revised rules, Program Description, Attorney General's statement, and Memorandum of Agreement were approved as a minor program modification on October 3, 1990. This program consists of the following elements as submitted to EPA:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Utah. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Utah Water Pollution Control Act, Utah Code Annotated, Title 26, Chapter 11, Sections 2, 8, and 10 (1989);

(2) Underground Injection Control Regulations; Utah Administrative Code, Section R448–7 (effective as of January 2, 1990);

(3) Underground Injection Control Program (adopted January 20, 1982 and revised effective July 20, 1990) (Officially submitted to EPA by the Executive Secretary of Utah Water Pollution Control Committee on August 16, 1990).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference except for selected sections identified in paragraph (a) of this section, are also part of the approved State-administered program:

(1) Utah Pollution Control Act, Utah Code Annotated, Sections 26–11–1 through –20 (Supp. 1990);

(c)(1) The revised Memorandum of Agreement between EPA, Region VIII and the Utah Department of Health, Division of Environmental Health, signed by the Regional Administrator on October 3, 1990.

(2) Letter from Director, Utah Department of Health, Division of Environmental Health, Bureau of Water Pollution Control, to EPA Region VIII, Re: Underground Injection Control Program—Utah, March 15, 1982;

(3) Letter from the Executive Secretary of the Utah Water Pollution Control Committee to EPA Region VIII, ''Re: Utah UIC Class I Well Program Changes,'' August 16, 1990;

(d) *Statement of legal authority.* (1) ''Underground Injection Control Program—Attorney General's statement,'' signed by Attorney General, State of Utah, January, 1982;

(2) Letter from Assistant Attorney General of Utah to Chief, Drinking Water Branch, EPA Region VIII, June 18, 1982;

(3) Addendum to Underground Injection Control Program, Attorney General's Statement signed by Attorney General of Utah, August 10, 1990.

(e) The Program Description (revised June 19, 1990) and any other materials submitted as part of the application or supplements thereto.

[56 FR 9419, Mar. 6, 1991]

§ 147.2251 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Utah, except those on Indian lands, is the program administered by the Utah Department of

Natural Resources, Division of Oil, Gas, and Mining, approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on October 8, 1982 (47 FR 44561); the effective date of this program is November 7, 1982. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Utah. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Utah Code Annotated, 1953, section 40–6–1 through 40–6–18, as amended 1988 and Cumm. Supp. 1990;

(2) The Oil and Gas Conservation General Rules, adopted under the authority of the Oil and Gas Conservation Act, 40–6–1 *et seq.*, Utah Code Annotated, as amended 1988 (revised March 1989), rules R615–1 through R615–4, and R615–8 through R615–10.

(b) *Other laws.* [Reserved]

(c)(1) The Memorandum of Agreement between EPA, Region VIII and the Utah Department of Natural Resources, Division of Oil, Gas, and Mining and the Board of Oil, Gas and Mining, signed by the EPA Regional Administrator on July 19, 1983;

(2) Letter from Director, Division of Oil, Gas and Mining, Utah Department of Natural Resources and Energy, to Regional Administrator, EPA Region VIII, ''Re: Aquifer Exemption Process,'' June 16, 1982;

(3) ''Memorandum of Understanding'' between Utah Department of Health and Utah Department of Natural Resources, dated March 5, 1981;

(4) ''Second Addition to Agreement between the Department of Health and the Department of Natural Resources and Energy,'' dated December 15, 1981.

(d) *Statement of legal authority.* (1) Part III of ''Primacy Application—Class II Underground Injection Wells,'' consisting of ''Synopsis of Pertinent Statutes and Regulations,'' ''Statement of Legal Authority,'' and ''Certification by the Attorney General,'' by Assistant Attorney General, Department of Natural Resources and Energy, dated December 18, 1981;

(2) Letter from Assistant Attorney General, State of Utah, to EPA Region VIII, undated, received in the EPA Office of Regional Counsel June 10, 1982.

(3) Memorandum to Director, Division of Oil, Gas and Mining from Assistant Attorney General regarding Underground Injection Control Program, January 8, 1985.

(e) The Program Description and any other materials submitted as part of the application or amendments thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43091, Oct. 25, 1988; 56 FR 9420, Mar. 6, 1991]

§ 147.2253 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Utah is administered by EPA. The program for wells on the lands of the Navajo and Ute Mountain Ute consists of the requirements set forth at subpart HHH of this part. The program for all other wells on Indian lands consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for this program for all other Indian lands in Utah (as well as for the program of the Navajo and Ute Mountain Ute) is November 25, 1988.

[53 FR 40391, Oct. 25, 1988, as amended at 56 FR 9420, Mar. 6, 1991] h

Subpart UU—Vermont

§ 147.2300 State-administered program.

The UIC program for all classes of wells in the State of Vermont, except those wells on Indian lands, is the program administered by the Vermont Department of Environmental Conservation, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FR on June 22, 1984; the effective date of this program is July 6, 1984. This program consists of the following elements:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Vermont. This incorporation by reference was approved by the Director of the Federal Register July 6, 1984.

(1) Vt. Stat. Ann. tit. 10, sections 1251, 1259, 1263 (1973 and Supp. 1981), Effective date: July 1, 1982.

(2) Vermont Department of Water Resources and Environmental Engineering, Chapter 13 Water Pollution Control Regulations, Subchapter 13.UIC—Underground Injection Control, Dis-

charges to Injection Wells, Effective Date: June 21, 1984.

(b) *Other laws.* The following statutes and regulations although not incorporated by reference, also are part of the approved State-administered program:

(1) Vt. Stat. Ann. tit. 10, sections 1251 through 1283 (1973 and Supp. 1981).

(2) Vt. Stat. Ann. tit. 10, sections 901 through 911 (1973 and Supp. 1981).

(3) Vt. Stat. Ann. tit. 3, sections 801 through 847 (1973 and Supp. 1981).

(c)(1) The Memorandum of Agreement between EPA Region I and the Vermont Agency of Environmental Conservation signed by the EPA Regional Administrator on January 16, 1984.

(d) *Statement of legal authority.* (1) ''Vermont Attorney General's Statement for Classes I, II, III, IV and V Injection Wells,'' signed by Attorney General John J. Easton, Jr., as submitted with Vermont Application for Primary Enforcement Responsibility to Administer the Underground Water Source Protection Program Pursuant to the Safe Drinking Water Act and 40 CFR 145.21 through 145.24 (December 20, 1983).

(e) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

(42 U.S.C. 300)

[49 FR 25634, June 22, 1984, as amended at 53 FR 43091, Oct. 25, 1988; 56 FR 9420, Mar. 6, 1991]

§§ 147.2301—147.2302 [Reserved]

§ 147.2303 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Vermont is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands in Vermont is November 25, 1988.

[53 FR 43091, Oct. 25, 1988, as amended at 56 FR 9420, Mar. 6, 1991]

§§ 147.2304—147.2349 [Reserved]

Subpart VV—Virginia

§ 147.2350 State-administered program. [Reserved]

§ 147.2351 EPA-administered program.

(a) *Contents.* The UIC program for the State of Virginia, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on Indian lands is November 25, 1988. The effective date for the UIC program for the remainder of Virginia is June 25, 1984. (53 FR 43091, October 25, 1988).

[56 FR 9420, Mar. 6, 1991]

§ 147.2352 Aquifer exemptions. [Reserved]

Subpart WW—Washington

§ 147.2400 State-administered program—Class I, II, III, IV, and V wells.

The UIC program for Class I, II, III, IV, and V wells in the State of Washington other than those on Indian lands, is the program administered by the Washington Department of Ecology, approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on August 9, 1984; the effective date of this program is September 24, 1984. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Washington. This incorporation by reference was approved by the Director of the Federal Register effective September 24, 1984.

(1) Revised Code of Washington section 90.48.020, 90.48.080, 90.48.160, and 90.48.162 (Bureau of National Affairs, 1983 Laws);

(2) Washington Administrative Code sections 173–218–010 to 173–218–110 (Bureau of National Affairs, 2/29/84);

(3) Washington Administrative Code sections 344–12–001 to 344–12–262 (1983 Ed.)

(4) Washington Administrative Code Chapter 173–160 (reprinted May 1988).

(b) *Other laws.* The following statutes and regulations although not incorporated by reference, also are part of the approved State-administered program:

(1) Revised Code of Washington, chapter 34.04 (Bureau of National Affairs, 1981 Laws), entitled ''Administrative Procedure act'';

(2) Revised Code of Washington, chapter 43.21A (Bureau of National Affairs, 1980 Laws), entitled ''Department of Ecology,'' as amended by 1983 Washington Laws, Chapter 270;

(3) Revised Code of Washington, chapter 70.105 (Bureau of National Affairs, 1983 Laws), entitled ''Hazardous Waste Disposal'';

(4) Revised Code of Washington, chapter 78.52 (Bureau of National Affairs, 1983 Laws), entitled ''Oil and Gas Conservation'';

(5) Revised Code of Washington, chapter 90.48 (Bureau of National Affairs, 1986 Laws), entitled ''Water Pollution Control.''

(c)(1) The Memorandum of Agreement between EPA Region X and the Washington Department of Ecology, signed by the EPA Regional Administrator on May 14, 1984;

(2) Memorandum of Agreement between the Washington Department of Ecology and Oil and Gas Conservation Committee, Related to the Underground Injection Control Program for the State of Washington, signed March 23, 1984;

(3) Memorandum of Agreement between the Washington Department of Ecology and Washington Department of Natural Resources, Related to the Underground Injection Control Program for the State of Washington, signed March 23, 1984;

(4) Memorandum of Agreement between the Washington Department of Ecology and Department of Social and Health Services, Related to the Underground Injection Control Program for the State of Washington, signed March 23, 1984;

(d) *Statement of legal authority.* Letter from Attorney General of the State of Washington, by Senior Assistant Attorney General, to Director, Washington State Department of Ecology, ''Re: Underground Injection Control Regulatory Program—Attorney General's Statement,'' February 28, 1984.

(e) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[49 FR 31876, Aug. 9, 1984, as amended at 56 FR 9420, Mar. 6, 1991]

§ 147.2403 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Washington is administered by EPA. This program, for all Indian lands except those of the Colville Tribe, consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program for Indian lands in Washington is November 25, 1988.

[53 FR 43091, Oct. 25, 1988, as amended at 56 FR 9420, Mar. 6, 1991]

§ 147.2404 EPA-administered program—Colville Reservation.

(a) The UIC program for the Colville Indian Reservation consists of a prohibition of all Class I, II, III and IV injection wells and of a program administered by EPA for Class V wells. This program consists of the UIC program requirements of 40 CFR part 124, 144 and 146 and any additional requirements set forth in the remainder of this subpart. Injection well owners and EPA shall comply with these requirements. The prohibition on Class I–IV wells is effective November 25, 1988. No owner or operator shall construct, operate, maintain, convert, or conduct any other injection activity thereafter using Class I–IV wells.

(b) Owners and operators of Class I, II, III or IV wells in existence on the effective date of the program shall cease injection immediately. Within 60 days of the effective date of the program, the owner or operator shall submit a plan and schedule for plugging and abandoning the well for the Director's approval. The owner or operator shall plug and abandon the well according to the approved plan and schedule.

[53 FR 43091, Oct. 25, 1988]

Subpart XX—West Virginia

§§ 147.2450—147.2452 [Reserved]

§ 147.2453 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of West Virginia is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in West Virginia is November 25, 1988.

[53 FR 43092, Oct. 25, 1988, as amended at 56 FR 9420, Mar. 6, 1991]

§§ 147.2454—147.2499 [Reserved]

Subpart YY—Wisconsin

§ 147.2500 State-administered program.

The UIC program for Class I, II, III, IV, and V wells in the State of Wisconsin, other than those on Indian lands as described in § 147.2510, is the program administered by the Wisconsin Department of Natural Resources, approved by EPA pursuant to SDWA section 1422. Notice of this approval was published in the FEDERAL REGISTER on September 30, 1983 (48 FR 44783); the effective date of this program is November 30, 1983. This program consists of a prohibition of all injection wells except heat pump return flow injection wells and may be found in the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Wisconsin. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained at the Wisconsin Department of Natural Resources, Box 7921, Madison, Wisconsin, 53707. Copies may be inspected at the Environmental Protection Agency, Region V, 77 West Jackson Boulevard, Chicago, Illinois, 60604, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(1) Wisconsin Statutes Annotated §§ 147.015, 147.02 and 147.04 (West 1974 and Supp. 1983);

(2) Chapter NR 112, Well Construction and Pump Installation, Wisconsin Administrative Code §§ NR 112.03 and 112.20 (October 1981), as amended by Natural Resources Board Order No. WQ–25–82, approved by the Natural Resources Board on August 25, 1982;

(3) Chapter NR 113, Servicing Septic Tanks, Seepage Pits, Grease Traps or Privies, Wisconsin Administrative Code §§ NR 113.07–113.08 (1979), as amended by Natural Resources Board Order No. WQ–25–82, approved by the Wisconsin Natural Resources Board on August 25, 1982;

(4) Chapter NR 181, Hazardous Waste Management, Wisconsin Administrative Code §§ NR 181.04–181.415 (1981), as amended June 1985;

(5) Chapter NR 210, Sewage Treatment Works, Wisconsin Administrative Code § 210.05 Natural Resources Board Order No. WQ–25–82, approved by the Wisconsin Natural Resources Board on August 25, 1982;

(6) Chapter NR 214, Land Application and Disposal of Liquid Industrial Wastes and By-Products, Wisconsin Administrative Code §§ 214.03 and 214.08 (1983).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference except for select sections identified in paragraph (a) of this section, are also part of the approved State-administered program:

(1) Chapter 144, Water, Sewage, Refuse, Mining and Air Pollution, Wisconsin Statutes Annotated (West 1974 and Supp. 1983);

(2) Chapter 147, Pollution Discharge Elimination, Wisconsin Statutes Annotated (West 1974 and Supp. 1983);

(3) Chapter 162, Pure Drinking Water, Wisconsin Statutes Annotated (West 1974 and Supp. 1983);

(4) Laws of 1981, Chapter 20, § 2038 (Re: heat pump injection);

(5) Wisconsin Statutes 803.09(1) (West 1977) (intervention as of right in civil actions).

(c) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region V and the Wisconsin Department of Natural Resources, signed by the Regional Administrator on December 6, 1983.

(d) *Statement of legal authority.* (1) ''Attorney General's Statement,'' signed by Attorney General, State of Wisconsin;

(2) Letter from Assistant Attorney General, State of Wisconsin, to EPA Region, ''Re: Amendments to Attorney General's Statement-UIC,'' June 30, 1983.

(e) *Program Description.* The Program Description and other materials submitted as part of the application or as supplements thereto.

[49 FR 45309, Nov. 15, 1984, as amended at 56 FR 9420, Mar. 6, 1991; 56 FR 14150, Apr. 5, 1991; 62 FR 1834, Jan. 14, 1997]

§ 147.2510 EPA-administered program—Indian lands.

(a) *Contents*. The UIC program for Indian lands in the State of Wisconsin is administered by EPA. This program consists of 40 CFR parts 144 and 146 and additional requirements set forth in this section. Injection well owners and operators, and EPA, shall comply with these requirements.

(b) *Requirements.* Notwithstanding the requirements of paragraph (a) of this section for Indian lands in Wisconsin no owner or operator shall construct, operate, maintain, or convert any Class I, II, III, IV or V injection well.

(c) *Effective date.* The effective date of the UIC program requirements for Indian lands in Wisconsin is December 30, 1984.

[49 FR 45309, Nov. 15, 1984]

Subpart ZZ—Wyoming

§ 147.2550 State-administered program—Class I, III, IV and V wells.

The UIC program for Class I, III, IV and V wells in the State of Wyoming, except those on Indian lands is the program administered by the Wyoming Department of Environmental Quality approved by EPA pursuant to section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on July 15, 1983 (48 FR 32344); the effective date of this program is August 17, 1983. The program consists of the following elements as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the State of Wyoming. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Wyoming Environmental Quality Act, Wyoming Statutes sections 35–11–101 through 35–11–115, and 35–11–301 through 35–11–305 (1977 Republished Edition and 1989 Cumm. Supp.);

(2) Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter III: Regulations for Permit to Construct, Install or Modify Public Facilities Capable or, (sic) Causing or Contributing to Pollution (certified copy, signed December 21, 1983);

(3) Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter VIII: Quality Standards for Groundwaters of Wyoming (certified copy, signed April 9, 1980);

(4) Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter IX: Wyoming Groundwater Pollution Control Permit (certified copy, signed April 9, 1980);

(5) Water Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XIII: Prohibitions of Permits for New Hazardous Waste Injection Wells (certified copy, signed August 25, 1989);

(6) Land Quality Rules and Regulations, Wyoming Department of Environmental Quality, Chapter XXI: In Situ Mining (effective March 26, 1981).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference except for select sections identified in paragraph (a) of this section, are also part of the approved State-administered program:

(1) Article 9, Underground Water, Wyoming Statutes sections 41–3–901 through 41–3–938 (September 1982);

(2) Wyoming Administrative Procedure Act, Wyoming Statutes sections 9–4–101 through 9–4–115 (1988);

(3) Department of Environmental Quality Rules of Practice and Procedure (1982).

(c)(1) The Memorandum of Agreement between EPA, Region VIII and the Wyoming Department of Environmental Quality, signed by the EPA Regional Administrator on April 26, 1983.

(2) Letter from Regional Administrator, EPA Region VIII, to Governor of Wyoming, May 21, 1982, with Attachment (regarding aquifer exemptions);

(3) Letter from Governor of Wyoming to Regional Administrator, EPA Region VIII, ''Re: Underground Injection Control (UIC) Program—Aquifer Exemption Issues,'' June 7, 1982;

(4) Letter from Regional Administrator, EPA Region VIII to Governor of Wyoming, ''Re: Underground Injection Control (UIC) Program—Aquifer Exemption Issues,'' June 25, 1982;

(5) Letter from Director, Wyoming Department of Environmental Quality, to Acting Director, Water Management Division, EPA Region VIII, December 1, 1982.

(d) *Statement of legal authority.* (1) ''Attorney General's Statement—Wyoming Statutory and Regulatory Authority for Assumption of the Underground Injection Control Program Pursuant to the Federal Safe Drinking Water Act,'' signed by Attorney General and Assistant Attorney General for the State of Wyoming, September 22, 1982;

(2) Letter from Attorney General for the State of Wyoming to Acting Regional Counsel, EPA Region VIII, ''Re: Wyoming Assumption of the UIC Program—$36, Chapter IX, Wyoming Water Quality Rules and Regulations,'' November 24, 1982.

(e) The Program Description and any other materials submitted as part of the application or amendment thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43092, Oct. 25, 1988; 56 FR 9421, Mar. 6, 1991]

§ 147.2551 State-administered program—Class II wells.

The UIC program for Class II wells in the State of Wyoming, except those on Indian lands, is the program administered by the Wyoming Oil and Gas Conservation Commission approved by EPA pursuant to section 1425 of the SDWA. Notice of this approval was published in the FR on November 23, 1982 (47 FR 52434); the effective date of this program is December 23, 1982. This program consists of the following elements as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by

reference and made a part of the applicable UIC program under the SDWA for the State of Wyoming. This incorporation by reference was approved by the Director of the OFR in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained at the Wyoming Oil and Gas Conservation Commission, Office of the State Oil and Gas Supervisor, P.O. Box 2640, 77 West First Street, Casper, Wyoming, 82602. Copies may be inspected at the Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(1) Rules and Regulations of the Wyoming Oil and Gas Conservation Commission, including Rules of Practice and Procedure, as published by the Wyoming Oil and Gas Conservation Commission, August 7, 1990;

(2) Title 30, Chapter 5, Wyoming Statutes, sections 30–5–101 through 30–5–126 (June 1983 and Wyoming Statutes Annotated, July 1990 Supp.).

(b) *Memorandum of Agreement.* (1) The initial Memorandum of Agreement between EPA, Region VIII and Wyoming Oil and Gas Conservation Commission, signed by the EPA Regional Administrator and the Oil Field Supervisor of the Commission on June 2, 1982;

(2) Amendment No. 1 to the Memorandum of Agreement, dated December 22, 1982;

(3) Amendment No. 2 to the Memorandum of Agreement, dated January 25, 1990;

(4) Letter from State Oil and Gas Supervisor, Wyoming Oil and Gas Conservation Commission, to the Acting Director, Water Management Division, EPA Region VIII, ''Re: Application for Primacy in the Regulation of Class II Injection Wells,'' March 8, 1982;

(5) Letter from State Oil and Gas Supervisor, Wyoming Oil and Gas Conservation Commission, to EPA Region VIII, ''Re: Regulation of Liquid Hydrocarbon Storage Wells Under the UIC Program,'' July 1, 1982;

(6) Memorandum of Agreement Between the Wyoming State Board of Control, State Engineer, Oil and Gas Conservation Commission, and the Department of Environmental Quality, dated October 14, 1981.

(c) *Statement of legal authority.* (1) ''Statement of Legal Authority'' and ''State Review of Regulations and Statutes Relevant to the UIC Program-Class II Wells,'' signed by Special Assistant Attorney General for the State of Wyoming, as submitted with ''Wyoming Oil and Gas Conservation Commission, Application for Primacy in the Regulation of Class II Injection Wells under Section 1425 of the Safe Drinking Water Act,'' November 1981;

(2) Letter from special Assistant Attorney General for the State of Wyoming to Assistant Regional Counsel, EPA Region VIII, May 13, 1982;

(3) Letter from special Assistant Attorney General for the State of Wyoming to Assistant Regional Counsel, EPA Region VIII, July 1, 1982.

(d) *Program Description.* The Program Description and other material submitted as part of the application or amendments thereto, including the memorandum to the National UIC Branch reporting on Improvement to the Wyoming Oil and Gas 1425 program, dated April 28, 1989.

[56 FR 9421, Mar. 6, 1991]

§ 147.2553 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for all classes of wells on Indian lands in the State of Wyoming is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in Wyoming is November 25, 1988.

[53 FR 43092, Oct. 25, 1988, as amended at 56 FR 9422, Mar. 6, 1991]

§ 147.2554 Aquifer exemptions.

In accordance with §§ 144.7(b) and 146.4 of this chapter, those portions of aquifers currently being used for injection in connection with Class II (oil and gas) injection operations on the Wind River Reservation, which are described below, are hereby exempted for the purpose of Class II injection activity. This exemption applies only to the aquifers tabulated below, and includes those portions of the aquifers defined on the surface by an outer boundary of those quarter-quarter sections dissected by a line drawn parallel to, but one-quarter mile outside, the field boundary, and is restricted to extend no further than one-quarter mile outside the Reservation boundary. Maps showing the exact boundaries of the field may be consulted at the EPA's Region 8 Office, and at the EPA Headquarters in Washington, DC.

AREAS TO BE EXEMPTED FOR THE PURPOSE OF CLASS II INJECTION ON THE WIND RIVER RESERVATION

Formation	Approximate depth	Location
Steamboat Butte Field		
Phosphoria	6,500–7,100	T3N, R1W—W/2 Sec. 4, Sec. 5, E/2 Sec. 6, NE/4 Sec. 8, W/2 Sec. 9. T4N, R1W—W/2 Sec. 29, E/2 Sec. 30, E/2 Sec. 31, Sec. 32.
Tensleep	6,900–7,500	T3N, R1W—W/2 Sec. 4, Sec. 5, E/2 Sec. 6, NE/4 Sec. 8, W/2 Sec. 9. T4N, R1W—W/2 Sec. 29, E/2 Sec. 30, E/2 Sec. 31, Sec. 32.
Winkleman Dome Field		
Tensleep	2,800–3,300	T2N, R1W—SW/4 Sec. 17, Sections 18, 19, 20, 29, NE/4 Sec. 30. T2N, R2W—E/2 Sec. 13, NE/4 Sec. 24.
Phosphoria	2,800–3,600	T2N, R1W—SW/4 Sec. 17, Sections 18, 19, 20, 29, NE/4 Sec. 30. T2N, R2W—E/2 Sec. 13, NE/4 Sec. 24.
Nugget	1,100–1,500	T2N, R1W—SW/4 Sec. 17, Sections 18, 19, 20, 29, NE/4 Sec. 30. T2N, R2W—E/2 Sec. 13, NE/4 Sec. 24.
Lander Field		
Phosphoria	1,100–3,800	T2S, R1E—Sections 12 and 13, E/2 Sec. 24, NE/4 Sec. 25. T2S, R2E—W/2 Sec. 18, W/2 Sec. 19, Sec. 30. T33N, R99W—Sec. 4.
NW Sheldon Field		
Crow Mountain and Cloverly	3,400–3,600	T6N, R3W—SE/4 Sec. 35, SW/4 Sec. 36. T5N, R3W—N/2 Sec. 1.
Circle Ridge Field		
Tensleep	1,500–1,800	T6N, R2W—Sec. 6, N/2 Sec. 7. T7N, R3W—SE/4 Sec. 36. T7N, R2W—SW/4 Sec. 31. T6N, R3W—E/2 Sec. 1.
Phosphoria	800–1,800	T7N, R3W—S/2 Sec. 36. T6N, R3W—NE/4 Sec. 1.
Amsden	700–l,200	T6N, R3W—Sec. 6.
Rolff Lake Field		
Crow Mountain	3,500–3,700	T6N, R3W—SW/4 Sec. 26, NW/4 Sec. 27.

[53 FR 43092, Oct. 25, 1988]

Subpart AAA—Guam

§ 147.2600 State-administered program.

The UIC program for all classes of wells in the territory of Guam, except those on Indian lands, is the program administered by the Guam Environmental Protection Agency, approved by EPA pursuant to SDWA section 1422. Notice of this approval was published in the FEDERAL REGISTER on May 2, 1983 (47 FR 19717); the effective date of this program is June 1, 1983. This program consists of the following elements, as submitted to EPA in the State's program application:

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the territory of Guam. This incorporation by reference was approved by the Director of the Federal Register on June 25, 1984.

(1) Water Resources Conservation Act, Government Code of Guam sections 57021–57025, Public Law 9–31 (March 9, 1967), as amended by Public Law 9–76 (July 29, 1967), as amended by Public Law 12–191 (December 30, 1974);

(2) Water Pollution Control Act, Government Code of Guam sections 57042 and 57045, Public Law 9–76 (July 29, 1967), as amended by Public Law 9–212 (August 5, 1968), as amended by Public Law 10–31 (March 10, 1969), as amended by Public Law 12–191 (December 30, 1974);

(3) Guam Environmental Protection Agency, Underground Injection Control Regulations, Chapters 1–9, as revised by amendments adopted September 24, 1982;

(4) Guam Environmental Protection Agency, Water Quality Standards, Section I–IV (approved September 25, 1981, effective November 16, 1981).

(b) *Other laws.* The following statutes and regulations, although not incorporated by reference ex-

cept for specific sections identified in paragraph (a) of this section, are also part of the approved State-administered program:

(1) Government Code of Guam, Title XXV, Chapters I–III (sections 24000–24207);

(2) Government Code of Guam, Title LXI, Chapters I–III (sections 57000–57051);

(3) Government Code of Guam, Title LXI, Chapters VI (sections 57120–57142);

(4) Government Code of Guam, Title LXI, Chapters VIII (sections 57170–57188);

(5) Government Code of Guam, Title LXI, Chapters XII (sections 57285–57299);

(c) The Memorandum of Agreement between EPA, Region IX and the Guam Environmental Protection Agency signed by the Regional Administrator on January 14, 1983.

(d) *Statement of legal authority.* (1) Letter from Attorney General of Guam to Regional Administrator, Region IX, ''Re: Attorney General's Statement for Underground Injection Control Program (UIC), Ground Water Program Guidance #16'' May 12, 1982;

(2) Letter from Attorney General of Guam to Regional Administrator, Region IX, ''Re: Additional comments to be incorporated into the May 12, 1982, Attorney General's Statement for Underground Injection Control Program,'' September 2, 1982.

(e) The Program Description and any other materials submitted as part of the application or amendments thereto.

[49 FR 20197, May 11, 1984, as amended at 53 FR 43092, Oct. 25, 1988]

§ 147.2601 EPA-administered program—Indian lands.

(a) *Contents.* The UIC program for Indian lands in the territory of Guam is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on Indian lands in the territory of Guam is November 25, 1988.

[53 FR 43093, Oct. 25, 1988, as amended at 56 FR 9422, Mar. 6, 1991]

Subpart BBB—Puerto Rico

§ 147.2650 State-administered program—Class I, II, III, IV, and V wells.

The Underground Injection Control Program for all classes of wells in the Commonwealth of Puerto Rico, other than those on Indian lands, is the program administered by Puerto Rico's Environmental Quality Board (EQB), approved by the EPA pursuant to the Safe Drinking Water Act (SDWA) section 1422. This program consists of the following elements, as submitted to EPA in the Commonwealth's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the Commonwealth of Puerto Rico. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained or inspected at the following locations: EPA, Region II, 26 Federal Plaza, room 845, New York, NY 10278; EPA, Headquarters, 401 M Street, SW., room E1101A, Washington, DC 20460; or the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(1) Underground Injection Control Regulations of the Commonwealth of Puerto Rico, Parts I through V and appendices A and B, adopted September 14, 1983 (Amended July 20, 1988).

(2) Puerto Rico Public Policy Environmental Act (PRPPE), Title 12 Laws of Puerto Rico Annotated (LPRA) Chapters 121 and 131, 1977 edition, as amended 1988 edition, and Chapter 122, 1988 edition.

(b) Memorandum of Agreement. The Memorandum of Agreement between EPA Region II and the Commonwealth of Puerto Rico's EQB signed by the Regional Administrator on August 23, 1991.

(c) Statement of legal authority. (1) Attorney General's statement on the Commonwealth of Puerto Rico's Authority to apply for, assume and carry out the UIC Program, dated June 26, 1987. (2) Letter from the Governor of the Commonwealth of Puerto Rico requesting the program, dated July 16, 1987.

(d) Program description. The Description of the Commonwealth of Puerto Rico's Underground Injection Control Program, dated with the effective date October 30, 1986.

[57 FR 33446, July 29, 1992]

§ 147.2651 EPA-administered program— Indian lands.

(a) Contents. The UIC program for all classes of wells on Indian lands in the Commonwealth of Puerto Rico is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148 and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators and EPA shall comply with the requirements.

(b) Effective date. The effective date for the UIC program on Indian Lands in the Commonwealth of Puerto Rico is November 25, 1988.

[57 FR 33446, July 29, 1992]

Subpart CCC—Virgin Islands

§ 147.2700 State-administered program. [Reserved]

§ 147.2701 EPA-administered program.

(a) *Contents.* The UIC program for the Virgin Islands, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for non-Indian lands in the Virgin Islands is December 30, 1984. The effective date for Indian lands in the Virgin Islands is November 25, 1988.

[53 FR 43093, Oct. 25, 1988, as amended at 56 FR 9422, Mar. 6, 1991]

Subpart DDD—American Samoa

§ 147.2750 State-administered program. [Reserved]

§ 147.2751 EPA-administered program.

(a) *Contents.* The UIC program for American Samoa, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date for the UIC program on non-Indian lands is June 25, 1984. The effective date of the UIC program on Indian lands is November 25, 1988.

[53 FR 43093, Oct. 25, 1988, as amended at 56 FR 9422, Mar. 6, 1991]

§ 147.2752 Aquifer exemptions. [Reserved]

Subpart EEE—Commonwealth of the Northern Mariana Islands

§ 147.2800 State-administered program—Class I, II, III, IV, and V wells.

The UIC program for Class I, II, III, IV, and V wells in the Commonwealth of the Northern Mariana Islands, other than those on Indian lands, is the program administered by the Commonwealth of the Northern Mariana Islands Division of Environmental Quality approved by EPA pursuant to Section 1422 of the SDWA. Notice of this approval was published in the FEDERAL REGISTER on January 18, 1985; the effective date of this program is August 30, 1985. This program consists of the following elements, as submitted to EPA in the State's program application.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made a part of the applicable UIC program under the SDWA for the Commonwealth of the Northern Mariana Islands. This incorporation by reference was approved by the Director of the Federal Register effective July 31, 1985.

(1) CNMI Environmental Protection Act, 2 CMC sections 3101, *et seq.* (1984);

(2) CNMI Coastal Resources Management Act, 2 CMC sections 1501, *et seq.* (1984);

(3) CNMI Drinking Water Regulations, Commonwealth Register, Volume 4, Number 4 (August 15, 1982);

(4) CNMI Underground Injection Control Regulations, Commonwealth Register, Volume 6, Number 5 (May 15, 1984, amended November 15, 1984, January 15, 1985);

(5) CNMI Coastal Resources Management Regulations, Commonwealth Register, Volume 6, Number 12, December 17, 1984.

(b)(1) The Memorandum of Agreement between EPA Region IX and the Commonwealth of the Northern Mariana Islands Division of Environmental Quality, signed by the EPA Regional Administrator on May 3, 1985;

(c) *Statement of legal authority.* Statement from Attorney General Commonwealth of the Northern Mariana Islands, ''Underground Injection Control Program—Attorney General's Statement,'' signed on October 10, 1984.

(d) The Program Description and any other materials submitted as part of the original application or as supplements thereto.

[50 FR 28943, July 17, 1985]

§ 147.2801 EPA-administered program.

(a) *Contents.* The UIC program for Indian lands in the Commonwealth of the Northern Mariana Islands is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date of the UIC program for Indian lands is November 25, 1988.

[53 FR 43093, Oct. 25, 1988, as amended at 56 FR 9422, Mar. 6, 1991]

§ 147.2802 Aquifer exemptions. [Reserved]

Subpart FFF—Trust Territory of the Pacific Islands

§ 147.2850 State-administered program. [Reserved]

§ 147.2851 EPA-administered program.

(a) *Contents.* The UIC program for Trust Territory of the Pacific Islands, including all Indian lands, is administered by EPA. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and any additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective dates.* The effective date of the UIC program for non-Indian lands of the Trust Territory of the Pacific Islands is June 25, 1984. The effective date for the Indian lands is November 25, 1988.

[53 FR 43093, Oct. 25, 1988, as amended at 56 FR 9422, Mar. 6, 1991]

§ 147.2852 Aquifer exemptions. [Reserved]

Subpart GGG—Osage Mineral Reserve—Class II Wells

AUTHORITY: Safe Drinking Water Act, 42 U.S.C. 300h.

SOURCE: 49 FR 45309, Nov. 15, 1984, unless otherwise noted.

§ 147.2901 Applicability and scope.

This subpart sets forth the rules and permitting requirements for the Osage Mineral Reserve, Osage County, Oklahoma, Underground Injection Control Program. The regulations apply to owners and operators of Class II injection wells located on the Reserve, and to EPA.

§ 147.2902 Definitions.

Most of the following terms are defined in § 144.3, and have simply been reproduced here for the convenience of the reader. This section also includes definitions of some terms unique to the Osage program. Terms used in this subpart are defined as follows:

Administrator—the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Aquifer—a geologic formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

BIA—The ''Bureau of Indian Affairs,'' United States Department of Interior.

Casing—a pipe or tubing of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and, thus, prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent water, gas, or other fluid from entering the hole.

Cementing—the operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing.

Class II Wells—wells which inject fluids:

(a) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters would be classified as a hazardous waste at the time of injection;

(b) For enhanced recovery of oil or natural gas; and

(c) For storage of hydrocarbons which are liquid at standard temperature and pressure.

Existing Class II Wells—wells that were authorized by BIA and constructed and completed before the effective date of this program.

New Class II Wells—wells constructed or converted after the effective date of this program, or which are under construction on the effective date of this program.

Confining bed—a body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

Confining zone—a geologic formation, group of formations, or part of a formation that is capable of limiting fluid movement above an injection zone.

Contaminant—any physical, chemical, biological, or radiological substance or matter in water.

Disposal well—a well used for the disposal of waste into a subsurface stratum.

EPA—The United States Environmental Protection Agency.

Fault—a surface or zone of rock fracture along which there has been displacement.

Fluid—material or substance which moves or flows whether in a semisolid, liquid, sludge, gas or any other form or state.

Formation—a body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

Freshwater—''Underground source of drinking water.''

Ground water—water below the land surface in a zone of saturation.

Injection well—a well into which fluids are being injected.

Injection zone—a geological formation, group of formations, or part of a formation receiving fluids through a well.

Lithology—the description of rocks on the basis of their physical and chemical characteristics.

Owner/operator—the owner or operator of any facility or activity subject to regulation under the Osage UIC program.

Packer—a device lowered into a well to produce a fluid-tight seal within the casing.

Permit—an authorization issued by EPA to implement UIC program requirements. Permit does not include the UIC authorization by rule or any permit which has not yet been the subject of final Agency action.

Plugging—the act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation.

Pressure—the total load or force per unit area acting on a surface.

Regional Administrator—the Regional Administrator of Region 6 of the United States Environmental Protection Agency, or an authorized representative.

Subsidence—the lowering of the natural land surface in response to: Earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution solids, either artificially or from natural causes; compaction due to wetting (hydrocompaction); oxidation of organic matter in soils; or added load on the land surface.

Underground source of drinking water—an aquifer or its portion:

(a)(1) Which supplies any public water system; or

(2) Which contains a sufficient quantity of ground water to supply a public water system; and

(i) Currently supplies drinking water for human consumption; or

(ii) Contains fewer than 10,000 mg/1 total dissolved solids; and

(b) Which is not an exempted aquifer.

USDW—underground source of drinking water.

Well—a bored, drilled, or driven shaft, or a dug hole whose depth is greater than the largest surface dimension.

Well injection—the subsurfac emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

Well workover—any reentry of an injection well; including, but not limited to, the pulling of tubular goods, cementing or casing repairs; and excluding any routine maintenance (e.g. re-seating the packer at the same depth, or repairs to surface equipment).

§ 147.2903 Prohibition of unauthorized injection.

(a) Any underground injection, except as authorized by permit or rule issued under the UIC program, is prohibited. The construction or operation of any well required to have a permit is prohibited until the permit has been issued.

(b) No owner or operator shall construct, operate, maintain, convert, plug, or abandon any injection well, or conduct any other injection activity, in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause the violation of any primary drinking water regulation under 40 CFR part 142 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

(c) Injection between the outermost casing protecting underground sources of drinking water and the well bore is prohibited.

§ 147.2904 Area of review.

(a) The area of review for an injection well or project will be a fixed radius of one-forth of a mile from the well, field or project.

(b) The zone of endangering influence is the lateral area around the injection well or project in which the injection zone pressures may cause movement of fluid into an underground source of drinking water (USDW) if there are improperly sealed, completed or abandoned wells present. A zone of endangering influence may be determined by EPA through the use of an appropriate formula that addresses the relevant geologic, hydrologic, engineering and operational features of the well, field, or project.

§ 147.2905 Plugging and abandonment.

The owner/operator shall notify the Osage UIC office within 30 days of the date injection has terminated. The well must be plugged within 1 year after termination of injection. The Regional Ad-

ministrator may extend the time to plug, but only if no fluid movement into a USDW will occur, and the operator has presented a viable plan for utilizing the well within a reasonable time.

(a) Until an injection well has been properly plugged and abandoned, annual reports to the Regional Administrator on well status, and mechanical integrity tests as outlined in §§ 147.2912 and 147.2920 will be required, whether or not injection has ceased.

(b) All wells shall be plugged to prevent movement of fluid into an USDW.

(c) The owner/operator shall notify the Osage UIC office by certified mail at least 5 days prior to the commencement of plugging operations. The Osage UIC office may waive or reduce the 5-day notice requirement when a qualified EPA representative is available to witness the plugging operation. The following information must be submitted as part of the notification:

(1) Type and number of plugs to be used;

(2) Elevation of top and bottom of each plug;

(3) Method of plug placement; and

(4) Type, grade and quantity of cement to be used.

(d) The well shall be kept full of mud as casing is removed. No surface casing shall be removed without written approval from the Regional Administrator.

(e)(1) If surface casing is adequately set and cemented through all freshwater zones (set to at least 50 feet below the base of freshwater), a plug shall be set at least 50 feet below the shoe of the casing and extending at least 50 feet above the shoe of the casing, or

(2) If the surface casing and cementing is inadequate, the well bore shall be filled with cement from a point 50 feet below the base of fresh water to a point 50 feet above the shoe of the surface casing, and any additional plugs as required by the Osage UIC office and/or the Osage Agency.

(3) In all cases, the top 20 feet of the well bore below 3 feet of ground surface shall be filled with cement. Surface casing shall be cut off 3 feet below ground surface and covered with a secure steel cap on top of the surface pipe. The remaining 3 feet shall be filled with dirt.

(f)(1) Except as provided in paragraph (f)(2) of this section, each producing or receiving formation shall be sealed off with a 50-foot cement plug placed at the base of the formation and a 50–foot cement plug placed at the top of the formation.

(2) The requirement in paragraph (f)(1) of this section does not apply if the producing/receiving formation is already sealed off from the well bore with adequate casing and cementing behind casing, and casing is not to be removed, or the only openings from the producing/receiving formation into the well bore are perforations in the casing, and the annulus between the casing and the outer walls of the well is filled with cement for a distance of 50 feet below the base of the formation and 50 feet above the top of the formation. When such conditions exist, a bridge plug capped with 10 feet of cement set at the top of the producing formation may be used.

(g) When specified by the Osage UIC office, any uncased hole below the shoe of any casing to be left in the well shall be filled with cement to a depth of at least 50 feet below the casing shoe, or the bottom of the hole, and the casing above the shoe shall be filled with cement to at least 50 feet above the shoe of the casing. If the well has a screen or liner which is not to be removed, the well bore shall be filled with cement from the base of the screen or liner to at least 50 feet above the top of the screen or liner.

(h) All intervals between cement plugs in the well bore shall be filled with mud.

(i) A report containing copies of the cementing tickets shall be submitted to BIA within 10 days of plugging completion.

(j) A surety bond must be on file with the Bureau of Indian Affairs (BIA), and shall not be released until the well has been properly plugged and the Regional Administrator has agreed to the release of the bond.

§ 147.2906 Emergency permits.

(a) An emergency permit may be issued if:

(1) There will be an imminent health hazard unless an emergency permit is issued; or

(2) There will be a substantial and irretrievable loss of oil and gas resources, timely application for a permit could not practicably have been made, and injection will not result in movement of fluid into an USDW; or

(3) There will be a substantial delay in oil or gas production, and injection will not result in movement of fluid into an USDW.

(b) *Requirements*—(1) *Permit duration.* (i) Emergency permits issued to avoid an imminent health threat may last no longer than the time necessary to prevent the hazard.

(ii) Emergency permits issued to prevent a substantial and irretrievable loss of oil or gas resources shall be for no longer than 90 days, unless a complete permit application has been submitted during that time; in which case the emergency permit may be extended until a final decision on the permit application has been made.

(iii) Emergency permits to avoid a substantial delay in oil or gas production shall be issued only after a complete permit application has been submitted and shall be effective until a final decision on the permit application is made.

(2) Notice of the emergency permit will be given by the Regional Administrator according to

the notice procedure for a draft permit within 10 days after issuance.

(3) An emergency permit may be oral or written. If oral, a written emergency permit must be issued within five calendar days.

§ 147.2907 Confidentiality of information.

(a) The following information cannot be claimed confidential by the submitter:

(1) Name and address of permit applicant or permittee.

(2) Information concerning the existence, absence or level of contaminants in drinking water.

(b) Other information claimed as confidential will be processed in accordance with 40 CFR part 2.

§ 147.2908 Aquifer exemptions.

(a) After notice and opportunity for a public hearing, the Administrator may designate any aquifer or part of an aquifer as an exempted aquifer.

(b) An aquifer or its portion that meets the definition of a USDW may be exempted by EPA from USDW status if the following conditions are met:

(1) It does not currently serve as a source of drinking water, and

(2) It cannot now and will not in the future serve as a source of drinking water because:

(i) It is hydrocarbon producing, or can be demonstrated by a permit applicant as a part of a permit application for a Class II operation to contain hydrocarbons that are expected to be commercially producible (based on historical production or geologic information); or

(ii) It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; or

(iii) It is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or

(3) The Total Dissolved Solids content of the groundwater is more than 3,000 and less than 10,000 mg/1 and it is not reasonably expected to supply a public water system.

§ 147.2909 Authorization of existing wells by rule.

All existing Class II injection wells (wells authorized by BIA and constructed or completed on or before the effective date of the Osage UIC program) are hereby authorized. Owners or operators of wells authorized by rule must comply with the provisions of §§ 147.2903, 147.2905, 147.2907, and 147.2910 through 147.2915.

§ 147.2910 Duration of authorization by rule.

Existing Class II injuction wells are authorized for the life of the well, subject to the obligation to obtain a permit if specifically required by the Regional Administrator pursuant to § 147.2915.

§ 147.2911 Construction requirements for wells authorized by rule.

All Class II wells shall be cased and cemented to prevent movement of fluids into USDWs. The Regional Administrator shall review inventory information, data submitted in permit applications, and other records, to determine the adequacy of construction (completion) or existing injection wells. At the Regional Administrator's discretion, well casing and cementing may be considered adequate if it meets the BIA requirements that were in effect at the time of construction (completion) and will not result in movement of fluid into an USDW. If the Regional Administrator determines that the construction of a well authorized by rule is inadequate, he shall require a permit, or he shall notify the owner/operator and the owner/operator shall correct the problem according to instructions from the Regional Administrator. All corrections must be completed within one year of owner/operator notification of inadequacies.

§ 147.2912 Operating requirements for wells authorized by rule.

(a) Each well authorized by rule must have mechanical integrity. Mechanical integrity must be demonstrated within five years of program adoption. The Regional Administrator will notify the well owner/operator three months before proof of mechanical integrity must be submitted to EPA. The owner/operator must contact the Osage UIC office at least five days prior to testing. The owner/operator may perform the mechanical integrity test prior to receiving notice from the Regional Administrator, provided the Osage UIC office is notified at least five days in advance. Conditions of both paragraphs (a)(1) and (a)(2) of this section must be met.

(1) There is no significant leak in the casing, tubing or packer. This may be shown by the following:

(i) Performance of a pressure test of the casing/tubing annulus to at least 200 psi, or the pressure specified by the Regional Administrator, to be repeated thereafter, at five year intervals, for the life of the well (pressure tests conducted during well operation shall maintain an injection/annulus pressure differential of at least 100 psi through the tubing length); or

(ii) Maintaining a positive gauge pressure on the casing/tubing annulus (filled with liquid) and mon-

itoring the pressure monthly and reporting of the pressure information annually; or

(iii) Radioactive tracer survey; or

(iv) For enhanced recovery wells, records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate at the well head, following an initial pressure test as described by paragraph (a)(1)(i) or (v) of this section; or

(v) Testing or monitoring programs approved by the Regional Administrator on a case-by-case basis, and

(2) There is no significant fluid movement into a USDW through vertical channels adjacent to the well bore. This may be shown by any of the following:

(i) Cementing records (need not be reviewed every five years);

(ii) Tracer survey (in appropriate hydrogeologic settings; must be used in conjunction with at least one of the other alternatives);

(iii) Temperature log;

(iv) Noise log; or

(v) Other tests deemed acceptable by the Regional Administrator.

(b) Injection pressure at the wellhead shall be limited so that it does not initiate new fractures or propagate existing fractures in the confining zone adjacent to any UDSW.

(1) For existing Class II salt water disposal wells, The owner/operator shall, except during well stimulation, use an injection pressure at the wellhead no greater than the pressure calculated by using the following formula:

$$Pm=(0.75 \cdot 0.433Sg)d$$

where:

Pm=injection pressure at the wellhead in pounds per square inch
Sg=specific gravity of injected fluid (unitless)
d=injection depth in feet.

Owner/operator of wells shall comply with the above injection pressure limits no later than one year after the effective date of this regulation.

(2) For existing Class II enhanced recovery wells, the owner or operator:

(i) Shall use an injection pressure no greater than the pressure established by the Regional Administrator for the field or formation in which the well is located. The Regional Administrator shall establish such a maximum pressure after notice, opportunity for comment, and opportunity for a public hearing according to the provisions of part 124, subpart A of this chapter, and will inform owners and operators in writing of the applicable maximum pressure.

(ii) Prior to such time as the Regional Administrator establishes rules for maximum injection pressures based on data provided pursuant to paragraph (b)(2)(ii)(B) of this section the owner/operator shall:

(A) Limit injection pressure at the wellhead to a value which will not initiate new fractures or propagate existing fractures in the confining zone adjacent to any USDW; and

(B) Submit data acceptable to the Regional Administrator which defines the fracture pressure of the formation in which injection is taking place. A single test may be submitted on behalf of two or more operators conducting operations in the same formation, if the Regional Administrator approves such submission. The data shall be submitted to the Regional Administrator within one year of the effective date of this program.

(c) Injection wells or projects which have exhibited failure to confine injected fluids to the authorized injection zone or zones may be subject to restriction of injection volume and pressure, or shutdown, until the failure has been identified and corrected.

(The information collection requirements contained in paragraphs (a)(1) (ii) through (v) and (a)(2) (i) through (v) were approved by the Office of Management and Budget under control number 2040–0042)

§ 147.2913 Monitoring and reporting requirements for wells authorized by rule.

(a) The owner/operator has the duty to submit inventory information to the Regional Administrator upon request. Such request may be a general request to all operators in the County (e.g., public notice, or mailout requesting verification of information).

(b) The operator shall monitor the injection pressure (psi) and rate (bb1/day) at least monthly, with the results reported annually. The annual report shall specify the types of methods used to generate the monitoring data.

(c) The owner/operator shall notify the Osage UIC office within 30 days of any mechanical failure or down-hole problems involving well integrity, well workovers, or any noncompliance. As required, operators must apply for and obtain a workover permit from the Bureau of Indian Affairs Osage Agency before reentering an injection well. If the condition may endanger an USDW, the owner/operator shall notify the Osage UIC office orally within 24 hours, with written notice including plans for testing and/or repair to be submitted within five days. If all the information is not available within five days, a followup report must be submitted within 30 days.

(d) The owner/operator shall determine the nature of injected fluids initially, when the nature of injected fluids is changed or when new constituents are added. The records should reflect the

source of character of the new fluid and the date changes were made.

(e) The owner/operator shall retain all monitoring records for three years, unless an enforcement action is pending, and then until three years after the enforcement action has been resolved.

(Approved by the Office of Management and Budget under control number 2040–0042)

§ 147.2914 Corrective action for wells authorized by rule.

Based on the Regional Administrator's discretion, corrective action to prevent movement of fluid into an USDW may be required for improperly sealed, completed or abandoned wells (i.e., wells or well bores which may provide and avenue for fluid migration into a USDW) within the zone of endangering influence (as defined in § 147.2904, Area of Review) of an injection well authorized by rule.

(a) EPA will notify the operator when corrective action is required. Corrective action may include:

(1) Well modifications:

(i) Recementing;

(ii) Workover;

(iii) Reconditioning;

(iv) Plugging or replugging;

(2) Limitations on injection pressure to prevent movement of fluid into an USDW;

(3) A more stringent monitoring program; and/or

(4) Periodic testing of other wells to determine if significant movement of fluid has occurred.

(b) If the monitoring discussed in paragraph (a)(3) or (4) of this section indicate the potential endangerment of an USDW, then action as described in paragraph (a) (1) or (2) of this section must be taken.

§ 147.2915 Requiring a permit for wells authorized by rule.

(a) The Regional Administrator may require the owner or operator of any well authorized by rule to apply for an individual or area permit. The Regional Administrator shall notify the owner/operator in writing that a permit application is required. The notice shall contain:

(1) Explanation of need for application;

(2) Application form and, if appropriate, a list of additional information to be submitted; and

(3) Deadline for application submission.

(b) Cases in which the Regional Administrator may require a permit include:

(1) The owner or operator is not in compliance with provisions of the rule;

(2) Injection well is no longer within the category of wells authorized by rule;

(3) Protection of USDWs requires that the injection operation be regulated by requirements which are not contained in the rule; or

(4) Discretion of Regional Administrator.

(c) Injection is no longer authorized by rule upon the effective date of a permit or permit denial, or upon failure of the owner/operator to submit an application in a timely manner as specified in the notice described in paragraph (a) of this section.

(d) Any owner/operator authorized by rule may request to be excluded from the coverage of the rules by applying for an individual or area UIC permit.

§ 147.2916 Coverage of permitting requirements.

The owner or operator of a new Class II injection well or any other Class II well required to have a permit in the Osage Mineral Reserve shall comply with the requirements of §§ 147.2903, 147.2907, 147.2918, through 147.2928.

§ 147.2917 Duration of permits.

Unless otherwise specified in the permit, the permits will be in effect until the well is plugged and abandoned or the permit terminated. The Regional Administrator will review each issued permit at least once every five years to determine whether it should be modified or terminated.

§ 147.2918 Permit application information.

(a) The owner/operator must submit the original and three copies of the permit application, with two complete sets of attachments, to the Osage UIC office. The application should be signed by the owner/operator or a duly authorized representative. The application should also include appropriate forms (i.e., BIA's Application for Operation or Report on Wells and EPA's permit application). The applicant has the burden of proof to show that the proposed injection activities will not endanger USDWs.

(b) The application shall include the information listed below. Information required by paragraphs (b) (5), (7), or (9) of this section that is contained in EPA or BIA files may be included in the application by reference.

(1) Map using township-range sections showing the area of review and identifying all wells of public record penetrating the injection interval.

(2) Tabulation of data on the wells identified in paragraph (b)(1) of this section, including location, depth, date drilled, and record of plugging and/or completion.

(3) Operating data:

(i) Maximum and average injection rate;

(ii) Maximum and average injection pressure;

(iii) Whether operation is on cyclic or continuous operation basis; and

(iv) Source and appropriate analysis of injected fluids, including total dissolved solids, chlorides, and additives.

(4) Geologic data on the injection and confining zones, including faults, geological name, thickness permeability, depth and lithologic description.

(5) Depth to base of fresh water.

(6) Schematic drawings of the surface and subsurface details of the well, showing:

(i) Total depth or plug-back depth;

(ii) Depth to top and bottom of injection interval;

(iii) Depths to tops and bottoms of casing and cemented intervals, and amount of cement to be used;

(iv) Size of casing and tubing, and depth of packer; and

(v) Hole diameter.

(7) Proof that surety bond has been filed with the BIA Superintendent in accordance with 25 CFR 226.6. A surety bond must be maintained until the well has been properly plugged.

(8) Verification of public notice, consisting of a list showing the names, addresses, and date that notice of permit application was given or sent to:

(i) The surface land owner;

(ii) Tenants on land where injection well is located or proposed to be located; and

(iii) Each operator of a producing lease within one-half mile of the well location.

(9) All available logging and testing data on the well (for existing wells, i.e., wells to be converted or wells previously authorized by rule).

(Approved by the Office of Management and Budget under control number 2040–0042)

§ 147.2919 Construction requirements for wells authorized by permit.

(a) All Class II wells shall be sited so that they inject into a formation that is separated from any USDW by a confining zone free of known open faults or fractures within the area of review.

(b) All Class II wells shall be cased and cemented to prevent movement of fluids into or between USDWs. Requirements shall be based on the depth to base of fresh water, and the depth to the injection zone. Newly drilled Class II wells must have surface casing set and cemented to at least 50 feet below the base of fresh water, or the equivalent (e.g., long string cemented to surface). At the Regional Administrator's discretion, the casing and cementing of wells to be converted may be considered adequate if they meet the BIA requirements that were in effect at the time of construction (completion), and will not result in movement of fluid into a USDW.

(c) Owner/operators shall provide a standard female fitting with cut-off valves, connected to the tubing and the tubing/casing annulus so that the injection pressure and annulus pressure may be measured by an EPA representative by attaching a gauge having a standard male fitting.

(d) No owner or operator may begin construction of a new well until a permit authorizing such construction has been issued, unless such construction is otherwise authorized by an area permit.

§ 147.2920 Operating requirements for wells authorized by permit.

(a) For new Class II wells, injection shall be through adequate tubing and packer. Packer shall be run on the tubing and set inside the casing within 75 feet of the top of the injection interval. For existing Class II, wells, injection shall be through adequate tubing and packer, or according to alternative operating requirements approved by the Regional Administrator, as necessary to prevent the movement of fluid into a USDW.

(b) Each well must have mechanical integrity. Mechanical integrity of the injection well must be shown prior to operation. The owner/operator must notify the Osage UIC office at least five days prior to mechanical integrity testing. Conditions of both paragraphs (b) (1) and (2) of this section must be met.

(1) There is no significant leak in the casing, tubing or packer. This may be shown by the following:

(i) Performance of a pressure test of the casing/tubing annulus to at least 200 psi, or the pressure specified by the Regional Administrator, to be repeated thereafter, at five year intervals, for the life of the well (Pressure tests conducted during well operation shall maintain an injection/annulus pressure differential of at least 100 psi throughout the tubing length); or

(ii) Maintaining a positive gauge pressure on the casing/tubing annulus (filled with liquid) and monitoring the pressure monthly and reporting of the pressure information annually; or

(iii) Radioactive tracer survey; or

(iv) For enhanced recovery wells, record of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate at the wellhead, following an initial pressure test as described by paragraph (b)(1) (i) or (v) of this section; or

(v) Testing or monitoring programs approved by the Administrator on a case-by-case basis, and

(2) There is no significant fluid movement into a USDW through vertical channels adjacent to the well bore. This may be shown by any of the following:

(i) Cementing records (need not be reviewed every five years);

(ii) Tracer survey (in appropriate hydrogelogic settings; must be used in conjunction with at least one of the other alternatives);

(iii) Temperature log;

(iv) Noise log; or

(v) Other tests deemed acceptable by the Administrator.

(c) Injection pressure at the wellhead shall be limited so that it does not initiate new fractures or propagate existing fractures in the confining zone adjacent to any UDSW.

(d) Injection wells or projects which have exhibited failure to confine injected fluids to the authorized injection zone or zones may be subject to restriction of injected volume and pressure or shut-in, until the failure has been identified and corrected.

(e) Operation shall not commence until proof has been submitted to the Regional Administrator, or an EPA representative has witnessed that any corrective action specified in the permit has been completed.

§ 147.2921 Schedule of compliance.

The permit may, when appropriate, specify a schedule of compliance leading to compliance with the Safe Drinking Water Act and the Osage UIC regulations.

(a) Any schedule of compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit.

(b) If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(1) The time between interim dates shall not exceed one year.

(2) If the time necessary for completion of any interim requirement is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(c) The permit shall be written to require that if a schedule of compliance is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

§ 147.2922 Monitoring and reporting requirements for wells authorized by permit.

(a) The owner/operator shall notify the Osage UIC office within 30 days of the date on which injection commenced.

(b) The operator shall monitor the injection pressure (psi) and rate (bbl/day) at least monthly, with the results reported annually. The annual reports shall specify the types or methods used to generate the monitoring data.

(c) The owner/operator shall notify the Osage UIC office within 30 days of any mechanical failure or down-hole problems involving well integrity, well workovers, or any noncompliance. (Operators should note the obligation to apply for and obtain a workover permit from the Bureau of Indian Affairs Osage Agency before reentering an injection well.) If the condition may endanger an USDW, the owner/operator shall notify the Osage UIC officer orally within 24 hours, with written notice including plans for testing and/or repair to be submitted within five days. If all the information is not available within five days, a followup report must be submitted within 30 days.

(d) The owner/operator shall retain all monitoring records for three years, unless an enforcement action is pending, and then until three years after the enforcement action has been resolved.

(e) The owner/operator shall notify the Osage UIC office in writing of a transfer of ownership at least 10 days prior to such transfer.

(Approved by the Office of Management and Budget under control number 2040–0042)

§ 147.2923 Corrective action for wells authorized by permit.

All improperly sealed, completed or abandoned wells (i.e., wells or well bores which may provide an avenue for movement of fluid into an UDSW) within the zone of endangering influence (as defined in § 147.2904, Area of Review) that penetrate the injection zone of a Class II well, must have corrective action taken to prevent movement of fluid into a USDW.

(a) EPA will review completion and plugging records of wells within the zone of endangering influence that penetrate the injection zone and will notify the operator when corrective action is required. Corrective action may include:

(1) Well modifications, including:

(i) Recementing;

(ii) Workover;

(iii) Reconditioning; and/or

(iv) Plugging or replugging;

(2) Permit conditions to limit injection pressure so as to prevent movement of fluid into a USDW;

(3) A more stringent monitoring program; and/or

(4) Periodic testing of other wells within the area of review to determine if significant movement of fluid has occurred. If the monitoring discussed in paragraph (a)(3) or (a)(4) of this section indicates the potential endangerment of a USDW, then action as described in paragraph (a)(1) or (a)(2) of this section must be taken.

(b) If the Regional Administrator has demonstrable knowledge that wells within the zone of endangering influence will not serve as conduits for fluid movement into a USDW, the permit may be approved without requiring corrective action. However, additional monitoring shall be required to confirm that no significant migration will occur.

§ 147.2924 Area permits.

(a) Area permits may be issued for more than one injection well if the following conditions are met:

(1) All existing wells are described and located in the permit application;

(2) All wells are within the same well field, project, reservoir or similar unit;

(3) All wells are of similar construction; and

(4) All wells are operated by the same owner/operator.

(b) Area permits shall specify:

(1) The area within which injection is authorized; and

(2) The requirements for construction, monitoring, reporting, operation and abandonment for all wells authorized by the permit.

(c) Area permits can authorize the construction and operation of new wells within the permit area, if:

(1) The permittee notifies the Regional Administrator in the annual report of when and where any new wells have or will be drilled;

(2) The new wells meet the criteria outlined in paragraphs (a) and (b) of this section; and

(3) The effects of the new wells were addressed in the permit application and approved by the Regional Administrator.

§ 147.2925 Standard permit conditions.

(a) The permittee must comply with all permit conditions, except as authorized by an emergency permit (described in § 147.2906). Noncompliance is grounds for permit modification, permit termination or enforcement action.

(b) The permittee has a duty to halt or reduce activity in order to maintain compliance with permit conditions.

(c) The permittee shall take all reasonable steps to mitigate any adverse environmental impact resulting from noncompliance.

(d) The permittee shall properly operate and maintain all facilities installed or used to meet permit conditions. Proper operation and maintenance also includes adequate operator staffing and training, adequate funding, and adequate engineering capability available.

(e) This permit may be modified or terminated for cause (see §§ 147.2927 and 147.2928). The filing of a request by the permittee for a permit modification or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(f) This permit does not convey any property rights, or any exclusive privilege.

(g) The permittee shall furnish, within a reasonable time, information that the Regional Administrator requests, for determination of permit compliance, or if cause exists, for permit modification or termination.

(h) The permittee shall allow EPA representatives, upon presentation of appropriate credentials or other documentation, to:

(1) Enter permittee's premises where a regulated activity is conducted or located, or where records required by this permit are kept;

(2) Have access to and copy records required by this permit;

(3) Inspect any facilities, equipment, practices or operations regulated or required by this permit; and

(4) Sample or monitor any substances or parameters at any location for purpose of assuring compliance with this permit or the SDWA.

(i) Monitoring and records.

(1) Samples and monitoring data shall be representative of injection activity.

(2) Permittee shall retain monitoring records for three years.

(3) Monitoring records shall include:

(i) Date, exact place and time of sampling or measurement;

(ii) Individual(s) who preformed the measurements;

(iii) Date(s) analyses were performed;

(iv) Individual(s) who performed the analyses;

(v) Analytical techniques or methods used, including quality assurance techniques employed to insure the generation of reliable data; and

(vi) Results of analyses.

(j) *Signatory requirements.* All applications, reports or information submitted to the Regional Administrator or the Osage UIC office must be signed by the injection facility owner/operator or his duly authorized representative. The person signing these documents must make the following certification:

> ''I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.''

(k) *Reporting requirements.* (1) The permittee shall notify the Regional Administrator as soon as possible of any planned changes to the facility.

(2) The permittee shall give advance notice to the Regional Administrator of any planned changes which may result in noncompliance.

(3) This permit is not transferable to any person except after notice to the Regional Administrator in accordance with § 147.2926.

(l) A new injection well shall not commence injection until construction is complete and the Regional Administrator has been notified of completion of construction and has given his approval to commence injection.

(The information collection requirements contained in paragraphs (g) and (i) were approved by the Office of Management and Budget under control number 2040–0042)

§ 147.2926 Permit transfers.

(a) Permits may be transferred to another permittee:

(1) If the current permittee notifies the Regional Administrator at least 10 days before the proposed transfer date; and

(2) If the notice includes a written agreement between the existing and new permittees containing:

(i) A specific date for transfer of permit responsibility, coverage and liability; and

(ii) Assurance that the new permittee has a surety bond on file with BIA; and

(3) If the Regional Administrator does not respond with a notice to the existing permittee that the permit will be modified.

(b) If the conditions in paragraph (a) of this section are met, the transfer is effective on the date specified in paragraph (a)(2)(i) of this section.

§ 147.2927 Permit modification.

(a) Permits may be modified for the following causes only (with the exceptions listed in paragraph (b) of this section regarding minor modifications):

(1) There are substantial changes to the facility or activity which occurred after permit issuance that justify revised or additional permit conditions.

(2) The Regional Administrator has received information (e.g., from monitoring reports, inspections) which warrants a modified permit.

(3) The regulations or standards on which the permit was based have changed.

(4) The Regional Administrator has received notice of a proposed permit transfer.

(5) An interested person requests in writing that a permit be modified, and the Regional Administrator determines that cause for modification exists.

(6) Cause exists for termination under § 147.2928, but the Regional Administrator determines that permit modification is appropriate.

(b) *Minor modifications.* (1) Minor modifications do not require that the procedures listed in paragraph (c) of this section be followed.

(2) Minor modifications consist of:

(i) Correcting typographical errors;

(ii) Requiring more frequent monitoring or reporting;

(iii) Changing ownership or operational control (see § 147.2926, Permit Transfers); or

(iv) Changing quantities or types of injected fluids, provided:

(A) The facility can operate within conditions of permit;

(B) The facility classification would not change.

(c) *Modification procedures.* (1) A draft permit shall be prepared with proposed modifications.

(2) The draft permit shall follow the general permitting procedures (i.e., public comment period, etc.) before a final decision is made.

(3) Only the changed conditions shall be addressed in the draft permit or public review.

§ 147.2928 Permit termination.

(a) Permits may be terminated for the following causes only:

(1) Noncompliance with any permit condition.

(2) Misrepresentation or failure to fully disclose any relevant facts.

(3) Determination that the permitted activity endangers human health or the environment.

(4) Interested person requests in writing that a permit be terminated and the Regional Administrator determines that request is valid.

(b) *Termination procedures.* (1) The Regional Administrator shall issue notice of intent to terminate (which is a type of draft permit).

(2) Notice of intent to terminate shall follow the general permitting procedures (i.e., public comment period, etc.) before a final decision is made.

§ 147.2929 Administrative permitting procedures.

(a) *Completeness review.* (1) The Regional Administrator shall review each permit application for completeness with the application requirements in § 147.2918. The review will be completed in 10 days, and the Regional Administrator shall notify the applicant whether or not the application is complete.

(2) If the application is incomplete, the Regional Administrator shall:

(i) List the additional information needed;

(ii) Specify a date by which the information must be submitted; and

(iii) Notify the applicant when the application is complete.

(3) After an application is determined complete, the Regional Administrator may request additional information to clarify previously submitted infor-

mation. The application will still be considered complete.

(4) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement actions taken.

(b) *Draft permits.* (1) After an application is deemed complete, the Regional Administrator shall either prepare a draft permit or notice of intent to deny the permit (which is a type of draft permit). If the Regional Administrator later decides the tentative decision to deny was wrong, he shall withdraw the notice of intent to deny and prepare a draft permit.

(2) A draft permit shall contain at least the following information:

(i) The standard permit conditions in § 147.2925;

(ii) Any monitoring and reporting requirements;

(iii) The construction and operation requirements; and

(iv) Plugging and abandonment requirements.

(c) *Statement of basis.* (1) The Regional Administrator shall prepare a statement of basis for every draft permit.

(2) The statement of basis shall briefly describe the draft permit conditions and the reasons for them. In the case of a notice of intent to deny or terminate, the statement of basis shall give reasons to support the tentative decision.

(3) The statement of basis shall be sent to the applicant, and to any other person who requests a copy.

(d) *Public notice.* (1)(i) The Regional Administrator shall give public notice when:

(A) A permit application has been tentatively denied;

(B) A draft permit has been prepared;

(C) A hearing has been scheduled; or

(D) An appeal has been granted.

(ii) The applicant shall give public notice that he is submitting a permit application.

(iii) Public notice is not required when a request for permit modification or termination is denied. However, written notice will be given to the permittee and the requester.

(iv) Public notices may include more than one permit or action.

(2)(i) Public notice of a draft permit (including notice of intent to deny) shall allow at least 15 days for public comment.

(ii) Public notice of a hearing shall be given at least 30 days before the hearing.

(3)(i) Public notice given by the Regional Administrator for the reasons listed in paragraph (d)(1)(i) of this section shall be mailed to the applicant, and published in a daily or weekly paper of general circulation in the affected area.

(ii) Notice of application submission required by paragraph (d)(1)(ii) of this section shall be given to the surface landowner, tenants on the land where an injection well is located or is proposed to be located, and to each operator of a producing lease within one-half mile of the well location prior to submitting the application to the Regional Administrator.

(4) The notice of application submission in paragraphs (d)(1)(ii) and (d)(3)(ii) of this section shall contain:

(i) The applicant's name and address;

(ii) The legal location of the injection well;

(iii) Nature of activity;

(iv) A statement that EPA will be preparing a draft permit and that there will be an opportunity for public comment; and

(v) The name and phone number of EPA contact person.

(5) All other notices shall contain:

(i) The name, address, and phone number of the Osage UIC office and contact person for additional information and copies of the draft permit;

(ii) Name and address of permit applicant or permittee;

(iii) Brief description of nature of activity;

(iv) Brief description of comment period and comment procedures;

(v) Location of the information available for public review; and

(vi) In the case of a notice for a hearing the notice shall also include:

(A) Date, time, and location of hearing;

(B) Reference to date of previous notices of the same permit; and

(C) Brief description of the purpose of the hearing, including rules and procedures.

(e) *Public comments.* (1) During the public comment period, any person may submit written comments on the draft permit, and may request a public hearing. A request for hearing shall be in writing and state the issues proposed to be raised in the hearing.

(2) The Regional Administrator shall consider all comments when making the final decision, and shall respond to comments after the decision is made. The response shall:

(i) Specify if any changes were made from the draft permit to the final permit decision, and why;

(ii) Briefly describe and respond to all significant comments on the draft permit made during the comment period, or hearing, if held; and

(iii) Be made available to the public.

(f) *Public hearings.* (1) The Regional Administrator shall hold a public hearing whenever he finds a significant amount of public interest in a draft permit, based on the requests submitted, or at his discretion.

(2) Any person may submit oral or written statements and data concerning the draft permit. The public comment period shall be automatically

extended to the close of any public hearing held, or may be extended by the hearing officer at the hearing.

(3) A tape recording or written transcript of the hearing shall be made available to the public.

(g) *Reopening of the comment period.* (1) If any of the information submitted during the public comment period raises substantial new questions about a permit, the Regional Administrator may:

(i) Prepare a new draft permit;

(ii) Prepare a revised statement of basis; or

(iii) Reopen the comment period.

(2) Comments submitted during a reopened comment period shall be limited to the substantial new questions that caused its reopening.

(3) Public notice about any of the above actions shall be given and shall define the scope of the new questions raised.

(h) *Issuance and effective date of a permit.* (1) After the close of the comment period on a draft permit, the Regional Administrator shall make a final permit decision. The Regional Administrator shall notify the applicant and each person who commented or requested to receive notice. The notice shall include reference to the procedures for appealing a permit decision.

(2) A final permit decision shall become effective 30 days after giving notice of the decision unless:

(i) A later date is specified in the notice;

(ii) Review is requested under § 147.2929(j); or

(iii) No comments requested a change in the draft permit, in which case the permit is effective immediately upon issuance.

(i) *Stays of contested permit conditions.* If a request for review of a final UIC permit § 147.2929(j) is granted, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final agency action. If the permit involves a new injection well or project, the applicant shall be without a permit for the proposed well pending final agency action. Uncontested provisions which are not severable from those contested provisions shall be stayed with the contested provisions.

(j) *Appeal of permits.* (1) Any person who filed comments on the draft permit or participated in the public hearing may petition the Administrator to review any condition of the permit decision. Any person who failed to file comments or participate in the hearing may petition for administrative review only to the extent of the changes from the preliminary permit to the final permit decision.

(2) A person may request review of a final permit decision within 30 days after a final permit decision has been issued. The 30-day period within which a person may request review begins with the service of notice of the Regional Administrator's final permit decision unless a later date is specified in that notice.

(3) The petition requesting review shall include:

(i) A demonstration that the petition is eligible under the requirements of paragraph (j)(1) of this section; and, when appropriate,

(ii) A showing that the condition in question is based on:

(A) A finding of fact or conclusion of law that is clearly erroneous; or

(B) An exercise of discretion or important policy consideration which the Administrator, in his discretion, should review.

(4) The Administrator may also decide, on his initiative, to review any condition of any UIC permit issued under these requirements. The Administrator must act under this paragraph within 30 days of the date notice was given of the Regional Administrator's action.

(5) Within a reasonable time following the filing of the petition for review, the Administrator shall issue an order either granting or denying the request. To the extent that review is denied, the conditions of the final permit decision become final agency action.

(6) Public notice shall be given by the Regional Administrator of any grant of a review petition by the Administrator. Notice shall be sent to the applicant, the person requesting the review, appropriate persons on the Osage County mailing list and to newspapers of general circulation in the county. Included in the notice shall be a briefing schedule for the appeal and a statement that any interested person may file an amicus brief. Notice of denial of the review petition will be sent only to the person(s) requesting the review.

(7) A petition to the Administrator, under paragraphs (j) (1) and (2) of this section is a prerequisite to the seeking of judicial review of the final agency action. For purposes of judicial review, final agency action occurs when a final UIC permit is issued or denied by the Regional Administrator and agency review procedures are exhausted. A final permit decision shall be issued by the Regional Administrator:

(i) When the Administrator issues notice to the parties involved that review has been denied;

(ii) When the Administrator issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or

(iii) Upon the completion of the remand proceedings if the proceedings are remanded, unless the Administrator's remand order specifically provides that the appeal of the remand decision will be required to exhaust the administrative remedies.

Subpart HHH—Lands of the Navajo, Ute Mountain Ute, and All Other New Mexico Tribes

SOURCE: 53 FR 43104, Oct. 25, 1988, unless otherwise noted.

§ 147.3000 EPA-administered program.

(a) *Contents.* The UIC program for the Indian lands of the Navajo, the Ute Mountain Ute (Class II wells only on Ute Mountain Ute lands in Colorado and all wells on Ute Mountain Ute lands in Utah and New Mexico), and all wells on other Indian lands in New Mexico is administered by EPA. (The term ''Indian lands'' is defined at 40 CFR 144.3.) The Navajo Indian lands are in the States of Arizona, New Mexico, and Utah; and the Ute Mountain Ute lands are in Colorado, New Mexico and Utah. This program consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and additional requirements set forth in the remainder of this subpart. The additions and modifications of this subpart apply only to the Indian lands described above. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program on these lands is November 25, 1988.

[53 FR 43104, Oct. 25, 1988, as amended at 56 FR 9422, Mar. 6, 1991]

§ 147.3001 Definition.

Area of review. For the purposes of this subpart, area of review means the area surrounding an injection well or project area described according to the criteria set forth in § 147.3009 of this subpart.

§ 147.3002 Public notice of permit actions.

An applicant shall give public notice of his intention to apply for a permit as follows:

(a) Prior to submitting an application to the Director, the applicant shall give notice to each landowner, tenant, and operator of a producing lease within one-half mile of the well and to the affected Tribal Government. The notice shall include:

(1) Name and address of applicant;

(2) A brief description of the planned injection activities including well location, name and depth of the injection zone, maximum injection pressure and volume, and source and description of the fluid to be injected;

(3) Name, address, and phone number of the EPA contact person; and

(4) A statement that opportunity to comment will be announced to the public after EPA prepares a draft permit.

(b) In addition to the requirements of § 144.31(e) of this chapter, a permit applicant shall submit a description of the way the notice was given and the names and addresses of those to whom it was given.

(c) Upon written request and supporting documentation, the Director may waive the requirement in paragraph (a) of this section to give individual notice of intent to apply for permits in an area where it would be impractical. However, notice to the affected Tribal government shall not be waived.

(d) The Director shall also provide to the affected Tribal government all notices given to State governments under § 124.10(c) of this chapter.

§ 147.3003 Aquifer exemptions.

(a) *Aquifer exemptions in connection with Class II wells.* In accordance with § 144.7(b) and § 146.4 of this chapter, the portions of authorized injection zones into which existing Class II wells are currently injecting which are described in appendix A are hereby exempted. The exempted aquifers are defined by a one-quarter mile radius from the existing injection well. The exemption includes the intended injection zone only and is solely for the purpose of Class II injection.

(b) *Class III wells.* In addition to the requirements of § 144.7(c)(1) of this chapter, an applicant for a uranium mining permit which necessitates an aquifer exemption shall submit a plugging and abandonment plan containing an aquifer cleanup plan, acceptable to the Director, describing the methods or techniques that will be used to meet the standards of § 147.3011. The cleanup plan shall include an analysis of pre-injection water quality for the constituents required by the Director. The Director shall consider the cleanup plan in addition to the other information required for permit applications under §§ 144.31(e) and 146.34 of this chapter.

§ 147.3004 Duration of rule authorization for existing Class I and III wells.

Notwithstanding § 144.21(a)(3)(i)(B) of this chapter, authorization by rule for existing Class I and III wells will expire 90 days after the effective date of this UIC program unless a complete permit application has been submitted to the Director.

§ 147.3005 Radioactive waste injection wells.

Notwithstanding §§ 144.24 and 146.51(b) of this chapter, owners and operators of wells used to dispose of radioactive waste (as defined in 10 CFR

part 20, appendix B, table II, but not including high level and transuranic waste and spent nuclear fuel covered by 40 CFR part 191) shall comply with the permitting requirements pertaining to Class I wells in parts 124, 144 and 146 of this chapter, as modified and supplemented by this subpart.

§ 147.3006 Injection pressure for existing Class II wells authorized by rule.

(a) *Rule-authorized Class II saltwater disposal wells.* In addition to the requirements of § 144.28(f)(3)(ii) of this chapter, the owner or operator shall, except during well stimulation, use an injection pressure measured at the wellhead that is not greater than the pressure calculated by using the following formula: Pm=0.2d

where:

Pm=injection pressure at the wellhead in pounds per square inch

d=depth in feet to the top of the injection zone.

Owners and operators shall comply with this requirement no later than one year after the effective date of this program.

(b) *Rule-authorized Class II enhanced recovery and hydrocarbon storage wells.* (1) In addition to the requirements of § 144.28(f)(3)(ii) of this chapter, owners and operators shall use an injection pressure no greater than the pressure established by the Director for the field or formation in which the well is located. The Director shall establish such maximum pressure after notice (including notice to the affected Tribe), opportunity for comment, and opportunity for public hearing according to the provisions of part 124, subpart A, of this chapter, and shall inform owners and operators and the affected Tribe in writing of the applicable maximum pressure; or

(2) An owner or operator may inject at a pressure greater than that specified in paragraph (b)(1) of this section for the field or formation in which he is operating after demonstrating in writing to the satisfaction of the Director that such injection pressure will not violate the requirements of § 144.28(f)(3)(ii) of this chapter. The Director may grant such a request after notice (including notice to the affected Tribe), opportunity for comment and opportunity for a public hearing according to the provisions of part 124, subpart A of this chapter.

(3) Prior to the time that the Director establishes rules for maximum injection pressure under paragraph (b)(1) of this section the owner or operator shall:

(i) Limit injection pressure to a value which will not exceed the operating requirements of § 144.28(f)(3)(ii); and

(ii) Submit data acceptable to the Director which defines the fracture pressure of the formation in which injection is taking place. A single submission may be made on behalf of two or more operators conducting operations in the same field and formation, if the Director approves. The data shall be submitted to the Director within one year of the effective date of this program.

§ 147.3007 Application for a permit.

(a) Notwithstanding the requirements of § 144.31(c)(1) of this chapter, the owner or operator of an existing Class I or III well shall submit a complete permit application no later than 90 days after the effective date of the program.

(b) The topographic map (or other map if a topographic map is unavailable) required by § 144.31(e)(7) of this chapter, shall extend two miles from Class II wells, and 2½ miles from Class I and III wells. These maps will show all the information listed in paragraph 144.31(e)(7) within ½ mile for Class II wells and 2½ miles for Class I and III wells.

§ 147.3008 Criteria for aquifer exemptions.

The aquifer exemption criterion in § 146.4(c) of this chapter shall not be available for this program.

§ 147.3009 Area of review.

The area of review shall be defined as follows:

(a) *Class II wells.* The area of review for Class II permits and area permits shall be defined by a fixed radius as described in § 146.6(b) (1) and (2) of this chapter except that the radius shall be one-half mile.

(b) *Class I and III wells.* The area of review for Class I and III wells are well fields which may be either:

(1) An area defined by a radius two and one-half miles from the well or well field; or

(2) An area one-quarter mile from the well or well field where the well field production at the times exceeds injection to produce a net withdrawal; or

(3) A suitable distance, not less than one-quarter mile, proposed by the owner or operator and approved by the Director based upon a mathematical calculation such as that found in § 146.6(a)(2) of this chapter.

§ 147.3010 Mechanical integrity tests.

The monitoring of annulus pressure listed in § 146.8(b)(1) of this chapter will only be acceptable if preceded by a pressure test, using liquid or gas that clearly demonstrates that mechanical integrity exists at the time of the pressure test.

§ 147.3011 Plugging and abandonment of Class III wells.

To meet the requirements of § 146.10(d) of this chapter, owners and operators of Class III uranium projects underlying or in aquifers containing up to 5,000 mg/l TDS which have been exempted under § 146.4 of this chapter shall:

(a) Include in the required plugging and abandonment plan a plan for aquifer clean-up and monitoring which demonstrates adequate protection of surrounding USDWs.

(1) The Director shall include in each such permit for a Class III uranium project the concentrations of contaminants to which aquifers must be cleaned up in order to protect surrounding USDWs.

(2) The concentrations will be set as close as is feasible to the original conditions.

(b) When requesting permission to plug a well, owners and operators shall submit for the Director's approval a schedule for the proposed aquifer cleanup, in addition to the information required by § 146.34(c).

(c) Cleanup and monitoring shall be continued until the owner or operator certifies that no constituent listed in the permit exceeds the concentrations required by the permit, and the Director notifies the permittee in writing that cleanup activity may be terminated.

§ 147.3012 Construction requirements for Class I wells.

In addition to the cementing requirement of § 146.12(b) of this chapter, owners and operators of Class I wells shall, through circulation, cement all casing to the surface.

§ 147.3013 Information to be considered for Class I wells.

(a) In addition to the information listed in § 146.14(a) of this chapter, the Director shall consider the following prior to issuing any Class I permit:

(1) Expected pressure changes, native fluid displacement, and direction of movement of the injected fluid; and

(2) Methods to be used for sampling, and for measurement and calculation of flow.

(b) In addition to the information listed in § 146.14(b) of this chapter, the Director shall consider any information required under § 146.14(a) of this chapter (as supplemented by this subpart) that has been gathered during construction.

§ 147.3014 Construction requirements for Class III wells.

(a) In addition to the requirements of § 146.32(c)(3) of this chapter, radiological characteristics of the formation fluids shall be provided to the Director.

(b) In addition to the requirements of § 146.32(e) of this chapter, the Director may require monitoring wells to be completed into USDWs below the injection zone if those USDWs may be affected by mining operations.

§ 147.3015 Information to be considered for Class III wells.

(a) In addition to the requirements of § 146.34(a) of this chapter, the following information shall be considered by the Director:

(1) Proposed construction procedures, including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing and coring program.

(2) Depth to the proposed injection zone, and a chemical, physical and radiological analysis of the ground water in the proposed injection zone sufficient to define pre-injection water quality as required for aquifer cleanup by § 147.3011 of this subpart.

(3) An aquifer cleanup plan if required by § 147.3003(b) of this subpart.

(4) Any additional information that may be necessary to demonstrate that cleanup will reduce the level of contaminants in the surrounding USDWs as close as feasible to the original conditions.

(b) In addition to the requirements of § 146.34(b) of this chapter, the Director shall consider any information required under § 146.34(a) of this chapter (as supplemented by this subpart) that has been gathered during construction.

§ 147.3016 Criteria and standards applicable to Class V wells.

In addition to the criteria and standards applicable to Class V wells set forth in subpart F of part 146 of this chapter, owners and operators of wells that do not fall within the Class IV category but that are used to dispose of radioactive wastes (as defined in 10 CFR part 20, appendix B, table II, col-

umn 2, but not including high level and transuranic wastes and spent nuclear fuel covered by 40 CFR part 191) shall comply with all of the requirements applicable to Class I injection wells in 40 CFR parts 124, 144 and 146 as supplemented by this subpart.

APPENDIX A TO SUBPART HHH—EXEMPTED AQUIFERS IN NEW MEXICO

The areas described by a one-quarter mile radius around the following Class II wells in the listed formations are exempted for the purpose of Class II injection.

Sec.					Well No.
Arco Oil & Gas Co.—Operator/Horseshoe Gallup—Field/Gallup—Formation					
SE/NE	5	T30N R16W	1650′FNL	330′FEL	134
NW/NW	30	T31N R16W	660′FNL	703′FWL	8
SE/SW	28	T31N R16W	790′FSL	2150′FWL	167
NW/SE	33	T31N R16W	1710′FSL	2310′FEL	199
SE/NW	35	T31N R16W	2105′FNL	2105′FWL	196
NW/NW	4	T30N R16W	455′FNL	4435′FEL	219
NW/SW	33	T31N R16W	1980′FSL	386′FWL	65
NW/SE	27	T31N R16W	1980′FSL	2080′FEL	164
SE/SE	30	T31N R16W	660′FSL	660′FEL	5
NW/NW	34	T31N R16W	730′FNL	515′FWL	180
NW/NE	34	T31N R16W	813′FNL	2036′FEL	182
NW/NE	2	T30N R16W	720′FNL	2040′FEL	229
NW/NW	29	T31N R16W	660′FNL	660′FWL	24
NW/SW	13	T31N R17W	1975′FSL	670′FWL	77
NW/SE	29	T31N R16W	1980′FSL	1980′FEL	22
SE/SW	27	T31N R16W	660′FSL	1980′FWL	171
NW/SW	35	T31N R16W	1980′FSL	660′FWL	205
SE/NW	30	T31N R16W	1980′FNL	2061′FWL	7
NW/NE	31	T31N R16W	660′FNL	1980′FEL	17
NW/NE	4	T30N R16W	330′FNL	2160′FEL	221
NW/NE	29	T31N R16W	660′FNL	1980′FEL	26
SE/NE	34	T31N R16W	1990′FNL	645′FEL	194
SE/SE	31	T31N R16W	640′FSL	660′FEL	27
NE/SW	14	T31N R17W	2250′FSL	2630′FWL	94
NE/NW	14	T31N R17W	625′FNL	1995′FWI,	69
SE/NW	10	T30N R16W	1900′FNL	2080′FWL	271
SE/SE	29	T31N R16W	560′FSL		21
SE/NE	30	T31N R16W	1980′FNL	660′FEL	10
SE/NW	29	T31N R16W	2080′FNL	1980′FWL	23
NW/SE	25	T31N R17W	1980′FSL	1980′FEL	122
SE/SW	32	T31N R16W	660′FSL	1980′FWL	14
NW/SW	30	T31N R16W	2021′FSL	742′FWL	19
SE/SW	13	T31N R17W	660′FSL	1980′FWL	82
NW/NW	27	T31N R16W	520′FNL	660′FWL	150
SE/SE	28	T31N R16W	660′FSL	660′FEL	169
NW/SW	29	T31N R16W	1980′FSL	660′FWL	11
SE/NW	34	T31N R16W	2310′FNL	1650′FWL	192
SE/NW	29	T31N R16W	660′FSL	1980′FWL	12
NW/SW	27	T31N R16W	1650′FSL	330′FWL	162
NE/SE	23	T31N R17W	1880′FSL	340′FEL	96
NW/SW	24	T31N R17W	2050′FSL	990′FWL	97
SE/NW	4	T30N R16W	2060′FNL	1710′FWL	232
NW/NW	31	T31N R16W	620′FNL	701′FWL	30
NW/SE	35	T31N R16W	1980′FSL	1980′FEL	207
SE/NE	32	T31N R16W	1980′FNL	417′FEL	20
NE/NW	28	T31N R16W	1980′FNL	1980′FEL	152

	Sec.					Well No.
NE/NW	34	T31N	R16W	2140′FSL	735′FWL	201
SE/NW	3	T30N	R16W	2310′FNL	1640′FWL	236
SE/SW	34	T31N	R16W	660′FSL	1980′FWL	213
NW/NE	30	T31N	R16W	660′FNL	1980′FFL	9
SE/SW	26	T31N	R16W	660′FSL	1980′FWL	175
NW/SE	30	T31N	R16W	1980′FSL	1980′FEL	6
SE/NW	9	T30N	R16W	1650′FNL	2131′FWL	264
NW/SW	4	T30N	R16W	2310′FSL	4390′FEL	242
NW/SW	2	T30N	R16W	1980′FSL	660′FWL	250
NW/NW	33	T31N	R16W	660′FNL	386′FWL	66
NE/NE	15	T31N	R17W	660′FNL	660′FEL	67
NW/NE	33	T31N	R16W	660′FNL	1980′FEL	178
NW/SE	24	T31N	R17W	1875′FSL	1900′FEL	99
NW/NE	28	T31N	R16W	660′FNL	1980′FEL	148
NW/NW	19	T31N	R16W	680′FNL	682′FWL	89
NW/SE	4	T30N	R16W	1820′FSL	2130′FEL	244
SE/SW	20	T31N	R16W	660′FSL	1980′FWL	115
NW/NE	25	T31N	R17W	660′FNL	1980′FEL	118
SE/SW	4	T30N	R16W	660′FSL	3300′FEL	253
NW/SW	19	T31N	R16W	1980′FSL	706′FWL	101
NW/SE	32	T31N	R16W	1950′FSL	1980′FEL	22
NW/NW	35	T31N	R16W	605′FNL	690′FWL	184
SE/NE	29	T31N	R16W	1980′FNL	417′FEL	25
SE/NW	19	T31N	R16W	1980′FNL	2023′FWL	95
NW/NW	32	T31N	R16W	660′FNL	660′FWL	4
SE/SW	24	T31N	R17W	660′FSL	3300′FEL	107
SE/NE	28	T31N	R16W	2105′FNL	940′FEL	154
NW/NE	35	T31N	R16W	610′FNL	2000′FEL	186
SE/SW	5	T31N	R16W	990′FSL	2310′FWL	139
NW/SE	28	T31N	R16W	1980′FSL	1980′FEL	160
SE/SE	33	T31N	R16W	330′FSL	990′FEL	211
NW/NE	5	T30N	R16W	330′FNL	1650′FEL	128
SE/NW	27	T31N	R16W	1900′FNL	2050′FWL	156
SE/SW	35	T31N	R16W	660′FSL	1980′FWL	217
NW/NW	10	T30N	R16W	526′FNL	330′FWL	265
NE/SW	21	T31N	R16W	1880′FSL	1980′FWL	143
NW/NE	24	T31N	R17W	409′FNL	1914′FEL	87
NW/SW	32	T31N	R16W	1980′FSL	660′FWL	15
SE/SE	34	T31N	R16W	960′FSL	910′FEL	215
SW/SE	21	T31N	R16W	820′FSL	1820′FEL	145
SE/SE	27	T31N	R16W	610′FSL	640′FEL	173
NW/SW	3	T30N	R16W	1920′FSL	350′FWL	246
SE/SW	19	T31N	R16W	601′FSL	2002′FWL	111
SW/SE	14	T31N	R17W	330′FSL	1900′FEL	79
NW/NW	27	T31N	R16W	520′FNL	660′FWL	150
SE/NW	31	T31N	R16W	1724′FNL	2067′FWL	29
NW/NE	32	T31N	R16W	660′FNL	1980′FEL	13
SE/NE	24	T31N	R17W	1998′FNL	702′FEL	93

NW/NW	5	T30N	R16W	660′FNL	660′FWL	126
NW/SW	28	T31N	R16W	1740′FSL	590′FWL	158
SE/NE	31	T31N	R16W	1980′FNL	660′FEL	16
NW/NW	24	T31N	R17W	660′FNL	760′FWL	85
Energy Reserve Backup Inc.—Operator/Horseshoe Gallup—Field/Gallup—Formation						
SE/SE	5	T31N	R17W	660′FSL	660′FEL	4
NE/SW	10	T30N	R16W	1970′FSL	2210′FWL	31
SE/NW	11	T30N	R16W	2090′FNL	2190′FWI	29
SE/SE	10	T30N	R16W	700′FSL	500′FEL	37
Solar Petroelum Inc.—Operator/Horseshoe—Field/Gallup—Formation						
SW/SE	11	T31N	R17W	736′FSL	2045′FEL	205
SE/NE	9	T31N	R17W	1980′FNL	660′FEL	122
NW/SE	4	T31N	R17W	1980′FSL	1980′FFL	127
NE/NE	10	T31N	R17W	660′FNL	660′FEL	136
SE/SW	4	T31N	R17W	660′FSL	1980′FWL	125
SW/NW	11	T31N	R17W	2300′FNL	660′FWL	206
NW/SW	4	T31N	R17W	1980′FSL	660′FWL	103
SE/NW	4	T31N	R17W	1989′FNL	1980′FWL	128
NW/NW	4	T31N	R17W	660′FNL	660′FWL	101
SW/NE	10	T31N	R17W	1980′FNL	1980′FEL	117
SW/NW	10	T31N	R17W	1980′FNL	660′FWL	108
SW/SW	10	T31N	R17W	660′FSL	660′FWL	114
SW/SE	3	T31N	R17W	330′FSL	2310′FEL	143
SE/NE	5	T31N	R17W	1980′FNL	660′FEL	302
NE/NE	5	T31N	R17W	1950′FNL	1050′FEL	307
SE/SE	9	T31N	R17W	990′FSL	850′FEL	140
NE/NW	10	T31N	R17W	660′FNL	1980′FWL	118
SW/SW	11	T31N	R17W	660′FSL	660′FWL	204
NW/SE	9	T31N	R17W	1980′FSL	1980′FEL	115
SW/SE	10	T31N	R17W	990′FSL	1980′FEL	144
NW/NE	9	T31N	R17W	660′FNL	1980′FEL	123
NE/SW	10	T31N	R17W	1980′FSL	1980′FWL	109
NE/SW	11	T31N	R17W	1980′FSL	1980′FWL	203
SE/NW	9	T31N	R17W	1980′FNL	1980′FWL	134
NW/SW	3	T31N	R17W	1980′FSL	660′FWL	132
SW/SW	3	T31N	R17W	560′FSL	660′FWL	110
NW/NW	9	T31N	R16W	660′FNL	660′FWL	133
SE/SE	4	T31N	R17W	660′FSL	660′FEL	124
WTR Oil Co.—Operator/Horseshoe Gallup—Field/Gallup—Formation						
NE/SW	33	T32N	R17W	1980′FSL	1989′FWL	2

	Sec.				Well No.
Arco Oil & Gas Co.—Operator/Many Rocks Gallup—Field/Gallup—Formation					
NW/NW	7	T31N	R16W	898′FNL 500′FWL	2
SW/NE	17	T31N	R16W	1673′FNL 1789′FEL	21
NW/SE	17	T31N	R16W	1890′FSL 2150′FEL	23
SW/NE	7	T31N	R16W	2310′FNL 2310′FEL	6
NE/SW	8	T31N	R16W	1650′FSL 1650′FWL	12
NE/NW	17	T31N	R16W	660′FNL 2030′FWL	18
NE/NE	18	T31N	R16W	360′FNL 855′FEL	16
SE/SW	7	T31N	R16W	716′FSL 2185′FWL	13
SE/SE	17	T31N	R16W	660′FSL 660′FEL	26
NE/SW	17	T31N	R16W	2040′FSL 2070′FWL	22
SW/SW	6	T31N	R16W	330′FSL 330′FWL	1
SW/NW	17	T31N	R16W	2073′FNL 641′FWL	19
NW/SW	17	T31N	R16W	1967′FSL 981′FWL	8
James P. Woosley—Operator/Many Rocks Gallup—Field/Gallup—Formation					
NW/NE	20	T32N	R17W	330′FNL 2310′FEL	13
SW/SW	27	T32N	R17W	660′FSL 990′FWL	1
SW/NW	17	T32N	R17W	2310′FWL 330′FWL	4
SW/NW	27	T32N	R17W	260′FWL 1360′FNL	11
NE/SW	27	T32N	R17W	1980′FSL 1980′FWL	6
NE/SE	18	T32N	R17W	2474′FSL 133′FEL	18
SW/SE	27	T32N	R17W	625′FNL 2000′FEL	3
NE/SE	28	T32N	R17W	1980′FSL 330′FEL	12
Solar Petroleum Inc.—Operator/Many Rocks Gallup—Field/Gallup—Formation					
SE/NW	1	T31N	R17W	1980′FNL 1980′FWL	216
NW/NE	2	T31N	R17W	805′FNL 940′FEL	215
SE/NE	2	T31N	R17W	1980′FNL 660′FEL	218
NW/SW	1	T31N	R17W	2310′FSL 990′FNL	223
SE/NE	12	T31N	R17W	1820′FNL 500′FEL	217
WTR Oil Co.—Operator/Many Rocks Gallup—Field/Gallup—Formation					
NW/NW	35	T32N	R17W	810′FNL 510′FWL	11
SE/SE	35	T32N	R17W	660′FSL 660′FEL	6
SE/NE	34	T32N	R17W	775′FEL 1980′FNL	8
SE/NW	35	T32N	R16W	1980′FNL 1980′FWL	9
NW/SE	35	T32N	R17W	1980′FSL 1980′FEL	7
Chaco Oil Co.—Operator/Red Mtn Meseverde—Field/Menefee—Formation					
NE/NE	29	T20N	R9W	395′FNL 1265′FEL	6

SE/SW	20	T20N	R9W	442′FSL	2430′FWL	17
Geo Engineering Inc.—Operator/Red Mtn Meseverde—Field/Menefee—Formation						
NW/NE	29	T20N	R9W	160′FNL	2135′FEL	35
NE/NE	29	T20N	R9W	225′FNL	1265′FEL	7
SE/NW	29	T20N	R9W	1344′FNL	2555′FWL	20
NW/NE	29	T20N	R9W	615′FNL	1920′FEL	5
NE/NW	29	T20N	R9W	834′FNL	2113′FWL	21
SW/SE	20	T20N	R9W	265′FSL	2150′FEL	36
NE/NE	29	T20N	R9W	5′FNL	1130′FEL	8
SE/SE	20	T20N	R9W	450′FSL	1145′FEL	24
SE/SE	20	T20N	R9W	990′FSL	1280′FEL	10
NW/NE	29	T20N	R9W	1115′FNL	2325′FEL	22
SE/SE	20	T20N	R9W	1085′FSL	860′FEL	12
Tesoro Petroleum Co.—Operator/S. Hospah Lower Sand—Field/Hospah—Formation						
NW/SE	6	T17N	R8W	2310′FSL	2310′FEL	28
SW/SE	6	T17N	R8W	990′FSL	2310′FFL	34
SW/SW	6	T17N	R8W	5′FSL	20′FWL	18
SE/SW	6	T17N	R8W	5′FSL	2635′FWL	20

Subpart III—Lands of Certain Oklahoma Indian Tribes

SOURCE: 53 FR 43109, Oct. 25, 1988, unless otherwise noted.

§ 147.3100 EPA-administered program.

(a) *Contents.* The UIC program for the Indian lands in Oklahoma, except for that covering the Class II wells of the Five Civilized Tribes, is administered by EPA. The UIC program for all wells on Indian lands in Oklahoma, except Class II wells on the Osage Mineral Reserve (found at 40 CFR part 147, Subpart GGG) and the Class II program for the Five Civilized Tribes, consists of the UIC program requirements of 40 CFR parts 124, 144, 146, 148, and additional requirements set forth in the remainder of this subpart. Injection well owners and operators, and EPA shall comply with these requirements.

(b) *Effective date.* The effective date for the UIC program for all wells on Indian lands except Class II wells on the Osage Mineral Reserve and Class II wells on the lands of the Five Civilized Tribes is November 25, 1988.

[53 FR 43109, Oct. 25, 1988, as amended at 56 FR 9422, Mar. 6, 1991]

§ 147.3101 Public notice of permit actions.

(a) In addition to the notice requirements of § 124.10 of this chapter, the Director shall provide to the affected Tribal government all notices given to an affected State government under § 124.10(c) of this chapter.

(b) *Class I and III wells.* In addition to the notice requirements of § 124.10 of this chapter:

(1) Owners and operators of Class I and III wells shall notify the affected Tribal government prior to submitting an application for a permit, shall publish such notice in at least two newspapers of general circulation in the area of the proposed well, and shall broadcast notice over at least one local radio station.

(2) The Director shall publish a notice of availability of a draft permit in at least two newspapers of general circulation in the area of the proposed well, and broadcast notice over at least one local radio station. The public notice shall allow at least 45 days for public comment.

(c) *Class II wells.* In addition to the notice requirements of § 124.10 of this chapter:

(1) Owners and operators of Class II wells shall give notice of application for a permit to the affected Tribal government prior to submitting the application to the Director.

(2) In addition to the public notice required for each action listed in § 124.10(a) of this chapter, the Director shall also publish notice in a daily or weekly newspaper of general circulation in the affected area for actions concerning Class II wells.

§ 147.3102 Plugging and abandonment plans.

In lieu of the requirements of § 144.28(c)(1) and (2) (i)–(iii) of this chapter, owners and operators of Class II wells shall comply with the plugging and abandonment provisions of § 147.3108 of this subpart.

§ 147.3103 Fluid seals.

Notwithstanding §§ 144.28(f)(2) and 146.12(c) of this chapter, owners and operators shall not use a fluid seal as an alternative to a packer.

§ 147.3104 Notice of abandonment.

(a) In addition to the notice required by § 144.28(j)(2) of this chapter, the owner or operator shall at the same time submit plugging information in conformance with § 147.3108 of this subpart including:

(1) Type and number of plugs;

(2) Elevation of top and bottom of each plug;

(3) Method of plug placement; and

(4) Type, grade and quantity of cement to be used.

(b) In addition to the permit conditions specified in §§ 144.51 and 144.52 of this chapter, each owner and operator shall submit and each permit shall contain the following information (in conformance with § 146.3108 of this subpart):

(1) Type and number of plugs;

(2) Elevation of top and bottom of each plug;

(3) Method of plug placement; and

(4) Type, grade and quantity of cement to be used.

§ 147.3105 Plugging and abandonment report.

(a) In lieu of the time periods for submitting a plugging report in § 144.28(k) of this chapter, owners and operators of Class I and III wells shall submit the report within 15 days of plugging the well and owners or operators of Class II wells within 30 days of plugging, or at the time of the next required operational report (whichever is less.) If the required operational report is due less than 15 days following completion of plugging, then the plugging report shall be submitted within 30 days for Class II wells and 15 days for Class I and III wells.

(b) In addition to the requirement of § 144.28(k)(1) of this chapter, owners and operators of Class II wells shall include a statement that the well was plugged in accordance with § 146.10 of this chapter and § 147.3109 of this subpart, and,

if the actual plugging differed, specify the actual procedures used.

(c) The schedule upon which reports of plugging must be submitted are changed from those in § 144.51(o) to those specified in paragraph (a) of this section.

§ 147.3106 Area of review.

(a) When determining the area of review under § 146.6(b) of this chapter, the fixed radius shall be no less than one mile for Class I wells and one-half mile for Class II and III wells. In the case of an application for an area permit, determination of the area of review under § 146.6(b) shall be a fixed width of not less than one mile for the circumscribing area of Class I projects and one-half mile for the circumscribing area of Class II and III projects.

(b) However, in lieu of § 146.6(c) of this chapter, if the area of review is determined by a mathematical model pursuant to paragraph § 146.6(a) of this chapter, the permissible radius is the result of such calculation even if it is less than one mile for Class I wells and one-half for Class II and III wells.

§ 147.3107 Mechanical integrity.

(a) Monitoring of annulus pressure conducted pursuant to § 146.8(b)(1) shall be preceded by an initial pressure test. A positive gauge pressure on the casing/tubing annulus (filled with liquid) shall be maintained continuously. The pressure shall be monitored monthly.

(b) Pressure tests conducted pursuant to § 146.8(b)(2) of this chapter shall be performed with a pressure on the casing/tubing annulus of at least 200 p.s.i. unless otherwise specified by the Director. In addition, pressure tests conducted during well operation shall maintain an injection/annulus pressure differential of at least 100 p.s.i. throughout the tubing length.

(c) Monitoring of enhanced recovery wells conducted pursuant to § 146.8(b)(3), must be preceded by an initial pressure test that was conducted no more than 90 days prior to the commencement of monitoring.

§ 147.3108 Plugging Class I, II, and III wells.

In addition to the requirements of § 146.10 of this chapter, owners and operators shall comply with the following when plugging a well:

(a) For Class I and III wells:

(1) The well shall be filled with mud from the bottom of the well to a point one hundred (100) feet below the top of the highest disposal or injection zone and then with a cement plug from there to at least one hundred (100) feet above the top of the disposal or injection zone.

(2) A cement plug shall also be set from a point at least fifty (50) feet below the shoe of the surface casing to a point at least five (5) feet above the top of the lowest USDW.

(3) A final cement plug shall extend from a point at least thirty feet below the ground surface to a point five (5) feet below the ground surface.

(4) All intervals between plugs shall be filled with mud.

(5) The top plug shall clearly show by permanent markings inscribed in the cement or on a steel plate embedded in the cement the well permit number and date of plugging.

(b) For Class II wells:

(1) The well shall be kept full of mud as casing is removed. No surface casing shall be removed without written approval from the Director.

(2) If surface casing is adequately set and cemented through all USDWs (set to at least 50 feet below the base of the USDW), a plug shall be set at least 50 feet below the shoe of the casing and extending at least 50 feet above the shoe of the casing; or

(3) If the surface casing and cementing is inadequate, the well bore shall be filled with cement from a point at least 50 feet below the base of the USDW to a point at least 50 feet above the shoe of the surface casing, and any additional plugs as required by the Director.

(4) In all cases, the top 20 feet of the well bore below 3 feet of ground surface shall be filled with cement. Surface casing shall be cut off 3 feet below ground surface and covered with a secure steel cap on top of the surface pipe. The remaining 3 feet shall be filled with dirt.

(5) Except as provided in sub-paragraph (b)(6) of this section, each producing or receiving formation shall be sealed off with at least a 50-foot cement plug placed at the base of the formation and at least a 50-foot cement plug placed at the top of the formation.

(6) The requirement in sub-paragraph (b)(5) of this section does not apply if the producing/receiving formation is already sealed off from the well bore with adequate casing and cementing behind casing, and casing is not to be removed, or the only openings from the producing/receiving formation into the well bore are perforations in the casing, and the annulus between the casing and the outer walls of the well is filled with cement for a distance of 50 feet above the top of the formation. When such conditions exist, a bridge plug capped with at least 10 feet of cement set at the top of the producing formation may be used.

(7) When specified by the Director, any uncased hole below the shoe of any casing to be left in the well shall be filled with cement to a depth of at least 50 feet below the casing shoe, or the bottom of the hole, and the casing above the shoe shall

be filled with cement to at least 50 feet above the shoe of the casing. If the well has a screen or liner which is not to be removed, the well bore shall be filled with cement from the base of the screen or liner to at least 50 feet above the top of the screen or liner.

(8) All intervals between cement plugs in the well bore must be filled with mud.

(c) For the purposes of this section mud shall be defined as: mud of not less than thirty-six (36) viscosity (API Full Funnel Method) and a weight of not less than nine (9) pounds per gallon.

§ 147.3109 Timing of mechanical integrity test.

The demonstrations of mechanical integrity required by § 146.14(b)(2) of this chapter prior to approval for the operation of a Class I well shall, for an existing well, be conducted no more than 90 days prior to application for the permit and the results included in the permit application. The owner or operator shall notify the Director at least seven days in advance of the time and date of the test so that EPA observers may be present.

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

Subpart A—General

Subpart B—Prohibitions on Injection

Subpart C—Petition Standards and Procedures

AUTHORITY: Secs. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

SOURCE: 53 FR 28154, July 26, 1988, unless otherwise noted.

Subpart A—General

§ 148.1 Purpose, scope and applicability.

(a) This part identifies hazardous wastes that are restricted from disposal into Class I hazarous waste injection wells and defines those circumstances under which a waste, otherwise prohibited from injection, may be injected.

(b) The requirements of this part apply to owners or operators of Class I hazardous waste injection wells used to inject hazardous waste.

(c) Wastes otherwise prohibited from injection may continue to be injected:

(1) If an extension from the effective date of a prohibition has been granted pursuant to § 148.4 with respect to such wastes; or

(2) If an exemption from a prohibition has been granted in response to a petition filed under § 148.20 to allow injection of restricted wastes with respect to those wastes and wells covered by the exemption; or

(3) If the waste is generated by a conditionally exempt small quantity generator, as defined in § 261.5; or

(d) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under this part, or part 268 of this chapter, are not prohibited if the wastes:

(1) Are disposed into a nonhazardous or hazardous injection well as defined under 40 CFR § 146.6(a); and

(2) Do not exhibit any prohibited characteristic of hazardous waste identified in 40 CFR part 261, subpart C at the point of injection.

[53 FR 28154, July 26, 1988, as amended at 55 FR 22683, June 1, 1990; 57 FR 8088, Mar. 6, 1992; 57 FR 31763, July 20, 1992; 60 FR 33932, June 29, 1995; 61 FR 15596, Apr. 8, 1996; 61 FR 33682, June 28, 1996]

EFFECTIVE DATE NOTE: At 61 FR 15596, Apr. 8, 1996, § 148.1 was amended by revising paragraph (a), effective Apr. 8, 1998. For the convenience of the user, the revised text is set forth as follow:

§ 148.1 Purpose, scope and applicability.

(a) This part identifies wastes that are restricted from disposal into Class I wells and defines those circumstances under which a waste, otherwise prohibited from injection, may be injected.

* * * * *

§ 148.2 Definitions.

Injection interval means that part of the injection zone in which the well is screened, or in which the waste is otherwise directly emplaced.

Transmissive fault or fracture is a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

§ 148.3 Dilution prohibited as a substitute for treatment.

The prohibition of § 268.3 shall apply to owners or operators of Class I hazardous waste injection wells.

§ 148.4 Procedures for case-by-case extensions to an effective date.

The owner or operator of a Class I hazardous waste injection well may submit an application to the Administrator for an extension of the effective date of any applicable prohibition established under subpart B of this part according to the procedures of § 268.5.

§ 148.5 Waste analysis.

Generators of hazardous wastes that are disposed of into Class I injection wells must comply with the applicable requirements of § 268.7 (a) and (b). Owners or operators of Class I hazardous waste injection wells must comply with the applicable requirements of § 268.7(c).

Subpart B—Prohibitions on Injection

§ 148.10 Waste specific prohibitions—solvent wastes.

(a) Effective August 8, 1988, the spent solvent wastes specified in § 261.31 as EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005 are prohibited from underground injection unless the solvent waste is a solvent-water mixture or solvent-containing sludge containing less than 1 percent total F001–F005 solvent constituents listed in Table A of this section.

(b) Effective August 8, 1990, all spent F001–F005 solvent wastes containing less than 1 percent total F001–F005 solvent constituents listed in Table A of this section are prohibited from injection.

(c) Effective August 8, 1990, all spent F002 and F005 wastes containing solvent constituents listed in Table B of this section are prohibited from underground injection at off-site injection facilities.

(d) Effective November 8, 1990, the wastes specified in paragraph (c) of this section are prohibited from underground injection at on-site injection facilities.

(e) The requirements of paragraphs (a) and (b) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in subpart D of part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4 of this part.

TABLE A

Acetone
n-Butyl alcohol
Carbon disulfide
Carbon tetrachloride
Chlorobenzene
Cresols and cresylic acid
Cyclohexanone
1,2-dichlorobenzene
Ethyl acetate
Ethyl benzene
Ethyl ether
Isobutanol
Methanol
Methylene chloride
Methylene chloride (from the pharmaceutical industry)
Methyl ethyl ketone
Methyl isobutyl ketone
Nitrobenzene
Pyridine
Tetrachloroethylene
Toulene
1,1,1-Trichloroethane
1,2,2-Trichloro-1,2,2-trifluoroethane
Trichloroethylene
Trichlorofluoromethane
Xylene

TABLE B

Benzene
2-Ethoxyethanol
2-Nitropropane
1,1,2-Trichloroethane

[53 FR 28154, July 26, 1988, as amended at 54 FR 25422, June 14, 1989; 56 FR 3876, Jan. 31, 1991; 57 FR 8088, Mar. 6, 1992]

§ 148.11 Waste specific prohibitions—dioxin-containing wastes.

(a) Effective August 8, 1988, the dioxin-containing wastes specified in § 261.31 as EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, F027, and F028, and prohibited from underground injection.

(b) The requirements of paragraph (a) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in subpart D of part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4 of this part.

[53 FR 28154, July 26, 1988, as amended at 54 FR 25422, June 14, 1989]

§ 148.12 Waste specific prohibitions—California list wastes.

(a) Effective August 8, 1988, the hazardous wastes listed in 40 CFR 268.32 containing polychlorinated biphenyls at concentrations greater than or equal to 50 ppm or halogenated organic compounds at concentrations greater than or equal to 10,000 mg/kg are prohibited from underground injection.

(b) Effective August 8, 1990, the following hazardous wastes are prohibited from underground injection:

(1) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l;

(2) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

(i) Arsenic and/or compounds (as As) 500 mg/l;

(ii) Cadmium and/or compounds (as Cd) 100 mg/l;

(iii) Chromium (VI) and/or compounds (as Cr VI) 500 mg/l;

(iv) Lead and/or compounds (as Pb) 500 mg/l;

(v) Mercury and/or compounds (as Hg) 20 mg/l;

(vi) Nickel and/or compounds (as Ni) 134 mg/l;

(vii) Selenium and/or compounds (as Se) 100 mg/l; and

(viii) Thallium and/or compounds (as Tl) 130 mg/l;

(3) Liquid hazardous waste having a pH less than or equal to two (2.0); and

(4) Hazardous wastes containing halogenated organic compounds in total concentration less than 10,000 mg/kg but greater than or equal to 1,000 mg/kg.

(c) The requirements of paragraphs (a) and (b) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in subpart D of part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension is granted under § 148.4 of this part.

[53 FR 30918, Aug. 16, 1988, as amended at 53 FR 41602, Oct. 24, 1988]

§ 148.14 Waste specific prohibitions—first third wastes.

(a) Effective June 7, 1989, the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste numbers F006 (nonwastewaters) and the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K001, K015 (wastewaters), K016 (at concentrations greater than or equal to 1%), K018, K019, K020, K021 (nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes), K022 (nonwastewaters), K024, K030, K036 (nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes), K037, K044, K045, nonexplosive K046 (nonwastewaters), K047, K048, K060 (nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes), K061 (nonwastewaters), noncalcium sulfate K069 (nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes), K086 solvent washes, K087, K099, K101 (all wastewaters and less than 1% total arsenic nonwastewaters), K102 (all wastewaters and less than 1% total arsenic nonwastewaters), and K103 are prohibited from underground injection.

(b) Effective June 8, 1989, the waste specified in 40 CFR 261.32 as EPA Hazardous Waste number K036 (wastewaters); and the wastes specified in 40 CFR 261.33 as P030, P039, P041, P063, P071, P089, P094, P097, U221, and U223 are prohibited from underground injection.

(c) Effective July 8, 1989, the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste numbers F008 and F009 are prohibited from underground injection.

(d) Effective August 8, 1990, the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Number F006 (wastewaters) and F019; the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K004, K008, K015 (nonwastewaters), K017, K021 (wastewaters), K022 (wastewaters), K031, K035, K046 (reactive nonwastewaters and all wastewaters), K060 (wastewaters), K061 (wastewaters), K069 (calcium sulfate nonwastewaters and all wastewaters), K073, K083, K084, K085, K086 (all but solvent washes), K101 (high arsenic nonwastewaters), K102 (high arsenic nonwastewaters), and K106; and the wastes specified in 40 CFR part 261.33 as EPA Hazardous Waste Numbers P001, P004, P005, P010, P011, P012, P015, P016, P018, P020, P036, P037, P048, P050, P058, P059, P068, P069, P070, P081, P082, P084, P087, P092, P102, P105, P108, P110, P115, P120, P122, P123, U007, U009, U010, U012, U016, U018, U019, U022, U029, U031, U036, U037, U041, U043, U044, U046, U050, U051, U053, U061, U063, U064, U066, U067, U074, U077, U078, U086, U089, U103, U105, U108, U115, U122, U124, U129, U130, U133, U134, U137, U151, U154, U155, U157, U158, U159, U171, U177, U180, U185, U188, U192, U200, U209, U210, U211, U219, U220, U226, U227, U228, U237, U238, U248, and U249 are prohibited from underground injection at off-site injection facilities.

(e) Effective August 8, 1990, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K049, K050, K051, K052, K062, K071,

and K104 are prohibited from underground injection.

(f) Effective November 8, 1990, the wastes specified in paragraph (d) of this section are prohibited from underground injection at on-site injection facilities.

(g) Effective June 7, 1991, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K016 (at concentrations less than 1%) are prohibited from underground injection.

(h) Effective June 8, 1991, the waste specified in 40 CFR 261.31 as EPA Hazardous Waste number F007; and the wastes specified in 40 CFR 261.32 as K011 (nonwastewaters) and K013 (nonwastewaters) are prohibited from underground injection.

(i) Effective May 8, 1992, the wastes specified in 40 CFR 261.32 and 261.33 as EPA Hazardous Waste Numbers K011 (wastewaters), K013 (wastewaters), and K014 are prohibited from underground injection.

(j) The requirements of paragraphs (a) through (i) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in subpart D of part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4 of this part.

[54 FR 25423, June 14, 1989, as amended at 54 FR 26647, June 23, 1989; 54 FR 35328, Aug. 25, 1989; 55 FR 22683, June 1, 1990]

§ 148.15 Waste specific prohibitions—Second third wastes.

(a) Effective June 7, 1989, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K025 (nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes) are prohibited from underground injection.

(b) Effective June 8, 1989, the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste numbers F010, F024; the wastes specified in 40 CFR 261.32 as K009 (nonwastewaters), K010, K027, K028, K029 (nonwastewaters), K038, K039, K040, K043, K095 (nonwastewaters), K096 (nonwastewaters), K113, K114, K115, K116; and wastes specified in 40 CFR 261.33 as P029, P040, P043, P044, P062, P074, P085, P098, P104, P106, P111, U028, U058, U107, and U235 are prohibited from underground injection.

(c) Effective July 8, 1989, and continuing until December 8, 1989, the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste numbers F011 and F012 are prohibited from underground injection pursuant to the treatment standards specified in §§ 268.41 and 268.43 applicable to F007, F008, and F009 wastewaters and nonwastewaters. Effective December 8, 1989, F011 (nonwastewaters) and F012 (nonwastewaters) are prohibited pursuant to the treatment standards specified in §§ 268.41 and 268.43 applicable to F011 and F012 wastewaters and nonwastewaters.

(d) Effective August 8, 1990, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Number K025 (wastewaters), K029 (wastewaters), K041, K042, K095 (wastewaters), K096 (wastewaters), K097, K098, and K105; and the wastes specified in 40 CFR part 261.33 as P002, P003, P007, P008, P014, P026, P027, P049, P054, P057, P060, P066, P067, P072, P107, P112, P113, P114, U002, U003, U005, U008, U011, U014, U015, U020, U021, U023, U025, U026, U032, U035, U047, U049, U057, U059, U060, U062, U070, U073, U080, U083, U092, U093, U094, U095, U097, U098, U099, U101, U106, U109, U110, U111, U114, U116, U119, U127, U128, U131, U135, U138, U140, U142, U143, U144, U146, U147, U149, U150, U161, U162, U163, U164, U165, U168, U169, U170, U172, U173, U174, U176, U178, U179, U189, U193, U196, U203, U205, U206, U208, U213, U214, U215, U216, U217, U218, U239, and U244 are prohibited from underground injection at off-site injection facilities.

(e) Effective June 8, 1991, the waste specified in 40 CFR 261.32 as EPA Hazardous Waste number K009 (wastewaters) is prohibited from underground injection.

(f) Effective November 8, 1990, the wastes specified in paragraph (d) of this section are prohibited from underground injection at on-site injection facilities.

(g) The requirements of paragraphs (a) through (f) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in subpart D of part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4 of this part.

[54 FR 25423, June 14, 1989, as amended at 54 FR 26647, June 23, 1989; 55 FR 22683, June 1, 1990]

§ 148.16 Waste specific prohibitions—third third wastes.

(a) Effective June 7, 1989, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K100 (nonwastewaters generated by the process described in the waste listing description and

disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes) are prohibited from underground injection.

(b) Effective June 8, 1989, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K005 (nonwastewaters), K007 (nonwastewaters), K023, K093, K094; and the wastes specified in 40 CFR 261.33 as P013, P021, P099, P109, P121, U069, U087, U088, U102, and U190 are prohibited from underground injection.

(c) Effective August 8, 1990, the wastes identified in 40 CFR 261.31 as EPA Hazardous Waste Number F039 (nonwastewaters); the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K002, K003, K005 (wastewaters), K006, K007 (wastewaters), K026, K032, K033, K034, and K100 (wastewaters); the wastes specified in 40 CFR 261.33 as P006, P009, P017, P022, P023, P024, P028, P031, P033, P034, P038, P042, P045, P046, P047, P051, P056, P064, P065, P073, P075, P076, P077, P078, P088, P093, P095, P096, P101, P103, P116, P118, P119, U001, U004, U006, U017, U024, U027, U030, U033, U034, U038, U039, U042, U045, U048, U052, U055, U056, U068, U071, U072, U075, U076, U079, U081, U082, U084, U085, U090, U091, U096, U112, U113, U117, U118, U120, U121, U123, U125, U126, U132, U136, U141, U145, U148, U152, U153, U156, U160, U166, U167, U181, U182, U183, U184, U186, U187, U191, U194, U197, U201, U202, U204, U207, U222, U225, U234, U236, U240, U243, U246, and U247; and the wastes identified in 40 CFR 261.21, 261.23 or 261.24 as hazardous based on a characteristic alone, designated as D001, D004, D005, D006, D008, D009 (wastewaters), D010, D011, D012, D013, D014, D015, D016, D017, and newly listed waste F025 are prohibited from underground injection at off-site injection facilities.

(d) Effective August 8, 1990, mixed radioactive/hazardous waste in 40 CFR 268.10, 268.11, and 268.12, that are mixed radioactive and hazardous wastes, are prohibited from underground injection.

(e) Effective November 8, 1990, the wastes specified in paragraph (c) of this section are prohibited from underground injection at on-site injection facilities. These effective dates do not apply to the wastes listed in 40 CFR 148.12(b) which are prohibited from underground injection on August 8, 1990.

(f) Effective May 8, 1992, the waste identified in 40 CFR 261.31 as EPA Hazardous Waste Number F039 (wastewaters); the wastes identified in 40 CFR 261.22, 261.23 or 261.24 as hazardous based on a characteristic alone, designated as D002 (wastewaters and nonwastewaters), D003 (wastewaters and nonwastewaters), D007 (wastewaters and nonwastewaters), and D009 (nonwastewaters) are prohibited from underground injection. These effective dates do not apply to the wastes listed in 40 CFR 148.12(b) which are prohibited from underground injection on August 8, 1990.

(g) The requirements of paragraphs (a) through (f) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in subpart D of part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4 of this part.

[54 FR 25423, June 14, 1989, as amended at 54 FR 26647, June 23, 1989; 55 FR 22683, June 1, 1990; 55 FR 33694, Aug. 17, 1990; 56 FR 3876, Jan. 31, 1991]

§ 148.17 Waste specific prohibitions; newly listed wastes.

(a) Effective November 9, 1992, the wastes specified in 40 CFR part 261 as EPA hazardous waste numbers F037, F038, K107, K108, K109, K110, K111, K112, K117, K118, K123, K124, K125, K126, K131, K136, U328, U353, and U359 are prohibited from underground injection.

(b) Effective December 19, 1994 the wastes specified in 40 CFR 261.32 as EPA Hazardous waste numbers K141, K142, K143, K144, K145, K147, K148, K149, K150, and K151, are prohibited from underground injection.

(c) [Reserved]

(d) Effective June 30, 1995, the wastes specified in 40 CFR part 261 as EPA Hazardous waste numbers K117, K118, K131, and K132 are prohibited from underground injection.

(e) The requirements of paragraphs (a) and (b) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in subpart D of part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4 of this part.

[57 FR 37263, Aug. 18, 1992, as amended at 59 FR 48041, Sept. 19, 1994; 61 FR 15662, Apr. 8, 1996]

§ 148.18 Waste specific prohibitions—newly identified wastes.

(a) On July 8, 1996, the wastes specified in 40 CFR 261.32 as EPA Hazardous waste numbers K156–K161, P127, P128, P185, P188–P192, P194, P196–P199, P201–P205, U271, U277–U280, U364–U367, U372, U373, U375–U379, U381–387, U389–U396, U400–U404, U407, and U409–U411 are prohibited from underground injection.

(b) On January 8, 1997, the wastes specified in 40 CFR 261.32 as EPA Hazardous waste number K088 is prohibited from underground injection.

(c) On April 8, 1998, the wastes specified in 40 CFR part 261 as EPA Hazardous waste numbers D018–043, and Mixed TC/Radioactive wastes, are prohibited from underground injection.

[61 FR 15662, Apr. 8, 1996]

Subpart C—Petition Standards and Procedures

§ 148.20 Petitions to allow injection of a waste prohibited under subpart B.

(a) Any person seeking an exemption from a prohibition under subpart B of this part for the injection of a restricted hazardous waste into an injection well or wells shall submit a petition to the Director demonstrating that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This demonstration requires a showing that:

(1) The hydrogeological and geochemical conditions at the sites and the physiochemical nature of the waste stream(s) are such that reliable predictions can be made that:

(i) Fluid movement conditions are such that the injected fluids will not migrate within 10,000 years:

(A) Vertically upward out of the injection zone; or

(B) Laterally within the injection zone to a point of discharge or interface with an Underground Source of Drinking Water (USDW) as defined in 40 CFR part 146; or

(ii) Before the injected fluids migrate out of the injection zone or to a point of discharge or interface with USDW, the fluid will no longer be hazardous because of attenuation, transformation, or immobilization of hazardous constituents within the injection zone by hydrolysis, chemical interactions or other means; and

(2) For each well the petition has:

(i) Demonstrated that the injection well's area of review complies with the substantive requirements of § 146.63;

(ii) Located, identified, and ascertained the condition of all wells within the injection well's area of review (as specified in § 146.63) that penetrate the injection zone or the confining zone by use of a protocol acceptable to the Director that meets the substantive requirements of § 146.64;

(iii) Submitted a corrective action plan that meets the substantive requirements of § 146.64, the implementation of which shall become a condition of petition approval; and

(iv) Submitted the results of pressure and radioactive tracer tests performed within one year prior to submission of the petition demonstrating the mechanical integrity of the well's long string casing, injection tube, annular seal, and bottom hole cement. In cases where the petition has not been approved or denied within one year after the initial demonstration of mechanical integrity, the Director may require the owner or operator to perform the tests again and submit the results of the new tests.

NOTE: The requirements of § 148.20(a)(2) need not be incorporated in a permit at the time of petition approval.

(b) A demonstration under § 148.20(a)(1)(i) shall identify the strata within the injection zone which will confine fluid movement above the injection interval and include a showing that this strata is free of known transmissive faults of fractures and that there is a confining zone above the injection zone.

(c) A demonstration under § 148.20(a)(1)(ii) shall identify the strata within the injection zone where waste transformation will be accomplished and include a showing that this strata is free of known transmissive faults or fractures and that there is a confining zone above the injection zone.

(d) A demonstration may include a showing that:

(1) Treatment methods, the implementation of which shall become a condition of petition approval, will be utilized that reduce the toxicity or mobility of the wastes; or

(2) A monitoring plan, the implementation of which shall become a condition of petition approval, will be utilized to enhance confidence in one or more aspects of the demonstration.

(e) Any person who has been granted an exemption pursuant to this section may submit a petition for reissuance of the exemption to include an additional restricted waste or wastes or to modify any conditions placed on the exemption by the Director. The Director shall reissue the petition if the petitioner complies with the requirements of paragraphs (a), (b) and (c) of this section.

(f) Any person who has been granted an exemption pursuant to this section may submit a petition to modify an exemption to include an additional (hazardous) waste or wastes. The Director may grant the modification if he determines, to a reasonable degree of certainty, that the additional waste or wastes will behave hydraulically and chemically in a manner similar to previously included wastes and that it will not interfere with the containment capability of the injection zone.

§ 148.21 Information to be submitted in support of petitions.

(a) Information submitted in support of § 148.20 must meet the following criteria:

(1) All waste analysis and any new testing performed by the petitioner shall be accurate and reproducible and performed in accordance with quality assurance standards;

(2) Estimation techniques shall be appropriate, and EPA-certified test protocols shall be used where available and appropriate;

(3) Predictive models shall have been verified and validated, shall be appropriate for the specific site, waste streams, and injection conditions of the operation, and shall be calibrated for existing sites where sufficient data are available;

(4) An approved quality assurance and quality control plan shall address all aspects of the demonstration;

(5) Reasonably conservative values shall be used whenever values taken from the literature or estimated on the basis of known information are used instead of site-specific measurements; and

(6) An analysis shall be performed to identify and assess aspects of the demonstration that contribute significantly to uncertainty. The petitioner shall conduct a sensitivity analysis to determine the effect that significant uncertainty may contribute to the demonstration. The demonstration shall then be based on conservative assumptions identified in the analysis.

(b) Any petitioner under § 148.20(a)(1)(i) shall provide sufficient site-specific information to support the demonstration, such as:

(1) Thickness, porosity, permeability and extent of the various strata in the injection zone;

(2) Thickness, porosity, permeability, extent, and continuity of the confining zone;

(3) Hydraulic gradient in the injection zone;

(4) Hydrostatic pressure in the injection zone; and

(5) Geochemical conditions of the site.

(c) In addition to the information in § 148.21(b), any petitioner under § 148.20(a)(1)(ii) shall provide sufficient waste-specific information to ensure reasonably reliant predictions about the waste transformation. The petitioner shall provide the information necessary to support the demonstration, such as:

(1) Description of the chemical processes or other means that will lead to waste transformation; and

(2) Results of laboratory experiments verifying the waste transformation.

§ 148.22 Requirements for petition submission, review and approval or denial.

(a) Any petition submitted to the Director pursuant to § 148.20(a) shall include the following components:

(1) An identification of the specific waste or wastes and the specific injection well or wells for which the demonstration will be made;

(2) A waste analysis to describe fully the chemical and physical characteristics of the subject wastes;

(3) Such additional information as is required by the Director to support the petition under §§ 148.20 and 148.21; and

(4) This statement signed by the petitioner or an authorized representative:

> I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(b) The Director shall provide public notice and an opportunity for public comment in accordance with the procedures in § 124.10 of the intent to approve or deny a petition. The final decision on a petition will be published in the FEDERAL REGISTER.

(c) If an exemption is granted it will apply only to the underground injection of the specific restricted waste or wastes identified in the petition into a Class I hazardous waste injection well or wells specifically identified in the petition (unless the exemption is modified or reissued pursuant to § 148.20(e) or (f).

(d) Upon request by any petitioner who obtains an exemption for a well under this subpart, the Director shall initiate and reasonably expedite the necessary procedures to issue or reissue a permit or permits for the hazardous waste well or wells covered by the exemption for a term not to exceed ten years.

§ 148.23 Review of exemptions granted pursuant to a petition.

(a) When considering whether to reissue a permit for the operation of a Class I hazardous waste injection well, the Director shall review any petition filed pursuant to § 148.20 and require a new demonstration if information shows that the basis for granting the exemption may no longer be valid.

(b) Whenever the Director determines that the basis for approval of a petition may no longer be valid, the Director shall require a new demonstration in accordance with § 148.20.

§ 148.24 Termination of approved petition.

(a) The Director may terminate an exemption granted under § 148.20 for the following causes:

(1) Noncompliance by the petitioner with any condition of the exemption;

(2) The petitioner's failure in the petition or during the review and approval to disclose fully all relevant facts, or the petitioner's misrepresentation of any relevant facts at any time; or

(3) A determination that new information shows that the basis for approval of the petition is no longer valid.

(b) The Director shall terminate an exemption granted under § 148.20 for the following causes:

(1) The petitioner's willful withholding during the review and approval of the petition of facts directly and materially relevant to the Director's decision on the petition;

(2) A determination that there has been migration from the injection zone or the well that is not in accordance with the terms of the exemption, except that the Director may at his discretion decide not to terminate where:

(i) The migration resulted from a mechanical failure of the well that can be corrected promptly through a repair to the injection well itself or from an undetected well or conduit that can be plugged promptly; and

(ii) The requirements of § 146.67(i) are satisfied.

(c) The Director shall follow the procedures in § 124.5 in terminating any exemption under this section.

PART 149—SOLE SOURCE AQUIFERS

Subpart A—Criteria for Identifying Critical Aquifer Protection Areas

Subpart B—Review of Projects Affecting the Edwards Underground Reservoir, A Designated Sole Source Aquifer in the San Antonio, Texas Area

AUTHORITY: Sec. 1424(e), Safe Drinking Water Act (42 U.S.C. 300h–3(e); sec. 1427 of the Safe Drinking Water Act, (42 U.S.C. 300h–6).

Subpart A—Criteria for Identifying Critical Aquifer Protection Areas

SOURCE: 52 FR 23986, June 26, 1987, unless otherwise noted.

§ 149.1 Purpose.

The purpose of this subpart is to provide criteria for identifying critical aquifer protection areas, pursuant to section 1427 of the Safe Drinking Water Act (SDWA).

§ 149.2 Definitions.

(a) *Aquifer* means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(b) *Recharge* means a process, natural or artificial, by which water is added to the saturated zone of an aquifer.

(c) *Recharge Area* means an area in which water reaches the zone of saturation (ground water) by surface infiltration; in addition, a *major recharge area* is an area where a major part of the recharge to an aquifer occurs.

(d) *Sole or Principal Source Aquifer* (SSA) means an aquifer which is designated as an SSA under section 1424(e) of the SDWA.

[54 FR 6843, Feb. 14, 1989]

§ 149.3 Critical Aquifer Protection Areas.

A Critical Aquifer Protection Area is either:

(a) All or part of an area which was designated as a sole or principal source aquifer prior to June 19, 1986, and for which an areawide ground-water quality protection plan was approved, under section 208 of the Clean Water Act, prior to that date; or

(b) All or part of a major recharge area of a sole or principal source aquifer, designated before June 19, 1988, for which:

(1) The sole or principal source aquifer is particularly vulnerable to contamination due to the hydrogeologic characteristics of the unsaturated or saturated zone within the suggested critical aquifer protection area; and

(2) Contamination of the sole or principal source aquifer is reasonably likely to occur, unless a program to reduce or prevent such contamination is implemented; and

(3) In the absence of any program to reduce or prevent contamination, reasonably foreseeable contamination would result in significant cost, taking into account:

(i) The cost of replacing the drinking water supply from the sole or principal source aquifer, and

(ii) Other economic costs and environmental and social costs resulting from such contamination.

[54 FR 6843, Feb. 14, 1989]

Subpart B—Review of Projects Affecting the Edwards Underground Reservoir, A Designated Sole Source Aquifer in the San Antonio, Texas Area

SOURCE: 42 FR 51574, Sept. 29, 1977, unless otherwise noted. Redesignated at 52 FR 23986, June 26, 1987.

§ 149.100 Applicability.

This subpart sets forth, pursuant to sections 1424(e) and 1450 of the Public Health Service Act, as amended by the Safe Drinking Water Act, Pub. L. 93–523, regulations relating the Edwards Underground Reservoir which is the sole or principal drinking water source for the San Antonio area and which, if contaminated, would create a significant hazard to public health.

[42 FR 51574, Sept. 29, 1977. Redesignated and amended at 52 FR 23986, June 26, 1987]

§ 149.101 Definitions.

As used in this subpart and except as otherwise specifically provided, the term(s):

(a) *Act* means the Public Health Service Act, as amended by the Safe Drinking Water Act, Public Law 93–523.

(b) *Contaminant* means any physical, chemical, biological, or radiological substance or matter in water.

(c) *Recharge zone* means the area through which water enters the Edwards Underground Reservoir as defined in the December 16, 1975, Notice of Determination.

(d) *Administrator* (Regional Administrator) means the Administrator (Regional Administrator) of the United States Environmental Protection Agency.

(e) *Person* means an individual, corporation, company, association, partnership, State, or municipality.

(f) *Project* means a program or action for which an application for Federal financial assistance has been made.

(g) *Federal financial assistance* means any financial benefits provided directly as aid to a project by a department, agency, or instrumentality of the Federal government in any form including contracts, grants, and loan guarantees. Actions or programs carried out by the Federal government itself such as dredging performed by the Army Corps of Engineers do not involve Federal financial assistance. Actions performed for the Federal government by contractors, such as construction of roads on Federal lands by a contractor under the supervision of the Bureau of Land Management, should be distinguished from contracts entered into specifically for the purpose of providing financial assistance, and will not be considered programs or actions receiving Federal financial assistance. Federal financial assistance is limited to benefits earmarked for a specific program or action and directly awarded to the program or action. Indirect assistance, e.g., in the form of a loan to a developer by a lending institution which in turn receives Federal assistance not specifically related to the project in question is not Federal financial assistance under section 1424(e).

(h) *Commitment of Federal financial assistance* means a written agreement entered into by a department, agency, or instrumentality of the Federal Government to provide financial assistance as defined in paragraph (g) of this section. Renewal of a commitment which the issuing agency determines has lapsed shall not constitute a new commitment unless the Regional Administrator determines that the project's impact on the aquifer has not been previously reviewed under section 1424(e). The determination of a Federal agency that a certain written agreement constitutes a commitment shall be conclusive with respect to the existence of such a commitment.

(i) *Streamflow source zone* means the upstream headwaters area which drains into the recharge zone as defined in the December 16, 1975, Notice of Determination.

(j) *Significant hazard to public health* means any level of contaminant which causes or may cause the aquifer to exceed any maximum contaminant level set forth in any promulgated National Primary Drinking Water Standard at any point where the water may be used for drinking purposes or which may otherwise adversely affect the health of persons, or which may require a public water system to install additional treatment to prevent such adverse effect.

(k) *Aquifer* means the Edwards Underground Reservoir.

[42 FR 51574, Sept. 29, 1977. Redesignated and amended at 52 FR 23986, June 26, 1987]

§ 149.102 Project review authority.

(a) Once an area is designated, no subsequent commitments of Federal financial assistance may be made to projects which the Administrator determines may contaminate the aquifer so as to create a significant hazard to public health.

(b) The Regional Administrator is hereby delegated the authority and assigned responsibility for carrying out the project review process assigned to the Administrator under section 1424(e) of the Act, except the final determination that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health.

(c) The Regional Administrator may review any project which he considers may potentially contaminate the aquifer through its recharge zone so as to create a significant hazard to public health.

§ 149.103 Public information.

After the area is designated under section 1424(e), Federal agencies, for projects, located in the recharge zone and streamflow source zones, are required to:

(a) Maintain a list of projects for which environmental impact statements will be prepared in accordance with the National Environmental Policy Act (NEPA);

(b) Revise the list at regular intervals and submit to EPA; and

(c) Make the list available to the public upon request.

§ 149.104 Submission of petitions.

Any person may submit a petition requesting the Regional Administrator to review a project to determine if such project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health. Any such petition shall identify:

(a) The name, address, and telephone number of the individual, organization, or other entity submitting the petition;

(b) A brief statement of the requesting person's interest in the Regional Administrator's determination;

(c) The name of the project and Federal agency involved;

In addition, the petitioner is requested to submit to EPA available information on:

(d) Applicable action already taken by State and local agencies including establishment of regulations to prevent contamination of the aquifer and why, in the petitioner's judgment, the action was inadequate.

(e) Any actions taken under the National Environmental Policy Act and why, in the petitioner's judgment, that action was inadequate in regard to evaluation of potential effect on the aquifer.

(f) The potential contaminants involved;

(g) The means by which the contaminant might enter the aquifer; and

(h) The potential impact of the proposed project.

§ 149.105 Decision to review.

(a) The Regional Administrator shall review under section 1424(e) all projects located in the recharge or streamflow source zone of the aquifer for which a draft or final EIS is submitted which may have an impact on ground water quality and which involve Federal financial assistance as defined in these regulations.

(b) Upon receipt of a public petition, the Regional Administrator shall decide whether the project which is the subject of the petition should be reviewed under section 1424(e).

(c) The Regional Administrator may decide to review a project upon his own motion.

(d) In determining whether to review a project upon receipt of a public petition or upon his own motion, the Regional Administrator shall consider whether the project is likely to directly or indirectly cause contamination of the aquifer through its recharge zone, taking into account any factors he deems relevant, including:

(1) The location of the project, and

(2) The nature of the project.

(e) In determining whether to review a project upon receipt of a public petition or upon his own motion, the Regional Administrator may consult with, or request information from, the Federal agency to which the project application has been made, the applicant seeking Federal assistance, appropriate State and local agencies, and other appropriate persons or entities.

(f) In determining whether to review a project which is the subject of a public petition, the Regional Administrator may request such additional information from the petitioner as he deems necessary.

§ 149.106 Notice of review.

(a) *Notice to Federal agency.* If the Regional Administrator decides upon receipt of a public petition or upon his own motion to review a project under section 1424(e), he shall give written notification of the decision to the Federal agency from which financial assistance is sought. The notification shall include a description and identification of the project.

(b) *Notice to public.* When the Regional Administrator undertakes to review a project pursuant to § 149.13 above, he shall provide public notice of project review by such means as he deems appropriate. The notice shall set forth the availability for public review of all data and information available, and shall solicit comments, data and information with respect to the determination of impact under section 1424(e). The period for public comment shall be 30 days after public notice unless the Regional Administrator extends the period at his discretion or a public hearing is held under § 149.16.

§ 149.107 Request for information.

In reviewing a project under section 1424(e), the Regional Administrator may request any additional information from the funding Federal agency which is pertinent to reaching a decision. If full evaluation of the groundwater impact of a project has not been submitted in accordance with the agency's NEPA procedures, the Regional Administrator may specifically request that the Federal agency submit a groundwater impact evaluation of whether the proposed project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health.

§ 149.108 Public hearing.

If there is significant public interest, the Regional Administrator may hold a public hearing with respect to any project or projects to be reviewed if he finds that such a hearing is necessary and would be helpful in clarifying the issues. Public hearings held under this section should be coordinated, if possible, with other Federal public hearings held pursuant to applicable laws and regulations. Any such hearing shall be conducted by the Regional Administrator or designee in an informal, orderly and expeditious manner. Where appropriate, limits may be placed upon the time allowed for oral statements, and statements may be required to be submitted in writing. The record will be held open for further public comment for seven (7) days following the close of the public hearing.

§ 149.109 Decision under section 1424(e).

(a) As soon as practicable after the submission of public comments under section 1424(e) and information requested by the Environmental Protection Agency from the originating Federal agency, on the basis of such information as is available to him, the Regional Administrator shall review the project taking all relevant factors into account including:

(1) The extent of possible public health hazard presented by the project;

(2) Planning, design, construction, operation, maintenance and monitoring measures included in the project which would prevent or mitigate the possible health hazard;

(3) The extent and effectiveness of State or local control over possible contaminant releases to the aquifer;

(4) The cumulative and secondary impacts of the proposed project; and

(5) The expected environmental benefits of the proposed project.

(b) After reviewing the available information, the Regional Administrator shall:

(1) Determine that the risk of contamination of the aquifer through the recharge zone so as to create a significant hazard to public health is not sufficiently great so as to prevent commitment of Federal funding to the project; or

(2) Forward the information to the Administrator with his recommendation that the project may contaminate the aquifer through the recharge zone so as to create a significant hazard to public health.

(c) After receiving the available information forwarded by the Regional Administrator, the Administrator shall:

(1) Determine that the risk of contamination of the aquifer through the recharge zone so as to create a significant hazard to public health is not sufficiently great so as to prevent commitment of Federal funding to the project; or

(2) Determine that the project may contaminate the aquifer through the recharge zone so as to create a significant hazard to public health.

(d) Notice of any decisions by the Regional Administrator under paragraph (b)(1) of this section or by the Administrator under paragraphs (c)(1) and (2) of this section to prevent a commitment of Federal funding shall be published in the FEDERAL REGISTER. Such notices shall include a description of the propsed project, and a statement of decision with an accompanying statement of facts and reasons.

§ 149.110 Resubmittal of redesigned projects.

If a project is redesigned in response to EPA's objections, the applicant for Federal financial assistance or the grantor agency may file a petition with the Regional Administrator for withdrawal of the determination that the project may contaminate the aquifer through the recharge zone so as to create a significant hazard to public health. Any such petition shall demonstrate how the project has been redesigned so as to justify the withdrawal of EPA's objections. If appropriate, the Regional Administrator may request public comments or hold an informal public hearing to consider the petition. After review of pertinent information, the Regional Administrator shall either deny the petition or recommend to the Administrator that the initial determination that a project may contaminate the aquifer be vacated. Upon receipt of a recommendation from the Regional Administrator that a determination be vacated, the Administrator shall either deny the petition or order that the initial determination be vacated. The final decision regarding a petition shall be published in the FEDERAL REGISTER with an accompanying statement of reasons.

§ 149.111 Funding to redesigned projects.

After publication of a decision that a proposed project may contaminate a sole or principal source aquifer in a designated area through its recharge zone so as to create a significant hazard to public health, a commitment for Federal financial assistance may be entered into, if authorized under another provision of law, to plan or redesign such project to assure that it will not so contaminate the aquifer.

APPENDIX H -- EXAMPLES OF RCRA NOTICES

March 4, 1996 Washington Post (page B5)

Example of a public notice placed as a display advertisement

INFORMAL PUBLIC MEETING
and FORMAL PUBLIC HEARING
on PROPOSED DISTRICT
DRINKING WATER ORDER

WHO: The United States Environmental Protection Agency, Region III

WHAT: EPA will conduct both an informal public meeting and a formal public hearing to discuss the District of Columbia's drinking water supply.

WHEN:

Tuesday, April 9, 1996	Informal Public Meeting: 5-9 pm
Wednesday, April 17, 1996	Formal Public Hearing: 6:30-9 pm

WHERE: National Guard Association of the United States
"Hall of States" (first floor)
One Massachusetts Avenue, NW
Washington, DC 20001

WHY: On November 13, 1995, EPA issues a Proposed Administrative Order (PAO) to the water system of the District of Columbia for violations of section 1414(g) of the Safe Drinking Water Act [42 USC §3000-3(g)]. These sessions are authorized under 40 CFR §25.5, §25.6 and §142.205.

The **meeting** will focus on concerns about drinking water produced by the US Army Corps of Engineers' Washington Aqueduct and distributed by the District of Columbia Water Systems. Representatives of the Washington Aqueduct and DC Drinking Water System will attend the meeting.

The **hearing** is to determine if the PAO: correctly states the nature and extent of the District's SDWA violations, and if the PAO provides, where appropriate, a reasonable time for the District to comply with the SDWA and applicable rules. EPA will transcribe the hearing.

HOW: For further information and/or to obtain copies of the proposed Administrative Order, call Joyce Baker at 1-800-438-2474 or 215-597-2460. The PAO is also available for review at the Martin Luther King, Jr. Library, Southeast Branch, 403 7th Street, SE, Washington, DC 20003.

ROLLINS
ENVIRONMENTAL SERVICES (NJ) INC.

P.O. Box 337, Bridgeport, NJ 08014, 609/467-3100 General Offices, 609/467-3105 Sales Office

PUBLIC NOTICE OF HSWA PERMIT MODIFICATION REQUEST

Rollins Environmental Services (NJ) Inc. [RES(NJ)] submitted a request on January 25, 1996 to the U.S. Environmental Protection Agency (EPA) for modification of its Hazardous and Solid Waste Amendments of 1984 (HSWA) Permit. The facility, located in Logan Township, New Jersey includes hazardous waste storage, transfer and treatment units. In this modification request, RES(NJ) is seeking authorization to continue to receive sixty-four newly listed wastes designed as hazardous wastes by EPA on August 9, 1995.

The public is invited to submit written comments on this request to the following Agency contact through the 60-day period ending March 25, 1996:

Ms. Ellen Stein
U.S. Environmental Protection Agency
Air & Waste Management Division
290 Broadway, 22nd Floor
New York, NY 10007-1866
(212) 637-4114

The permittee's compliance history during the life of the permit being modified is available from the Agency contact person.

A copy of the permit modification request and supporting documentation may be viewed and copied at the following location:

Logan Township Municipal Building
73 Main Street
Bridgeport, New Jersey 08014

Please call Ms. Elizabeth Bullock, Township Clerk, at 467-3424 to schedule your visit to the Municipal Building.

RES(NJ) will hold a meeting open to the public on Tuesday, February 13, 1996 at 4:00 pm for the purpose of describing the request and to address comments on the request. The meeting will be held at the Bridgeport Holiday Inn at Exit 10 of Interstate 295.

The RES(NJ) contact person is:

Mr. Gerard V. Hartig
Rollins Environmental Services (NJ) Inc.
P.O. Box 337
Bridgeport, New Jersey 08014
(609) 467-3100

Squibb Manufacturing, Inc.
P.O. Box 609 Humacao Puerto Rico 00092-0609
Tel. (809) 852-1255 Fax (809) 852-3800

March 21, 1995

FEDERAL EXPRESS

Mr. Richard Yue
U.S. Environmental Protection Agency
Hazardous Waste Facilities Branch
290 Broadway
New York, NY 10007

Dear Mr. Yue:

Re: Squibb Manufacturing Inc.
RCRA Permit Application

Pursuant to your request today, I am please to submit for your consideration and records, copy of documents generated since early 1995 related to our RCRA Permit Renewal Application. These documents are attached and consist of the following:

Annex 1

Correspondence dated January 18, 1995.
Leaflet distributed among residents of Villa Humacao and El Junquito, advising them that:

a. SMI filed a RCRA Permit Renewal Application at EPA and EQB

b. EPA will soon publish public notice announcing the date and time for a public meeting related to the renewal process

c. copy of the documents are in the Public Library

d. the general community is welcome to participate in these proceedings

Annex 2

Correspondence dated January 26, 1995.
Leaflet distributed among residents of El Junquito inviting them to a community meeting to be held on January 31, 1995, to discuss environmental issues including the RCRA Permit Renewal Application. (A similar meeting was held at the request of Villa Humacao residents during December, 1994).

Annex 3

Copy of a January 25, 1995 newspaper article in Humacao's El Oriental, related to our application and inviting the Humacao community to request any desired information pertaining to the application maintained in the Public Library and the Plant.

Additionally, we advised the community of a meeting to be held at El Junquito and the planned EPA Public Meeting.

Annex 4

(Not included)

Annex 5

Copy of correspondence dated January 30, 1995. SMI requests WALO radio station to notify the Humacao community of the forthcoming January 31, 1995 meeting at El Junquito and the February 8, 1995 Public Meeting.

Annex 6

Copy of public notice published on February 1, 1995 in Humacao's El Oriental regarding EPA's February 8, 1995 Public Meeting.

Annex 7

Copy of a February 8, 1995 newspaper article published in Humacao's EL Oriental, related to our waste management activities and the particulars of the permit renewal process.

Annex 8

Copies of correspondence addressed to Humacao community leaders and government officials which served as cover letters to the four-volume RCRA Permit Renewal Application deliver individually and by-hand.

Please advise if I may be of further assistance.

Sincerely,

Julio Ortiz Torres
Environmental Affairs Manager

JOT/c
Attachments
Yue

SQUIBB MANUFACTURING, INC.

15 de enero de 1995

Estimados vecinos:

Squibb Manufacturing, Inc., en su compromiso con la comunidad de Humacao, desea por este medio informarles que ha radicado su solicitud de renovación de permiso como facilidad de manejo de desperdicios sólidos peligrosos ante la Agencia de Protección Ambiental Federal (EPA pos sus siglas en inglés).

Próximamente la EPA anunciara el día y el lugar donde se celebrara una reunión pública con el prepósito de informar sobre la renovación de Squibb y las oportunidades que tiene el publico en general de revisar la solicitud de renovación de permiso y posteriormente someter sus comentarios de conformidad con la reglamentaciones federal. Copia de la solicitud de renovación ya está disponible para el público en la Biblioteca Municipal de Humacao, Puerto Rico (Te. 850-6446) y en nuestras facilidades en la Carretera #3 Km., 77.5 en Humacao.

Squibb invita a la comunidad en general a participar en el proceso y está en la mejor disposición de proveer cualquier información u orientación sobre este asunto, en cuyo caso pueden comunicarse con el Ing. Julio Ortiz-Torres, Gerente de Asuntos del Ambiente, al teléfono 850-6731.

Héctor J. Totti
Gerente General

Annex 1

Squibb Manufacturing, Inc.
P.O. Box 609 Humacao Puerto Rico 00792-0609
Tel. (809) 852-1255 Fax (809) 852-3800

25 de enero de 1995

Estimados vecinos:

Cordialmente los invitamos a nuestra próxima reunión de comunicación con la comunidad a llevarse a cabo martes, 31 de enero de 1995, comenzando a las 7:00 de la noche en el Centro de Reuniones del Comité de Seguridad Vecinal en Junquito. Esa noche compartiremos con ustedes información relacionada con asuntos ambientales de suma importancia para la comunidad.

Los esperamos,

Sinceramente,

Héctor J. Totti
Gerente General

Annex 2

En defensa del Incinerado

"Las facilidades para el manejo de los desperdicios peligrosos que opera Squibb Manufacturing Inc. en Humancao, complen con los estrictos controles reglamentarios e lay ley federal", sostuvo el gerente general de esta planta, Héctor Totti, en un comunicado de prensá enviado a El Oriental.

Sobre las mencionadas facilidades de desperdicios sólidos que despuntan como el foco de una nueva controversia ambiental en la región, el ejecutivo de la plana aseguró que fueron diseñadas y construídas, "y se operan y se mantienen", en conformidad con las estrictas disposiciones reglamentarias que impone la Ley Federal de Desperdicios Peligrosos.

Totti descartó la percepción de que la operación es una nueva; señalando que lo que su ompañía ha hecho es radicar una solicitud de renovación de permiso como facilidad de manejo "de desperdicios peligrosos ante la Agencia Federal de Protección Ambiental (EPA pos sus siglas en inglés). "Esta facilidad lleva operando desde los años 60", puntualizó.

Según el ejecutivo, el único efecto que tendría la renovación del permiso sería el de permitirle a la Squibb continuar disponiendo en su planta de los desperdicios peligrosos que resultan del proceso de manufactura de los productos farmaceúticos.

"Los incineradores son indispensables para continuar nuestras actividades de manufactura", señaló el gerente, agregando que; "conforme a nuestro compromiso de mantener informada a la comunidad sobre este extenso proceso", se han programado una serie de reuniones con varios sectores de la comunidad.

En diciembre pasado se realizó una de estes reuniones en la urbanización Villa Humacao y próximamente, según anunció, se estará realizando otra en al comunidad del Junquito.

"Además la EPA tiene programado una reunión sobre este asunto, para principios de febrero próximo, reveló.

Totti extendió una invitación a la comunidad en general para que participar de este proceso y reliero "el compañía de la Squibb Manufacturing de p?? Information y aclarar dudas que sobre el proyecor".

A estos efectos, ofreció el número de teléfono, 850-6731, a donde pueden aquellos intersados en ob información sobre el mismo, e inu que existe una copía de la solicitud de renovación, disponible en la Biblioteca Municipal de Humacao, la JCA y propia planta.

Source: 8- El ORIENTAL - 25 de enero del 1995

Annex 3

Squibb Manufacturing, Inc.
P.O. Box 609 Humacao Puerto Rico 00792-0609
Tel. (809) 852-1255 Fax (809) 852-3800

30 de enero de 1995

Sa. Mercy Padilla
WALO Radio Oriental
Call Box 1240
Humacao, Puerto Rico 00792

Estimada Sa. Padilla:

Nos hacemos eco de la preocupación expresada por la Sra. Ferrer y Sra. Martínez en torno a la remoción de letreros y cruzacalles de su área vecinal.

Squibb no promueve y condena este tipo de acción ya que apoya totalmente la libre expresión de todos los sectores de la comunidad. Es por eso que estamos promoviendo un diálogo abierto entre todos para dilucidar y aclarar todas las dudas en cuanto al proceso de renovación de permisos.

Estamos participando en reuniones con las comunidades adyacentes. La próxima reunión es el martes, 31 de enero, con los residentes de la Comunidad de Junquito en el Centro de Seguridad Vecinal a las 7:00 p.m. El miércoles, 8 de febrero, la EPA celebrará una reunión en el Caracolillo con el objetivo de darle toda la información relacionada con este proceso.

Exhortamos a todos los vecinos de estas comunidades a asistir a estas reuniones para que puedan aclarar dudas y expresar sus preocupaciones.

Sinceramente,

Julio Ortiz-Torres
Gerente, Asuntos del Ambiente

GOVERNMENT OF PUERTO RICO/
OFFICE OF THE GOVERNOR
PUBLIC NOTICE

U.S. ENVIRONMENTAL PROTECTION AGENCY
26 FEDERAL PLAZA- REGION II
NEW YORK, NEW YORK 10278

PUBLIC NOTICE: PN #: DATE: JANUARY 27, 1995
EPA I.D. NUMBER: PRD090021056

NOTICE OF RECEIPT OF RCRA PART B PERMIT RENEWAL APPLICATION AND HAZARDOUS WASTE INCINERATOR RISK ASSESSMENT REPORT

Notice is hereby given that the U.S. Environmental Protection Agency(EPA) Region II, is in receipt of the Resource Conservation and Recovery Act (RCRA) Part B permit renewal application dated September 1, 1994, and the hazardous waste incinerator risk assessment report dated October 7, 1994, submitted by:

The Squibb Manufacturing Incorporated
State Road No. 3, Km 77.5
P.O. Box 609
Humacao, Puerto Rico 00792
Attention: Mr. Hector J. Totti, Vice President

The Squibb Manufacturing Incorporated ("Squibb") operates a pharmaceutical manufacturing facility which produces drugs for human consumption. The facility has been in operation since 1970. A permit was issue to Squibb effective on March 1, 1990 by EPA under the authority of the Resource Conservation and Recovery Act (RCRA), (42 U.S.C. _ 6901 et seq.), as amended by the hazardous and solid waste amendments of 1984 (HSWA), for the management of six (6) above-ground hazardous waste storage tanks, and the operation of two (2) incinerator units(the "trane" and "brule"). The trane unit is permitted to incinerate hazardous waste, while the brule unit is permitted to incinerate only ignitable waste. The brule unit is scheduled for closure in 1995. The current RCRA permit expires on March 1, 1995.

Squibb has applied to renew their permit for the management of hazardous wastes at the Humacao facility. Under the RCRA permit renewal application, Squibb proposes to continue the operation of the trane incinerator treating hazardous wastes. Addition, Squibb proposes to treat hazardous wastes in the existing caloric 1 incinerator and in a new caloric2 incinerator which is currently being constructed. The three hazardous waste incinerator units that are included in the permit renewal application (trane, caloric 1, and caloric2) will burn hazardous waste generated solely from the Squibb facility. With regards to the storage of hazardous wastes in the tank system, Squibb proposes to operate a new seventh (7) above ground hazardous waste storage tank, along with the six(6) existing storage tanks.

This notice of the receipt of the RCRA permit renewal application isfor the administrative record. The administrative record consists of this notice, RCRA Part B permit renewal application which includes the trial burn plan, and the hazardous waste incinerator risk assessment report submitted by Squibb, and other data and materials assembled or prepared by EPA and the Puerto Rico Environmental Quality Board (EQB) for the Squibb facility. Its contents may be inspected any time between 9:30 a.m. to 4:00 p.m. Monday through Friday, except Holidays. Copies of these documents are available at $.15 per copy sheet. To make an appointment to inspect the administrative record is also on file at the Puerto Rico Environmental Quality Board, and pollution control area, 431 Ponce De Leon Avenue Hato Rey Puerto Rico 00919. To make an appointment to inspect the administrative record at EQB, please contact Mr. Santos Cabrera at (809) 767-8181 ext. 2351.

For citizens residing near the Humacao municipality, a public information repository has been established by the facility for all citizens interested in becoming involved during the permitting process. The public information repository will have copies of the administrative record documents, and other information material relevant to the facility which is available for public review. The repository will also include the name and telephone number of EPA and EQB's contact office, and the mailing address to which comments and inquiries may be directed during the permit review process the repository will be maintained throughout the permitting process at the following location: the public library of the municipality of Humacao, Road No. 3, Km 77.5, Humacao, Puerto Rico. Telephone number: (809) 850-6446. A public meeting will be held on February 8, 1995, between 6:00 pm to 10:00 pm, at the Caracolillo Restaurant, Road No. 3, Km. 74.5, Humacao, Puerto Rico, 00791, Telephone number: (809) 850-0833. The purpose of the public meeting is to answer any questions the public

may have regarding the RCRA permit renewal application. This notice also provides the citizens interested in receiving relevant permitting information and future public notices on the draft and final permit determination an opportunity to be included in the facility or EPA's mailing list.

Finally, this notice also services the initial notification that Squibb may request a temporary emergency permit to treat hazardous waste in the existing non-permitted caloric 1 incinerator. If issued, the emergency permit would authorize Squibb to treat hazardous waste in the caloric 1 incinerator while the trane unit is used to perform trial burn tests to determine applicable permit operating conditions. Squibb must demonstrate to EPA and EQB that the temporary authorization is necessary for the facility's hazardous waste management activities and will minimize the over-accumulation of hazardous waste on-site, therefore, allowing for safer management of on-site hazardous waste.

Any written comments concerning the permit renewal process or temporary emergency permit. Requests for information, and requests to be on the EPA's mailing list should be made to:

Mr. Andrew Nellina, P.E.
Chief, Hazardous Waste Facilities Branch
U.S. Environmental Protection Agency, Region II
26 Federal Plaza, Room 1037
New York, New York 10278

[Note: Text of notice also provided on next page.]

PUBLIC NOTICE

U.S. ENVIRONMENTAL PROTECTION AGENCY - REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278
DATE: January 27, 1995

PUBLIC NOTICE: PN #_____
EPA I.D. NUMBER: PRD090021056

NOTICE OF RECEIPT OF RCRA PART B PERMIT RENEWAL APPLICATION
AND HAZARDOUS WASTE INCINERATOR RISK ASSESSMENT REPORT

NOTICE IS HEREBY GIVEN THAT THE U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA) REGION II, IS IN RECEIPT OF THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA) PART B PERMIT RENEWAL APPLICATION DATED SEPTEMBER 1, 1994, AND THE HAZARDOUS WASTE INCINERATOR RISK ASSESSMENT REPORT DATED OCTOBER 7, 1994, SUBMITTED BY:

THE SQUIBB MANUFACTURING INCORPORATED
STATE ROAD NO. 3, KM 77.5
P.O. BOX 609
HUMACAO, PUERTO RICO 00792
ATTENTION: MR. HECTOR J. TOTTI, VICE PRESIDENT

THE SQUIBB MANUFACTURING INCORPORATED ("SQUIBB") OPERATES A PHARMACEUTICAL MANUFACTURING FACILITY WHICH PRODUCES DRUGS FOR HUMAN CONSUMPTION. THE FACILITY HAS BEEN IN OPERATION SINCE 1970. A PERMIT WAS ISSUED TO SQUIBB EFFECTIVE ON MARCH 1, 1990 BY EPA UNDER THE AUTHORITY OF THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA), (42 U.S.C. § 6901 ET SEQ.), AS AMENDED BY THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984 (HSWA), FOR THE MANAGEMENT OF SIX (6) ABOVE-GROUND HAZARDOUS WASTE STORAGE TANKS, AND THE OPERATION OF TWO (2) INCINERATOR UNITS (THE "TRANE" AND "BRULE"). THE TRANE UNIT IS PERMITTED TO INCINERATE HAZARDOUS WASTE, WHILE THE BRULE UNIT IS PERMITTED TO INCINERATE ONLY IGNITABLE WASTE. THE BRULE UNIT IS SCHEDULED FOR CLOSURE IN 1995. THE CURRENT RCRA PERMIT EXPIRES ON MARCH 1, 1995.

SQUIBB HAS APPLIED TO RENEW THEIR PERMIT FOR THE MANAGEMENT OF HAZARDOUS WASTES AT THE HUMACAO FACILITY. UNDER THE RCRA PERMIT RENEWAL APPLICATION, SQUIBB PROPOSES TO CONTINUE THE OPERATION OF THE TRANE INCINERATOR TREATING HAZARDOUS WASTES. ADDITION, SQUIBB PROPOSES TO TREAT HAZARDOUS WASTES IN THE EXISTING CALORIC 1 INCINERATOR AND IN A NEW CALORIC 2 INCINERATOR WHICH IS CURRENTLY BEING CONSTRUCTED. THE THREE HAZARDOUS WASTE INCINERATOR UNITS THAT ARE INCLUDED IN THE PERMIT RENEWAL APPLICATION (TRANE, CALORIC 1, AND CALORIC 2) WILL BURN HAZARDOUS WASTE GENERATED SOLELY FROM THE SQUIBB FACILITY. WITH REGARDS TO THE STORAGE OF HAZARDOUS WASTES IN THE TANK SYSTEM, SQUIBB PROPOSES TO OPERATE A NEW SEVENTH (7) ABOVE-GROUND HAZARDOUS WASTE STORAGE TANK, ALONG WITH THE SIX(6) EXISTING STORAGE TANKS.

THIS NOTICE OF THE RECEIPT OF THE RCRA PERMIT RENEWAL APPLICATION IS FOR THE ADMINISTRATIVE RECORD. THE ADMINISTRATIVE RECORD CONSISTS OF THIS NOTICE, RCRA PART B PERMIT RENEWAL APPLICATION WHICH INCLUDES THE TRIAL BURN PLAN, AND THE HAZARDOUS WASTE INCINERATOR RISK ASSESSMENT REPORT SUBMITTED BY SQUIBB, AND OTHER DATA AND MATERIALS ASSEMBLED OR PREPARED BY EPA AND THE PUERTO RICO ENVIRONMENTAL QUALITY BOARD (EQB) FOR THE SQUIBB FACILITY. ITS CONTENTS MAY BE INSPECTED ANY TIME BETWEEN 9:30 A.M. TO 4:00 P.M. MONDAY THROUGH FRIDAY, EXCEPT HOLIDAYS. COPIES OF THESE DOCUMENTS ARE AVAILABLE AT $.15 PER COPY SHEET. TO MAKE AN APPOINTMENT TO INSPECT THE ADMINISTRATIVE RECORD IS ALSO ON FILE AT THE PUERTO RICO ENVIRONMENTAL QUALITY BOARD, LAND POLLUTION CONTROL AREA, 431 PONCE DE LEON AVENUE HATO REY PUERTO RICO 00919. TO MAKE AN APPOINTMENT TO INSPECT THE ADMINISTRATIVE RECORD AT EQB, PLEASE CONTACT MR. SANTOS CABRERA AT (809) 767-8181 EXT. 2351.

FOR CITIZENS RESIDING NEAR THE HUMACAO MUNICIPALITY, A PUBLIC INFORMATION REPOSITORY HAS BEEN ESTABLISHED BY THE FACILITY FOR ALL CITIZENS INTERESTED IN BECOMING INVOLVED DURING THE PERMITTING PROCESS. THE PUBLIC INFORMATION REPOSITORY WILL HAVE COPIES OF THE ADMINISTRATIVE RECORD DOCUMENTS, AND OTHER INFORMATION MATERIAL RELEVANT TO THE FACILITY WHICH IS AVAILABLE FOR PUBLIC REVIEW. THE REPOSITORY WILL ALSO INCLUDE THE NAME AND TELEPHONE NUMBER OF EPA AND EQB'S CONTACT OFFICE, AND THE MAILING ADDRESS TO WHICH COMMENTS AND INQUIRIES MAY BE DIRECTED DURING THE PERMIT REVIEW PROCESS THE REPOSITORY WILL BE MAINTAINED THROUGHOUT THE PERMITTING PROCESS AT THE FOLLOWING LOCATION: THE PUBLIC LIBRARY OF THE MUNICIPALITY OF HUMACAO, ROAD NO. 3, KM 77.5, HUMACAO, PUERTO RICO. TELEPHONE NUMBER: (809) 850-6446. A PUBLIC MEETING WILL BE HELD ON FEBRUARY 8, 1995, BETWEEN 6:00 PM TO 10:00 PM, AT THE CARACOLILLO RESTAURANT, ROAD NO. 3, KM. 74.5, HUMACAO, PUERTO RICO, 00791, TELEPHONE NUMBER: (809) 850-0833. THE PURPOSE OF THE PUBLIC MEETING IS TO ANSWER ANY QUESTIONS THE PUBLIC MAY HAVE REGARDING THE RCRA PERMIT RENEWAL APPLICATION. THIS NOTICE ALSO PROVIDES THE CITIZENS INTERESTED IN RECEIVING RELEVANT PERMITTING INFORMATION AND FUTURE PUBLIC NOTICES ON THE DRAFT AND FINAL PERMIT DETERMINATION AN OPPORTUNITY TO BE INCLUDED IN THE FACILITY OR EPA'S MAILING LIST.

FINALLY, THIS NOTICE ALSO SERVICES THE INITIAL NOTIFICATION THAT SQUIBB MAY REQUEST A TEMPORARY EMERGENCY PERMIT TO TREAT HAZARDOUS WASTE IN THE EXISTING NON-PERMITTED CALORIC 1 INCINERATOR. IF ISSUED, THE EMERGENCY PERMIT WOULD AUTHORIZE SQUIBB TO TREAT HAZARDOUS WASTE IN THE CALORIC 1 INCINERATOR WHILE THE TRANE UNIT IS USED TO PERFORM TRIAL BURN TESTS TO DETERMINE APPLICABLE PERMIT OPERATING CONDITIONS. SQUIBB MUST DEMONSTRATE TO EPA AND EQB THAT THE TEMPORARY AUTHORIZATION IS NECESSARY FOR THE FACILITY'S HAZARDOUS WASTE MANAGEMENT ACTIVITIES AND WILL MINIMIZE THE OVER-ACCUMULATION OF HAZARDOUS WASTE ON-SITE, THEREFORE, ALLOWING FOR SAFER MANAGEMENT OF ON-SITE HAZARDOUS WASTE.

ANY WRITTEN COMMENTS CONCERNING THE PERMIT RENEWAL PROCESS OR TEMPORARY EMERGENCY PERMIT. REQUESTS FOR INFORMATION, AND REQUESTS TO BE ON THE EPA'S MAILING LIST SHOULD BE MADE TO:

MR. ANDREW BELLINA, P.E.
CHIEF, HAZARDOUS WASTE FACILITIES BRANCH
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION II
26 FEDERAL PLAZA, ROOM 1037
NEW YORK, NEW YORK 10278

AVISO PUBLICO

AGENCIA DE PROTECCION AMBIENTAL DE LOS ESTADOS UNIDOS
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10275

EPA ID. NO. PRDO90021056 27 DE ENERO DE 1995

Por este medio, la Agencia de Protección Ambiental de los Estados Unidos (EPA, por sus siglas en inglés), Región II, da aviso de haber recibida la Solicitud de Renovación de Permiso Parte B de la Ley de Conservación y Recuperación de Recursos (RCRA) el día 1ro de septiembre de 1994, y el Reporte de Estudio de Riesgo de Incinerador de Desperdicios Peligrosos el día 7 de octubre de 1994, sometido por:

Squibb Manufacturing, Incorporated
Carr. Num. 3, Km. 77.5
P.O.Box 609
Humacao, Puerto Rico 00792
ATTN: Sr. Héctor J. Totti, Vice-Presidente

Squibb Manufacturing Incorporated ("Squibb") opera una facilidad que manufactura productos farmacéuticos, el cual produce drogas para consumo humano. La facilidad ha estado en operación desde 1970. Un permiso fue emitido a Squibb efectiva el 1 de marzo de 1990 por EPA bajo la autoridad de RCRA, (42 U.S.C. §6801 et seq.), según revisada por las Enmiendas a los Desperdicios Sólidos y Peligrosos de 1984 (HSWA, por sus siglas en inglés), para el manejo de seis (6) tanques de almacenaje de desperdicios peligrosos sobre el terreno, y la operación de dos (2) unidades de incinerador (el "TRANE" y "BRULE"). En la unidad "TRANE" lo es permitido incinerar desperdicios peligrosos, mientras en la unidad "BRULE" lo es permitido incinerar solo desperdicios ignitivos ("ignitables"). La unidad "BRULE" está programada para cerrarse en 1995. El permiso de RCRA actual expira el 1 de marzo de 1995.

Squibb ha solicitado renovar su permiso para el manejo de desperdicios peligrosos en la facilidad de Humacao. Bajo la solicitud de renovación de permiso RCRA, Squibb propona continuar con la operación del incinerador "TRANE" tratando desperdicios peligrosos. En adición, Squibb propone el tratar desperdicios peligrosos en el incinerador existente Caloric 1 y en el nuevo incinerador Caloric 2 el cualestá actualmente en construcción.

Los tres incineradores de desperdicios peligrosos que están incluidos en la solicitud de renovación de permiso (TRANE, Caloric 1 y Caloric 2) quemará desperdicios peligrosos generados únicamente de la facilidad de Squibb. Con respecto al almacenaje de desperdicios peligrosos en el sistema de tanques, Squibb propone operar un nuevo séptimo (7) tanques sobre el terreno para almacenar desperdicios peligrosos. Junto con los seis (6) tanques de almacenaje existentes.

Este aviso del recibo de la solicitud de renovación de permiso RCRA es para el archivo administrativo. El archivo administrativo consiste de este aviso, la solicitud de renovación de permiso RCRA Parte B, la cual incluye la prueba de quemado ("Trial Burn Plan"), y el reporte de estudio de Riesgo del Incinerador de desperdicios peligrosos sometido por Squibb, y otra información y material reunido o preparado tanto por EPA como por la Junta de Calidad Ambiental de Puerto Rico (JCA) para la facilidad de Squibb. Su contenido puede ser inspeccionado en cualquier momento entre las 8:30 A.M. a las 4:00 P.M. de Lunes a Viernes, excepto días feriados. Copias de estos documentos están disponibles a $.20 por página. Para hacer una cita con el propósito de inspeccionar el archivo administrativo en EPA en la ciudad de Nueva York, favor de comunicarse con el Sr. Richard Yue al (212)264-9339. El archivo administrativo se encuentra también disponible en la Junta de Calidad Ambiental; Área Control Contaminación de Terrenos, Avenida Ponce de León #431, Hato Rey, Puerto Rico 00919. Para hacer una cita con el propósito de inspeccionar el archivo administrativo en la JCA, favor de comunicarse con el Sr. Santos Cabrera al teléfono (809)767-8181 ext. 2351.

Para los ciudadanos residentes en o cerca del municipio de Humacao, interesados en conocer sobre el caso durante el proceso de permiso se ha designado un lugar donde estará disponible la información pública. En este lugarse tendrá disponible al público copia de los documentos del archivo administrativo y otro material de información relevante a la facilidad, nombres y números de teléfono de las oficinas de contacto de EPA y la JCA, y la dirección a la cual los comentarios y las preguntas deben ser dirigidas durante el proceso de evaluación del permiso. La información estará disponible durante todo el proceso de permiso en la siguiente localización: La Librería Pública en el municipio de Humacao, Carretera Núm. 3, Km. 77.5, Humacao, Puerto Rico. Número de teléfono (809)850-6464.

Una reunión pública se llevará a cabo el 8 de febrero de 1995, entre las 6:00 P.M. e 10:00 P.M., en el Restaurante El Caracolillo, Carr. Núm. 3, Km. 74.5, Humacao, Puerto Rico, 00791. Número de teléfono (809)850-0833. El propósito de la reunión pública es aclarar cualquier pregunta que el público pueda tener con respecto a la solicitud de renovación de permiso RCRA. Este aviso también provee el cuidadano interesado en recibir información relevante al permiso y avisos públicos futuros en el borrador y la determinación de permiso final una oportunidad para ser incluido en la lista de envío ("Mailing List") de la facilidad o en la de la EPA.

Finalmente, este aviso también sirve de notificación inicial de que Squibb solicita un permiso temporero de emergencia para tratar desperdicios peligrosos en el incinerador existente Caloric 1 no-permitido. Si es emitido, el permiso de emergencia puede autorizar a Squibb a tratar desperdicios peligrosos en el incinerador Caloric 1 mientras que la unidad "TRANE" es usada para efectuar pruebas de quemado para determinar condiciones de operación aplicables al permiso. Squibb debe demostrarlo a la EPA y a la JCA que la autorización temporera es necesaria para actividades de manejo de desperdicios peligrosos en el sitio de tal forma que permita un cuidadoso manejo de los desperdicios peligrosos en el sitio.

Cualquier comentario escrito con relación al proceso de renovación de permiso o al permiso temporero de emergencia, solicitudes de información y solicitudes para estar en la lista de envío ("Mailing List") de EPA puede ser sometidos a:

Mr. Andrew Bellina, P.E.
Chief, Hazardous Waste Facilities Branch
US Environmental Protection Agency
26 Federal Plaza - Region II - Room 1037
New York, New York 10278

HECTOR RUSSE MARTINEZ
PRESIDENTE
JUNTA CALIDAD AMBIENTAL

Insisten en defensa del Incinerador

Por: Magaly Monserrate Cerpa

Varios ejecutivos de la Squibb Manufacturing, entre los que se encontraba el gerente general de la planta de Humacao, insistieron en la seguridad y confiabilidad de sus incineradores y reiteraron que la compañía cumple con los estrictos controles reglamentarios de la Ley Federal de Desperdicios Peligrosos, durante una entrevista realizada por este rotativo en sus facilidades.

En la reunión que se produjo por invitación de la Squibb, el gerente de Asuntos Ambientales, Ing. Julio Ortíz rechazó algunos de los argumentos que han sido esbozados por detractores de los actuales planes de esta compañía, en las reuniones y manifestaciones que recientemente ha realizado el grupo opositor.

Ortíz comenzó por aclarar el comentario de que engañaban a la comunidad al decirles que estaban solicitando un permiso para disponer de desperdicios líquidos cuando el documento de solicitud indica que se trata de desperdicios sólidos peligrosos. Al respecto, indicó, que se trataba de un mal entendido producto del desconocimiento de la Reglamentación, que bajo la clasificación de Desperdicios Sólidos Peligrosos, cobija también a los líquidos.

"No hemos engañado a nadie, vamos a trabajar como hasta la fecha lo hemos hecho, con desperdicios líquidos, pero la Reglamentación no contempia una clasificación aparte para éstos, que no sea dentro de la de Desperdicios Sólidos Peligrosos". Debe quedar claro que no vamos a procesar solidos", arguyó.

Rivera también descartó de plano el comentario de que estuvieran contemplando trasportar hasta las facilidades de Humacao los desperdicios de las plantas de Barceloneta y Mayaguez, para ser procesados en los incineradores de acá.

Sobre la interrogante mas neurálgica relacionada con el nuevo incinerador, el impacto al ambiente ya la salud de los vecinos de la zona que tendrá esta nueva operación, aseguró que no se produciría aumento alguno en las emisiones.

En este tema, entró Héctor Totti, el gerente general de la planta, para señalar que "por el contrario" con este incinerador y los cambios que proponen hacer en el área de disposición, se minimizan los desperdicios sólidos peligrosos que genera la planta".

"La nueva reglamentación federal nos obliga a instituir un programa agresivo de minimización de estos desperdicios. Lo que estamos haciendo responde a la necesidid de avanzar en la tecnología para seguir cumpliendo con los restricciones federales y estatales de disposición de desperdicios peligrosos", expresó Totti.

Otro aspecto de la controversia en la que los propios ejecutivos coincidieron a generado confusión, por lo que intentaron explicarla, es la mezcla de dos procedimientos a un mismo tiempo.

Sobre ésto, Ortíz Torres explicó que cuando en el 1990 tramitaron la renovación del permiso para disponer de desperdicios sólidos peligrosos incluyeron los incineradores Trane y Brule pero no así el Caloric-1, que se encontraba en diseño. Poco después solicitaron a la EPA la inclusión de este último incinerador (para desperdicios sólidos peligrosos) pero esta agencia se dilató en su respuesta. Esa es la razón, por la que actualmente cuando se tramita nuevamente la renovación del referido permiso (que por ley tiene que hacerse cada cuatro años) se aprovecha para solicatar nuevamente la inclusión de este incineratador y el nuevo Caloric-2. Por instrucciones de la EPA, en lugar de hacer dos documentos, ambas cosas se incluyen en uno.

Agregó que estos dos incineradores, el Caloric-1 y el Caloric-2 deberán estar sustituyendo eventualmente al Trane (desperdicios peligrosos) y al Brule (de desperdicios peligrosos). El primero que deberá salir de operación se el Brule; en septiembre de este año y posteriormente (una fecha que no se especicico) el Trane.

Con esta nueva technología, reiteró Totti, lo que persigue es minimizar los desperdicios líquidos de manejo que la operación de la planta sea cada vez menos, impactando al ambiente. "En esto, aseguró, invertimos la mayor parte de nuestro presupuesto para mejoras. Un 70 por ciento de éste, está destinado a pruebas y labores conducente a disminuir este impacto. Esto lo venimos haciendo desde hace años, por ejemplo en nuestra área de experimentación con nuevos solventes, conocidos como environmentally friendly", concluyó

Squibb Manufacturing, Inc.
P.O. Box 609 Humacao Puerto Rico 0092-0609
Tel. (809) 852-1255 Fax (809) 852-3800

20 de enero de 1995

Hon. Joel Rosario Hernández
Representante
Cámara de Representantes
Apartado 2228
San Juan, PR 00902

Señor Representante:

Squibb, en su compromiso de mantener a la comunidad informada, por este medio le entreg a copia de la solicitud de renovación de permiso para sus unidades de manejo de desperdicios líquido s peligrosos y del análisis de riesgo realizado como parte de la misma. Esta solicitud fue radicada ante la Agencia Federal de Protección Ambie ntal (por sus siglas en inglés "EPA") y Junta de Calidad ambiental ("JCA").

Squibb es una farmacéutica dedicada a la manufactura de productos para el consumo humano. Entre ellos se producen Mycolog, Corg ard, Capoten, y Zerit- un producto para el tratamiento del SIDA. A planta ha estado en operación desde los años setenta. Esta consiste de varios edificios de producción, y facilidades de apoyo tales como laboratorios de control de calidad y de desarrollo e investigación , utilidades, área de recobro y reuso de solven tes, área de tratamiento de aguas usadas, área de manejo de desperdicios líquidos peligrosos, y otras.

En los procesos de manufac tura se utilizan compuestos orgánicos, incluyendo solventes, como es usual en este tipo de industria. Se generan residuos líquidos en los diferentes procesos de manufactura, los cuales son reciclados en nuestra planta de forma óptima para minimizar su impacto en el ambiente. Aquellos residuos que no son reutilizables se clasifican como desperdicios líquidos peligrosos par a disposición mediante incineración, la mejor tecnología para disponer de éstos. Los mismos consiste n principalmente de una mezcla de agua (85% a 98%) y pequeñas cantidades de solventes.

Desde sus comienzos en la d écada de 1970, Squibb opera unidades de incineración dentro de sus predios para el manejo de estos desperdi cios. Estas unidades han sido autorizadas por la EPA y la JCA. Respondiendo al desarrollo de la tecnología cada vez más avanzada, a través de los años Squibb h a mejarado los incineradores incorporando unidades más modernas.

En estos momentos, Squibb está renovando el permiso para sus unidades de manejo d e desperdicios líquidos peligrosos. Estas incluyen tanques de almacenamiento e incineradores. S e incorporan dos modernos incineradores, que sustitu irán uno que ya fue cerrado y otro programado para cierre durante este año.

Pruebas de eficiencia demuestran que estos nuevos incineradores cumplen tanto con toda l a reglamentación aplicable como con políticas establecidas recientemente por la EPA para unidades d e incineración.

Más aún, como parte del proceso se realizó un análisis de riesgo. Este establece que la operación de los incinerador es, presumiendo condiciones de exposición extremas e improbables, no afecta la salud ni el ambiente del área.

En agosto de 1994 Squibb comenzó un proceso de comunicación pública con el propósito d e divulgar información sobre los nuevos incineradores, para así promover la participación ciudadana en el proceso de permiso. A tales efectos, se ce lebró una reunión pública el 14 de septiembre de 1994, y otra en Villa Humacao el 1 de diciembre de 1994. Próximamente se celebrará otra en Junquito, similar a la ya celebrada en Villa Humacao. Además, EPA tiene otra reunión pública programada durante el mes de febrero.

Nos reiteramos a su disposición para proveer informació n adicional o aclarar cualquier duda con respecto a estos particulares. Puede comunicarse conmigo o con el Ing. Julio Ortiz-Torres, Gerente de Asuntos del Ambiente, al teléfono 850-6731.

Cordialmente,

Héctor J. Totti
Gerente General

wwin/data/environ.123
Anejo

APPENDIX I -- EXAMPLES OF ADDITIONAL RCRA PUBLIC PARTICIPATION TOOLS (FACT SHEETS, PUBLIC INVOLVEMENT PLANS, NEWS RELEASES)

United States
Environmental Protection
Agency

Region 10
1200 Sixth Avenue
Seattle, WA 98101

Alaska
Idaho
Oregon
Washington

EPA News Release

90-14

Contact: Dawnee Dahm
EPA Region 10
Hazardous Waste Program
442-2867

March 12, 1990

FOR IMMEDIATE RELEASE

EPA AND DEQ ANNOUNCE HAZARDOUS WASTE PERMIT FOR TEKTRONIX

A draft hazard waste permit has been issues for public comment which would allow Tektronix to operate hazardous waste storage units, to administer "post-closure" care to closed hazardous waste disposal units, and to carry out corrective activities or the closed hazardous and solid waste disposal units at its Beaverton facility.

The draft permit will be available for public review and comment until April 23, 1990.

Tektronix manages hazardous waste generated as by-products of manufacturing operations at its Beaverton facility and routinely manages wastes from other Tektronix facilities.

The draft permit requires Tektronix to take corrective action for tricholoethylene (TCE) contaminated groundwater at the facility and to monitor and maintain I closed surface impoundments for a at least 30 years. The permit also sets out operational requirements for Tektronix's hazardous waste storage units. These storage units include tanks and containers.

Copies of the permit are available at the Oregon Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland and at the Beaverton City Library, 12500 S.W. Allen Blvd.

(more)

Public comments on the draft permit will be accepted until April 23, 1990. A public hearing will be held if enough interest is expressed. Comments should be sent to:

Fred Bromfeld
DEQ
811 S.W. Sixth Avenue
Portland, OR 97204

Dawnee Dahm
EPA Region 10, HW-112
1200 Sixth Avenue
Seattle, Washington 98101

United States
Environmental Protection
Agency

Office of Public Affairs
Region 5
230 South Dearborn Street
Chicago, Illinois 60604

Illinois Indiana
Michigan Minnesota
Ohio Wisconsin

Public Involvement Plan
Ohio Technology Corporation
Proposed Incineration Facility

April 1989 - Revised

PUBLIC INVOLVEMENT PLAN

OHIO TECHNOLOGY CORPORATION

PROPOSED INCINERATION FACILITY

NOVA, OHIO

APRIL 1989

EPA WORK ASSIGNMENT NUMBER 96-5Q00.0

Prepared for: U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, Illinois 6064

Prepared by: ICF Technology, Inc.
35 East Wacker Drive
Suite 800
Chicago, Illinois 60601
Associates Firm, REM IV Contract No. 68-01-7251

TABLE OF CONTENTS

I. INTRODUCTION

In 1976, Congress passed the Resource Conservation and Recovery Act (RCRA) to regulate the generation, treatment, storage, and disposal of municipal and industrial solid wastes that are generated across the country. The RCRA law requires that before a facility can treat, store, or dispose of any hazardous waste, it must obtain a permit rom either the United States Environmental Protection Agency (U.S. EPA) or an authorized state government agency. [1] In addition to reviewing technical information, federal and state agencies encourage public involvement during the permitting process to ensure that residents understand proposed plans for handling hazardous wastes in their communities, and to provide an opportunity for residents to voice any concerns they may have.

This public involvement plan identifies some community concerns regarding Ohio Technology Corporation's application to build and operate a hazardous waste incinerator facility in Nova, Ohio. The plan details specific activities that U.S. EPA will engage in to disseminate information to the Nova community and to encourage public involvement as the Ohio Technology Corporation application is reviewed. The plan consists of the following sections:

- Description of the proposed facility;
- Community information;
- Community concerns;
- Objectives of the public involvement program;
- Public involvement activities; and an
- Implementation schedule.

The objectives and activities discussed in this plan are based on an assessment of community concerns collected during interviews with local officials, several residents, and local community opposition

[1] In many instances, authority for implementing RCRA has been given to the states by U.S. EPA. The State of Ohio, however, does not have such authority and all RCRA laws are currently enforced in Ohio by U.S. EPA.

groups conducted by U.S. EPA and contractor personnel in August 1988. Background information included in the plan was obtained from reviewing state and federal files; interviews with state, federal, and local officials; and local community opposition groups.

This plan has been prepared in accordance with U.S. EPA's Guidance on Public Involvement in the RCRA Permitting Program (Draft, January 1986).

II. DESCRIPTION OF THE PROPOSED ACTIVITY

A. Location and Description of Facility

Ohio Technology Corporation (OTC) proposed to construct and operate a hazardous waste and toxic substance treatment facility in Nova, Ohio, located in Troy Township, Ashland County. The property purchased by OTC in 1987 consists of approximately 280 acres of rural farm land along Township Road 791, one mile east of Nova and approximately 12 miles northeast of the City of Ashland (see Figures 1 and 2). The Nova Reservoir is located on the southwest portion of the property. Of the 280 acres, approximately 40 acres would be used for the facility.

The proposed facility includes construction of an incinerator called a Hybrid Thermal Treatment System developed by IT Corporation. The system involves a modularly designed rotary kiln incinerator for the destruction of a wide variety of organic wastes. As designed, fumes resulting from the kiln are burned in a secondary combustion chamber. In Nova, the proposed incinerator would be operated to burn both general hazardous wastes and polychlorinated biphenyls (PCBs). The Hybrid Thermal Treatment System would be designed to incinerate liquid wastes, viscous fluids, solids, soil, and other contaminated debris.

The proposed facility is designed not to discharge wastewater from the facility operating areas, but would be designed to treat wastewater on the site and reuse wastewater in the incineration process. Debris resulting from the incineration process, including processed solids and incinerator ash, are proposed to be disposed of in a RCRA licensed disposal facility off the site.

Access to the proposed OTC facility would be gained from Township Road 791. Trucks entering the facility would include tractor-trailer trucks carrying wastes contained in drums. Tankers trucks containing bulk liquids also would enter the facility. Fully loaded trucks would weigh approximately 30,000 to 50,000 pounds. An average of eight to 12

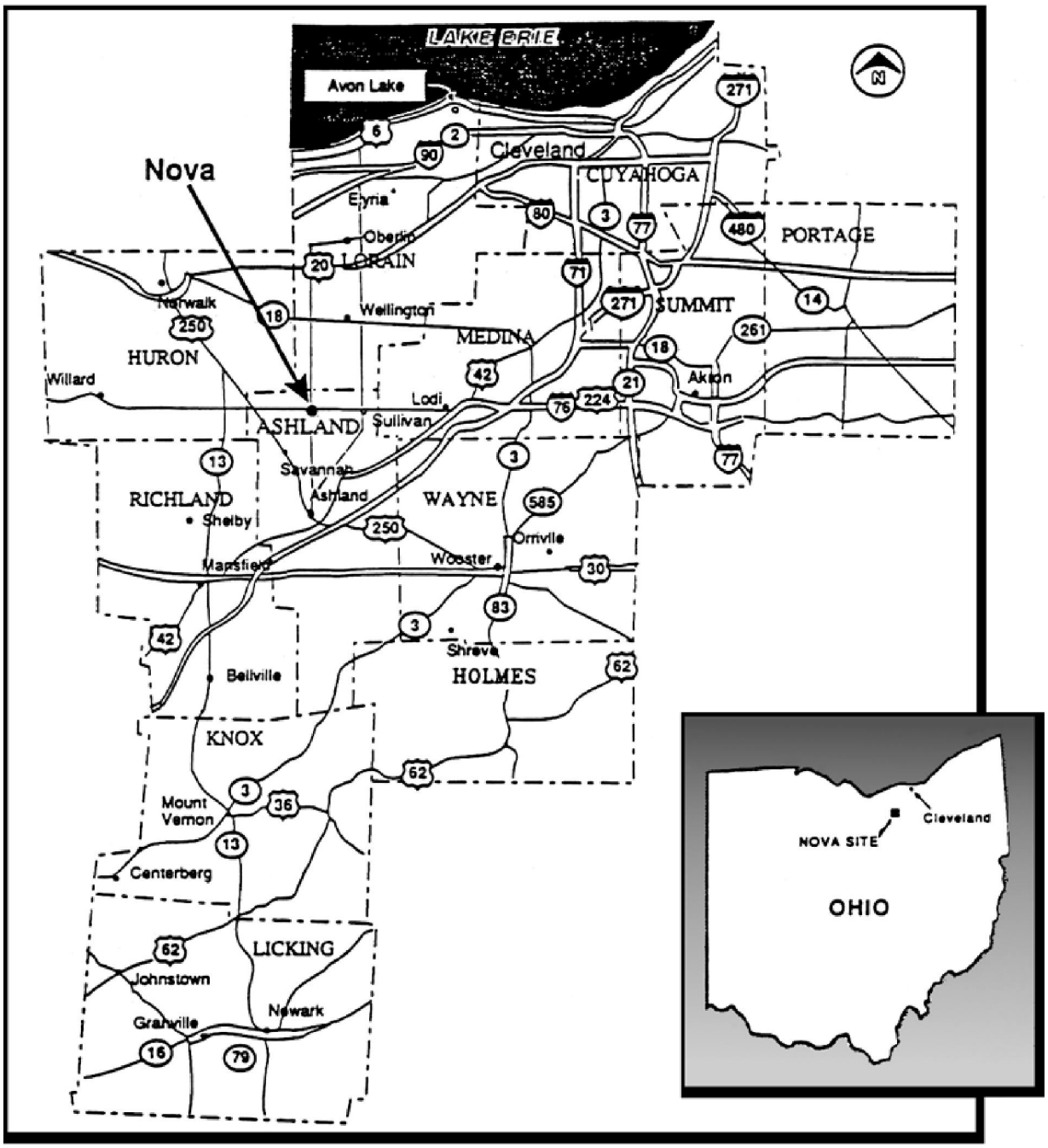


Figure 1
Proposed Facility Location Map

trucks would enter the facility per day.

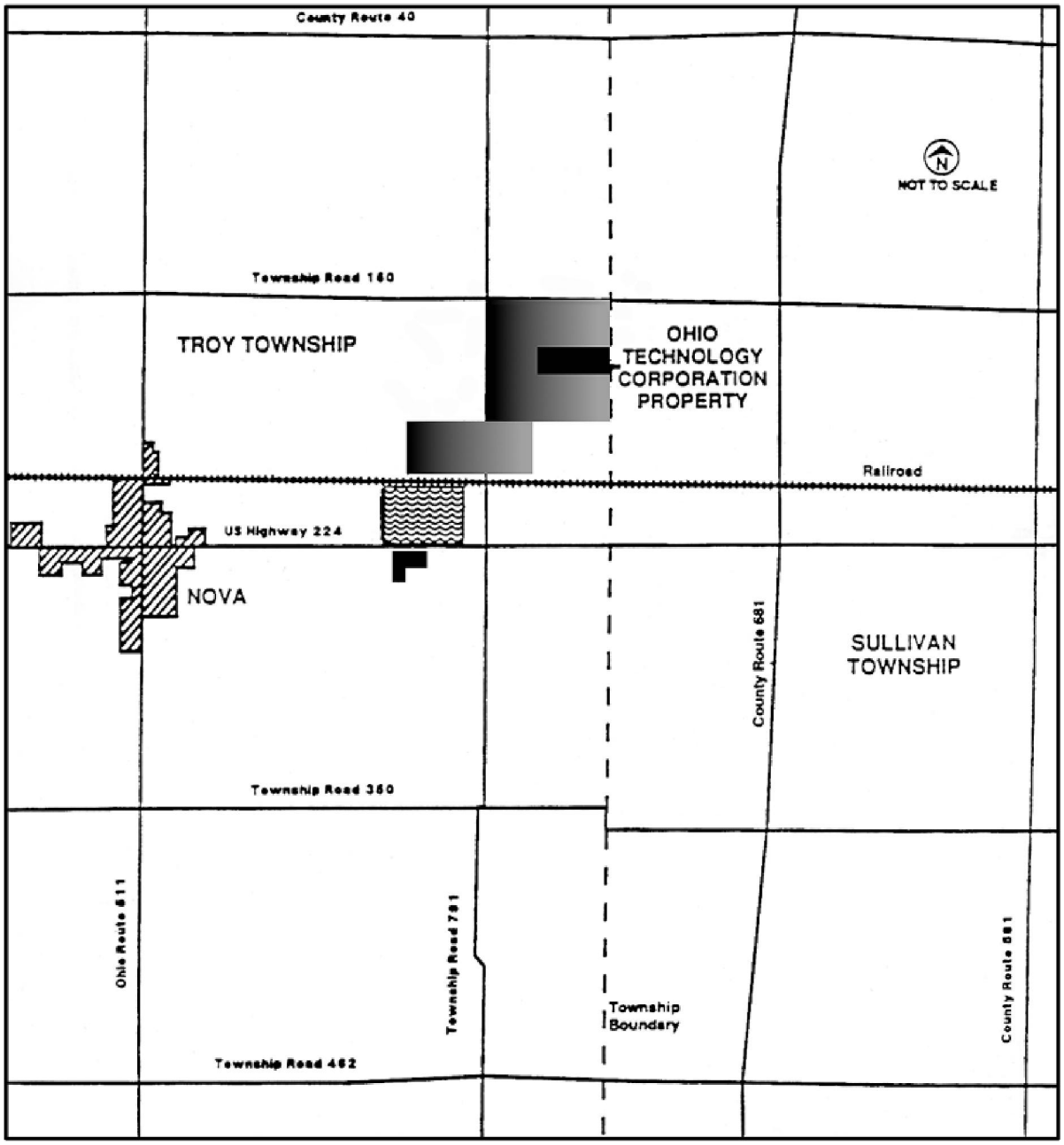


Figure 2
Proposed Facility Area Map

B. Owner/Operator Information

The current owner of the property is OTC which is also named as the proposed owner of the incineration facility in the RARA permit application. IT Corporation would operate the facility. OTC's headquarter offices are located in Cleveland, Ohio and IT Corporation's regional offices are located in Monroeville, Pennsylvania. According to an OTC official, the facility as proposed could reach its capacity by accepting wastes from within Ohio, although the facility is designed to be a regional hazardous waste treatment facility.

C. Regulatory Agencies

In order to obtain the required permits to construct and operate the incineration facility, OTC must submit permit applications to the Ohio Environmental Protection Agency (OEPA) and the U.S. EPA. Because OTC desires to build a facility that will burn both hazardous waste and PCBs, U.S. EPA permits are required from under both RARA and the Toxic Substance Control Act (TSCA). The RCRA permit is required for incineration of hazardous wastes, and the TSCA permit is required for incineration of wastes containing PCBs.

In addition, OTC must apply for and be issued permits from the State of Ohio. The primary permits required are a permit to install and a permit to operate a hazardous waste facility, both of which would be issued by the Ohio Hazardous Waste Facility Board. All proposed facilities in Ohio must receive these permits before any construction can begin. The application for the permits must be submitted for review to OEPA's Division of Solid and Hazardous Waste Management before a ruling on the applications is approved or denied by the Hazardous Waste Facility Board. In addition, OTC must receive an Air Permit to Install from OEPA's Division of Air Pollution, and a National Pollutant Discharge Elimination System (NPDES) permit -- a provision of the Clean Water Act -- from the Division of Water Pollution control. The air permit addresses the potential air emissions that could result from operations from the proposed incinerator, and the NPDES permit addresses potential discharges to water.

Currently, OTC has submitted permit applications to both OEPA and U.S. EPA. By law, permit applications must be reviewed for completeness and technical adequacy before the permits are either granted or denied.

III. COMMUNITY INFORMATION

A. Community Profile

Located in Troy Township, Nova is a rural, unincorporated town with a population of approximately 200 people. According to several residents interviewed, approximately 50% of the population are full-time farmers, and the remainder farm half time in addition to having jobs in other parts of the region.

Nova residents describe themselves as people not interested in urbanization. Several expressed pride in their families that have a long regional heritage, and have continued to live in the Nova area generation after generation. Several residents have recently move into the area away from more urban surroundings, preferring the clean air and rural atmosphere. According to residents interviewed, Nova residents view their population as one consisting of diverse individuals who possess a broad range of interests, all of which add to the character of the community.

Troy Township has a population of 450 people and is governed by a board consisting of three trustees and one clerk. Trustee and clerk elections are held every two years. The next election will be held in November 1989. The township chairperson is appointed every January by the trustees. The township administration also includes a Township Zoning Commission and a Zoning Board of Appeals. Both the Commission and Board of Appeals consists of five members of the community who are appointed by the township trustees to serve four-year terms.

Ashland County is governed by three county commissioners who each serve four-year terms. County Commissioner elections are held every two years. The commissioners elect a president each January.

B. Public Involvement to Date

In the Nova community, public involvement in issues surrounding the proposed facility has to date been primarily channeled through community groups. The next few paragraphs characterize the major community groups involved.

1. STOP IT

According to residents interviewed, community interest and concern over the proposed facility began when OTC purchased its property at an auction in 1987. Soon after the property was purchased, the community learned that OTC planned to install and operate a hazardous waste incinerator on the property. Concerned over the potential impact of the incinerator on the Nova community, Nova residents formed a citizens group called Nova's Right to Know in July 1987. The intent of the group was to collect information about the proposed project from Ohio Technology, International Technology, and local, state, and federal government agencies. In September 1987, the group change its name to STOP IT ("IT" stands for IT Corporation, the proposed operator of the facility) because the group's constituency broadened beyond the Nova community. STOP IT is managed by a director, three co-chairpersons, and an executive committee. Currently, membership in the group consists of approximately 400 people.

STOP IT activities have included establishing an information center in Nova, holding public meetings working with the state of legislature, coordinating with national and international environmental groups, and disseminating information to its membership and other interested parties. The goal of STOP IT is to prevent the proposed incinerator from being built. According to group members, STOP IT does not want to negotiate a permit; the organization does not want any permits issued to OTC at all. STOP IT is a highly organized group whose leadership possesses a strong commitment to its position. STOP IT has conducted various activities to heighten awareness of the proposed incinerator, and has worked to increase support for its position in Ashland County and other surrounding counties. According to an August

1988 STOP IT newsletter, the group's networking activities have resulted in the formation of other STOP IT chapters in Ashland, Parma, and Wellington. When U.S. EPA granted an extension for completion of the application to OCT in May 1988, U.S. EPA received over 400 telephone calls in protest. The telephone calling was largely organized by STOP IT. U.S. EPA responded in writing to each telephone call.

2. Citizens Against Pollution

In August 1987, residents from communities near the proposed facility formed a grassroots citizens group called Citizens Against Pollution (CAP). News of the proposed facility in Nova motivated the formation of the group which is run by a director and a board of trustees. With offices in Huntington, Ohio, the group consists of chapter representatives from neighboring communities such as Sullivan, Nova, Homerville, Medina, Ruggles, Spencer, and Elyria. CAP's major issue is the proposed incinerator, although the group's focus has widened over the past year to address several other environmental issues in Ohio, and is viewed as a growing grassroots environment organization in the state. Adopting a global ecosystem philosophy, CAP representatives indicated that they would like to see a moratorium placed on incineration technologies until the global impact of incineration can be adequately evaluated. According to a CAP representative, the group is interested in working with both OEPA and U.S. EPA to "stop the environmental degradation of Ohio."

3. The Amish Communities

One of the distinct features of the proposed facility is its proximity to several Amish settlements. The Lodi and Ashland settlements are the closest to the OTC property, but the proposed facility has captured the interest of Amish settlements throughout the region, including Holmes County, the largest Amish settlement in the world.

In April 1988, leaders of the Amish community traveled to Columbus, Ohio and participated in a press conference conducted with

support from STOP IT. The purpose of the conference was to present over 4,000 petition signatures from the Amish community in opposition to the proposed facility. Invited to the press conference were OEPA, U.S. EPA, the Ohio Hazardous Waste Facility Board, and state and federal government representatives. In a written statement, the Amish contingency voiced their concerns:

> We are meeting here today because of a concern. The old Order Amish are thankful to God for the privilege to live in a country where we can live, work and share our lives with our neighbors and fellowman.
>
> We still adhere to and believe in the Golden Rule: Do unto others as you world that others do unto you.
>
> It is with this in mind that we have over 4,000 signatures protesting a proposed toxic waste incinerator site in Ashland County.
>
> Living close to this site is an Amish community of over 100 families that would be severely disrupted and handicapped if this site was approved. Without any doubt these people would have to relocate.
>
> Also from information we have received we would be subject to toxic emissions in our area.
>
> So we plead with meekness to please accept our protests with an open mind and sincere concern.

The involvement of the Amish in this manner -- a people not known for their political activism -- generated significant media attention and was reported by the Chicago Tribune , U.S.A. Today , and the New York Times . Leaders of the Amish settlements keep informed about the status of the project, and are in contact with both STOP IT and CAP.

Public involvement over the last year can be characterized as significant. The work of the citizens groups has served to heighten awareness of the proposed project all over the region. In April 1988, the Troy Township Trustees polled their constituents and concluded that 94% of the responders were opposed to the proposed facility. In addition, several communities and organizations from a wide geographical area have adopted ordinances and resolutions in opposition to the proposed facility (see Appendix A). Although opposition to the proposed facility is widely known and publicized, there is some evidence of

support for OTC's project within the region. Newspaper reports indicate, however, that although there may be support for the facility, the strength of the opposition to the facility has caused proponents to keep their views to themselves.

Political interest in the proposed project has also grown over the last year. Responding to letters of concern from their constituents, U.S. Senator Howard Metzenbaum, U.S. Senator John Glenn, Congressman Don Pease, State Representative Ron Amstutz, and State Senator Dick Schafrath have all taken positions in opposition to the proposed facility. In addition, Cleveland's mayor, George Voinovich, has opposed the project. Many residents have written their concerns to both U.S. EPA and OEPA.

IV. COMMUNITY CONCERNS

The following community concerns were expressed by Nova area residents and local officials during interviews conducted in August 1988.

A) Lack of trust in the proposed operator of the facility. Residents interviewed expressed concern regarding IT Corporation's involvement in the proposed project. Nova area residents and members of STOP IT and CAP feel strongly that IT Corporation is not a reliable company to be operating the proposed facility. The citizens groups have distributed information about IT Corporation, including a list of violations of State of California environmental regulations and the Louisiana State Ethics Code. Members of STOP IT cite a recent Forbes article which discusses management and financial problems of IT Corporation, and the fact that the company insures itself against environmental liabilities as proof of IT Corporation's instability (see "Warning -- Hazardous Management," Forbes, Volume 142, Number 2, July 25, 1988, Page 60). Residents also are concerned that IT Corporation will purchase OTC and that OTC is merely acting as a "front" for IT Corporation.

B) Effects of proposed facility on quality of life. Residents interviewed stressed their concern regarding the impact of the proposed facility on the quality of life in the area. Residents said that the major reason why people move into rural areas and stay in these areas is the clean air, and non-urbanized, undeveloped characteristics of these regions. These residents feel that construction and operation of an incinerator in the area would destroy the appeal of the area, negatively impact property values, and drive people away. Moreover, residents and members of the Amish community pointed out that siting an incinerator in the Nova area is counter-culture to the Amish way of life. CAP stressed the fact that the Amish communities increase the tourist appeal of the area. According to newspapers reports, the Amish community has hinted to the possibility that the Amish settlements in the area may relocate if the incinerator is licensed and built. Community interviews with

Amish representatives, however, indicated that this would be a last resort.

C) Effects of proposed facility on environmental quality in the region. All residents interviewed expressed the greatest concern about the impacts of the proposed facility on the environment. The community is very concerned about air emissions from the proposed incinerator and feels strongly that there would be a threat of toxic air contamination. CAP and STOP IT also spoke about the fact that the facility would be located near the headwaters of the Black and Vermilion rivers. The groups feel that these rivers would be endangered by contamination resulting rom operation of the incinerator. The Amish leaders voiced their concern that air emissions would contaminate rainwater which is a primary water source through cisterns and wells on many of the Amish properties. The Amish are concerned about how their livestock and crops may be affected by the proposed incinerator. Such a concern is echoed by other farmers in the area who view the proposed incinerator as a threat to their livelihoods.

D) Inappropriateness of site selection. Most people interviewed questioned why Nova was chosen as the site for OTC's project. These people feel that it is inappropriate for an incinerator to be located in a rural community where natural resources are a significant aspect of the economy. Two residents interviewed, one that breeds Navajo Churro sheep (an endangered species) and another that propagates native American seeds, were particularly concerned that an incinerator in the area could endanger their projects. The Amish leaders expressed similar concerns and asked why incinerators had to be cited in places where people lived. They suggested that a better location would be in a desert, or some other unpopulated area.

E) Waste management in Ohio . Both CAP and STOP IT said that they wanted to obtain more information about the waste management industry in Ohio. These groups feel that there are plenty of incinerators in the area, and that building another one is not necessary. The groups are interested in exploring alternative waste management technologies to incineration. Their interests in this area reflect their concerns that OTC and IT are not acting in the best interest of the community or the state, and are proposing the incinerator for their own financial benefit.

F) Safety of the proposed incinerator . Residents and local officials brought up several safety issues. Most people interviewed said they are concerned about having trucks filled with contaminated material driving through the area. According to several residents, the roads in the area have several sharp curves which could lead to accidents by trucks traveling to the facility. In addition, residents cited air and fugitive emissions, and public health effects of long-term exposure to such emissions as major concerns.

Residents who oppose incineration altogether as a waste management technology believe that too little information is known about the synergistic effect of several chemicals burning at once, and feel that such an occurrence is a health threat to the area.

Many of the people interviewed wanted clarification on monitoring of the incinerator should it become operational. These residents wanted to know who would conduct the monitoring and how often it would be done. STOP IT and CAP expressed reservations about monitoring programs and said that the proposed incinerator would not be adequately monitored. These groups suspect that officials would only monitor for a narrow range of contaminants.

CAP representatives shared their frustration about the safety issue and rhetorically asked why the burden of making the incinerator safe rested with the residents. They expressed distrust in the ability of government officials to protect the environment and public health.

G) Emergency response capabilities in the area. Several concerned residents and local officials felt that siting the facility in the Nova area places the region in peril should an accident occur. Nova itself has no emergency response capabilities and relies on the City of Ashland and other communities for such assistance. The community is concerned that should an accident occur, there would be no efficient and comprehensive way of responding. Moreover, the Amish representatives expressed concern that should an accident occur, emergency communication with the settlements and evacuation would be impossible due to their lack of telephone, electricity, and modern transportation systems.

H) Confusion regarding the permitting process. Most of all the residents and local officials agreed that the permitting process is confusing. Many expressed frustration about the many levels of government involved and wanted clarification on the authorities of the federal, state, and local governments. In March 1988, OEPA held an informational session for Nova area residents. At the session, several division representatives from OEPA and U.S. EPA answered questions and provided information on the permitting process. Community members and OEPA officials indicated that the session was informative, although residents said that some confusion still remains about the permitting process.

I) Poor response from government officials. While many residents appeared satisfied with the information provided by government officials, several residents and the citizens groups felt that both the state and federal government officials should provide more information regarding the permitting process and should be more accessible. STOP IT complained bout being “hung up on” by U.S. EPA officials, and said they were frustrated that U.S. EPA had not acknowledged much of the information sent to them by STOP IT. CAP representatives expressed the same concerns.

J) Frustration over limited opportunities for public involvement. Most people interviewed did not understand the extent to which formal opportunities for public involvement exist during the permitting process. Those residents and local officials that are more

aware of public opportunities feel that they are limited and that they do not serve the interests of the communities. Most people interviewed, including the Amish leaders, asked about effective ways of becoming involved in the process so that their concerns can be officially considered before the agencies make any final decisions.

V. OBJECTIVES OF THE PUBLIC INVOLVEMENT PROGRAM

Based on the concerns voiced by area residents and local officials, the following are the objectives of the public involvement program during the permitting process:

A) Establish accessibility among U.S. EPA personnel to the community. As the Nova community works toward becoming informed about the issues surrounding the proposed facility, it will be very important for U.S. EPA personnel to be available to answer questions and provide information. Both STOP IT and CAP already are frustrated with the difficulty they have in contacting U.S. EPA personnel. Maintaining good positive contact with concerned citizens in the Nova community will strengthen U.S. EPA's credibility and allow people to become more involved in the process.

B) Coordinate with OEPA to make sure the community understands the permitting process and opportunities for public involvement. Community interviews reflected the confusion that residents and local officials have about the permitting process and opportunities for public involvement. A crucial component of the public involvement program is to make certain that interested residents and local officials have adequate opportunities to understand and be involved in the permitting process and the opportunities for their involvement. Because so many levels of government are involved in the process, U.S. EPA should work closely with OEPA to provide the community with adequate information and opportunities to ask questions of appropriate government officials.

C) Provide specific information on issues of interest to ensure a strong level of understanding by the community. Both STOP IT and CAP are working hard to acquire information that will put many of the issues of concern into perspective. Much of CAP and STOP IT's activities will involve disseminating information to all interested parties. U.S. EPA and OEPA should work together to provide the community with accurate information on subjects such as incineration technology, alternative waste management practices, emergency response procedures, monitoring

practices, and environmental impacts of waste management practices.

VI. PUBLIC INVOLVEMENT ACTIVITIES

Specific public involvement activities related to the OTC RCRA permit application are required by Title 40 of the Code of Federal Regulations, Part 124 and RCRA Section 7004. The public involvement activities describe below include required activities (indicated by an asterisk), as well as other activities intended to address community concerns and to carry out the objectives established for the public involvement program.

A) Designate U.S. EPA contact to respond to questions from the community. U.S. EPA has assigned one member of the Office of Public Affairs (OPA) staff in the Region V office in Chicago to be the central U.S. EPA liaison for the community (see Appendix B). This person will respond to community requests for information and will field telephone requests for information to other appropriate U.S. EPA personnel. The OPA's name and telephone number will appear on all correspondence between U.S. EPA and the community in addition to U.S. EPA's toll-free number. The OPA official also will be the central contact for local media to acquire information regarding the proposed incinerator, and will keep an up-to-date mailing list of interested individuals.

B) Establish local information repositories for interested parties to review material. In Nova as well as in other nearby communities (see Appendix C), information repositories will be established to provide the community with copies of the permit applications, applicable laws, and other relevant information. As new information is developed, the information repositories will be updated.

C) Coordinate with OEPA to provide fact sheets on issues of concern regarding the proposed facility. U.S. EPA will coordinate closely with OEPA to provide the community with fact sheets that summarize the permitting process in a clear and easy to read format. The first fact sheet will include information on the state and federal permitting process, and on the role of local government and opportunities for public involvement. In addition, separate fact sheets

will be distributed to provide information on other topics of concern expressed by the community. These fact sheets will cover incineration technology, monitoring practices of the U.S. EPA and OEPA, alternative waste management practices, and current information on environmental impacts of incinerators. The fact sheets will be printed and distributed to individuals on U.S. EPA's current mailing list.

D) Conduct availability sessions to answer specific questions. After the fact sheets are prepared and distributed, U.S. EPA in cooperation with OEPA will hold at least three availability sessions in the community. The availability sessions will be designed to accommodate small groups and will consist of representatives of OEPA and U.S. EPA who will be available to answer specific questions of the community. The sessions will be held in different geographic areas of the region and will accommodate members of the Amish community. Notices announcing the availability sessions will be published in local newspapers.

E) Notify the community about progress made on application review. As progress is made on processing of the permit application, or if the schedule for reviewing the application alters significantly, U.S. EPA will notify the community by providing a written update to individuals on the mailing list and media representatives.

*F) Develop and distribute fact sheet on draft permit or denial. It is required by RCRA regulations that one fact sheet, or "Statement of Basis," be distributed that describes both the facility and the permit that is being proposed for that facility. Such a fact sheet will be developed and distributed to individuals on the mailing list, media, and any other interested parties in advance of the public comment period.

*G) Conduct a public comment period on draft permit or denial. RCRA regulations require that the public must be notified through a local newspaper and broadcast over local radio stations that a draft permit has been prepared. A forty-five day period is also required under RCRA regulations to accept public comments. U.S. EPA may extend the public comment period if necessary. U.S. EPA will distribute a

press release to local media and a notice to the mailing list announcing the beginning of the public comment period.

H) Hold public hearing on draft permit or denial. RCRA regulations require that a public hearing be held if an individual organization or community requests one, or if the Regional Administrator determines that one is needed. The purpose of having a public hearing is to officially accept and record public comments. For this site, U.S. EPA has decided to hold a public hearing. U.S. EPA will hold such a hearing and will publicize it via a press release to local media, and advertisements in local newspapers. A notice also will be sent to the mailing list. After the hearing has been held, a tape or transcript will be placed in the information repositories.

*I) Prepare Response to Comments to address community concerns. RCRA regulations require that a response to comments be prepared at the conclusion of the public comment period. This document will consist of a summary of the written comments received, the oral comments presented at the haring, and a response to those comments prepared by U.S. EPA. The Response to Comments will be placed in local information repositories for public review.

* denotes required activity

VI. TIME LINE FOR IMPLEMENTING PUBLIC INVOLVEMENT ACTIVITIES

The following is a time line for public involvement activities through issuance of a final decision on the Ohio Technology Corporation's RCRA permit application. Should a permit be issued, U.S. EPA would continue the public involvement program.

Activity	Approval of the Public Involvement Plan	Completion of Technical Review	Issuance of Draft Permit (if applicable)	Issuance of Final Permit (if applicable)
1. Designate Contact	X			
2. Establish Information Repositories	X			
3. Fact Sheets	X----------X	X----------	X	
4. Availability Sessions	X----------X	X----------X	X----------X	----------X
5. Updates	X----------X	X----------X	X----------X	As needed-------X
6. Public Comment Period			X----------X	X----------
7. Public Hearing				X
8. Responsiveness Summary				X

APPENDIX A

LOCAL GOVERNMENTS AND ORGANIZATIONS ISSUING WRITTEN STATEMENTS OF OPPOSITION TO THE PROPOSED INCINERATOR

[obtained from state and federal files]

Government Body	Date resolution adopted
Village of Savannah	December 15, 1987
City of Avon Lake	December 14, 1987
Troy Township	September 28, 1987
Village of Lodi	October 19, 1987
Ashland County Soil and Water Conservation District	April 26, 1988
Russia Township	March 22, 1988
City of Allure	March 21, 1988

Local Organization	Date of written position
Cinnamon Lake Association, Inc.	December 16, 198
Ashland County Farm Bureau, Inc.	May 16, 1988
Episcopal Diocess of Ohio	July 12, 1988
Lodi Rotary Club	January 20, 1988
Lodi Chamber of Commerce	January 20, 1988
Ruritan Club of Lodi	January 20, 1988

APPENDIX B

LIST OF CONTACTS, INTERESTED PARTIES, AND MEDIA

1. Federal Elected Officials

Senator John Glenn (202) 224-3353
503 Senate Hart Office Building
Washington, DC 20510-3501

District Office (216) 522-7095

Federal Courthouse
201 Superior Avenue
Cleveland, OH 44114

Senator Howard Metzenbaum (202) 224-2315
140 Senate Russell Office Building
Washington, DC 20510-3502

District Office (216) 522-7272
Celebreeze Federal Building
Room 2915
1240 East Ninth Street
Cleveland, OH 44199

Congressman Donald Pease (202) 225-3401
2410 Rayburn House Office Building
Washington, DC 20515

District Office (419) 325-4184
The Centre
Suite 101
42 East Main Street
Ashland, OH 44805-2336

2. State Elected Officials

Governor Richard Celeste (614) 466-3555
Office of the Governor
Statehouse
Columbus, OH 43216

State Senator Richard Schafrath (614) 466-8086
Ohio Senate
Statehouse
Columbus, OH 43216

Local Address (419) 994-4161
424 West Main Street
Loudonville, OH 44842

State Representative Ronald Amstutz (614) 466-1474
Ohio House of Representatives
Statehouse
Columbus, OH 43216

Local Address (216) 262-7371
2243 Friar Tuck Circle
Wooster, OH 44691

3. Local Government Officials

Ashland County Commissioners (419) 289-0000
Court House
West Second Street
Ashland, OH 44805
Marilyn Byers, President
C.R."Dick" Myers
Robert Valentine

Ashland County Board of Health (419) 289-0000
c/o Ashland County Health Department
110 Cottage Street
Ashland, OH 44805

Gloria Weirick, President

Ashland County Regional Planning Commission (419) 289-0000
110 Cottage Street
Ashland, OH 44805

Mike Wolfson, Director

Ashland County Disaster Services (419) 289-6511
c/o Ashland City Fire Department
274 Cleveland Avenue
Ashland, OH 44805

John Augustine, Director

Troy Township Trustees
Donald Biddinger, Chairman (419) 652-3462
Ralph Smith, Vice Chairman (419) 652-3258
Richard Robertson (419) 652-3361
Mary Judith Fox, Clerk (419) 652-3187

Troy Township Zoning Inspector
Willard Smith (419) 652-3362

Troy Township Zoning Commission
Leslie White (419) 652-3842
Richard Hawley (419) 652-3021
Delmar Rife (419) 625-3851
Janet Cleugh (419) 652-3760
John M. Gorman (419) 652-3354

Troy Township Zoning Board of Appeals
James R. Callihan (419) 652-2225
Dean Sheppard (419) 652-3838
Tod Crumrine (419) 652-3194
Janice Schneiter (419) 652-3181
Eugene Fowler (419) 652-3808

4. Federal Government Agencies

U.S. Environmental Protection Agency
Region V
230 South Dearborn Street
Chicago, IL 60604

Valdas Adamkus, Regional Administrator (312) 353-2000
Anne Rowan, Public Participation Coordinator (312) 886-7857
Office of Public Affairs
Wen Huang, Environmental Engineer (312) 886-6191
RCRA Permit Branch

Charles Slaustas, Supervisor (312) 886-6190
RCRA Permit Branch
Lisa Pierard , Ohio Section Chief (312) 353-4789
RCRA Permit Branch
Sheldon Simon, Regional PCB Coordinator (312) 886-6087
Pesticides and Toxic Substances Branch

John Connell, Chief (312) 886-6832
PCB Compliance Section
Office of the Environmental Sciences Division

5. State Government Agencies

Ohio Environmental Protection Agency
P.O. Box 1049
1800 Water Mark Drive
Columbus, OH 43266-0149

Richard Shank, Director (614) 644-2782
Linda Whitmore, Public Involvement Coordinator (614) 644-2160
Public Interest Center
Robert Babik, Environmental Engineer (614) 644-2949
Division of Solid and Hazardous Waste
Management

Ohio Hazardous Waste Facility Board (614) 644-2742
P.O. Box 1049
1700 Water Mark Drive
Columbus, OH 43266-0149
James Adair III, Executive Director

Board members :

Richard C. Sahli, Deputy Director
Legal and Governmental Affairs
Ohio Environmental Protection Agency
Warren W. Tyler, Chairman
Ohio Water Development Authority
Charles E. Mauger, Assistant Director
Ohio Department of Natural Resources
Thomas Sweeney, Ph.D., Assistant Vice
President of Research and Graduate Studies
The Ohio State University
W.B. Clapham Jr., Ph.D., Associate Professor of Geology

6. Citizens Groups

STOP IT (419) 652-3000
P.O. Box 134
Nova, OH 44859

Dave Schlaufman, Director (419) 652-3862
Vern Hurst, Co-chairperson
Diana Schlaufman, Co-chairperson

Citizens Against Pollution (216) 647-6127
P.O. Box 122 (Mon.,Wed., Fri.)
Sullivan, OH 44880
Ardith Jordan, Trustee

7. Media

Newspapers

Ashland Times Gazette
40 East Second Street
Ashland, OH 44805
(419) 281-0581

Akron Beacon-Journal
44 East Exchange Street
Akron, OH 44328
(216) 375-8111

Elyria Chronicle-Telegram
P.O. Box 4010
225 East Avenue
Elyria, OH 44035
(216) 329-7000

Cleveland Plain Dealer
1801 Superior Avenue
Cleveland, OH 44114
(216) 344-4500

New London Record
P.O. Box 110
New London, OH 44851
(419) 929-3411

Mansfield News Journal
P.O. Box 25
70 West Fourth Street
Mansfield, OH 44901
(419) 522-3311

Wellington Enterprise
P.O. Box 38
Wellington, OH 44090
(216) 647-3171

Television

WAKC-TV
853 Copley Road
Akron, OH 44320
(216) 525-7831

WBNX-TV
P.O. Box 2091
Akron, OH 44309
(216) 928-5711

WEAO-TV
275 Martinel Drive
Kent, OH 44240
(216) 678-1656

WQHS-TV
2681 West Ridgewood
Parma, OH 44134
(216) 888-0061

WEWS-TV
3001 Euclid Avenue
Cleveland, OH 44115
(216) 431-5555

WJW-TV
5800 South Marginal Road
Cleveland, OH 44102
(216) 431-8888

WKYC-TV
1403 East Sixth Street
Cleveland, OH 44114
(216) 344-3333

WUAB-TV
8443 Day Drive
Cleveland, OH 44129
(216) 845-6043

WVIZ-TV
4300 Brockpart Road
Cleveland, OH 44134
(216) 398-2800

Radio

WNCO-Radio
P.O. Box 311
Ashland, OH 44805
(419) 289-2605

WRDL-Radio
Ashland College
401 College Avenue
Ashland, OH 44805
(419) 289-2480

WLKR-Radio
P.O. Box 547
Norwalk, OH 44857
(419) 668-8151

WCLS-Radio
711 McPherson Street
Mansfield, OH 44906
(419) 525-2331

WMAN-Radio
P.O. Box 8
Mansfield, OH 44901
(419) 524-2211

WVNO-Radio
2900 Park Avenue West
Mansfield, OH 44906
(419) 529-5900

WCWS-Radio
College of Wooster
Wooster, OH 44691
(216) 263-2240

WWST-WQKT Radio
South Hillcrest Drive
Wooster, OH 44691
(216) 264-5122

8. Owner/Operator

Ohio Technology Corporation (owner) (216) 464-2121
3350 Lander Road
Cleveland, OH 44124
John Tracy, Principal Manager

International Technology Corporation (operator) (412) 243-3230
Regional Office
William Penn Plaza
2790 Mosside Boulevard
Monroeville, PA 15146-2792
Brian Borofka, Site Assessment Group Leader

Headquarters
23456 Hawthorne Boulevard (213) 378-9933
Torrence, CA 90509

APPENDIX C

LIST OF INFORMATION REPOSITORY LOCATIONS

AND PUBLIC MEETING FACILITIES

1) Information Repository Locations

Ashland Public Library
224 Claremont Avenue
Ashland, OH 44805
(419) 289-8188
Contact:
Constance Wolfson, Librarian

New London Public Library
67 South Main Street
New London, OH 44851
(419) 929-3981
Contact:
Melissa Karnosh, Librarian

Troy Township Trustees
Nova, Ohio
(419) 652-3200
Contact:
Ralph Smith

2) Public Meeting Facilities

Mapleton Middleton School
(Ruggles Troy School)
U.S. Highway 224
Nova, OH 44859
(419) 652-3540
Contact:
John Neighbors, Principal
Capacity: Approximately 250

Mapleton High School
County Rod 620
Polk, OH 44861
(419) 945-2188
Contact:
Mr. Schneider, Principal
Capacity: Approximately 600

Citizens Against Pollution
Corner School House
Sullivan, OH 44880

APPENDIX D

LIST OF PERSONS CONTACTED FOR PREPARATION

OF THE PUBLIC INVOLVEMENT PLAN

(for U.S. EPA and Ohio EPA use only)

Ashland County Board of Commissioners (419) 289-0000

Court House
West Second Street
Ashland, OH 44805

J. Myron Leininger
Marilyn Byers
C. Jay Welsh

Troy Township Trustees

Donald Biddinger (419) 652-3463
Ralph Smith (419) 652-3258
Richard Robertson (419) 652-3361

Ohio Environmental Protection Agency

P.O. Box 1049
1800 WaterMark Drive
Columbus, OH 43266-0149

Linda Whitmore, Public Involvement Coordinator (614) 644-2160
Public Interest Center

Michael Greenberg, Public Information Specialist (614) 644-2160
Public Interest Center

Robert Babik, Environmental Engineer (614) 644-2949
Division of Solid and Hazardous Waste
Management

U.S. Environmental Protection Agency

Region V
230 South Dearborn Street
Chicago, IL 60604

Anne Rowan, Public Participation Coordinator/RCRA Office of Public Affairs	(312) 886-7857
Nancy Sullivan, Public Affairs Specialist/TSCA Office of Public Affairs	(312) 886-6687
Margaret McCue, RCRA Public Participation Manager Office of Public Affairs	(312) 886-6694
George Harper, Ohio Section Chief RARA Permit Branch	(312) 353-4789
Wen Huang, Environmental Engineer RCRA Permit Branch	(312) 886-6191
Charles Slaustas, Supervisor RCRA Permit Branch	(312) 886-6190
Sheldon Simon, Regional PCB Coordinator Pesticides and Toxic Substances Branch	(312) 886-6087

Local Residents and Interested Individuals

Mike Stanfield
962 County Route 40
Nova, OH 44859
(419) 652-3133

Gladys Thomas
838 U.S. Highway 224
Nova, OH 44859
(419) 652-3818

Elaine Drotliff
836 Township Road 150
Nova, OH 44859
(419) 652-3122

Diana Schlaufman
946 Township Road 150
Nova, OH 44859
(419) 652-3862

David Schlaufman
946 Township Road 150
Nova, OH 44859
(419) 652-3862

Vern Hurst
995 Township Road 150
Nova, OH 44859
(419) 652-3337

Frank Rickett
402 Township Road 791
Sullivan, OH 44880
(419) 652-3238

Tod Crumrine
173 State Route 511
Nova, OH 44859
(419) 652-3194

Lois Kinter
Box 15
U.S. Highway 224 West
Nova, OH 44859
(419) 652-3892

Bob Janca
12595 New London E Road
Homerville, OH 44235
(419) 648-2853

Judith Casteel
7730 Firestone Road
Homerville, OH 44235
(419) 625-2141

John Nethers, Ph.D.
Professor of History
Department of Social Sciences
Bixler Hall -- Ashland College
Ashland, OH 44805
(419) 289-5381

Joanne Slorgie
129 Broadway Street
Lodi, OH 44254
(216) 948-2482

Anne Slorgie
129 Broadway Street
Lodi, OH 44254
(216) 948-2482

Linda Martz
Mansfield News-Journal
P.O. Box 25
40 West Fourth Street
Mansfield, OH 44901
(419) 522-3311

Phil Dague
210 Township Road 2150
Jeromesville, OH 44840
(419) 368-3281

Sue Grycza
Ashland Times - Gazette
40 East Second Street
Ashland, OH 44805
(419) 281-0581

Leroy J. Keim
Lodi, OH

David Yoder
Firestone Road
Homerville, OH

Ardith Jordan
Mary Beth Derekito
Mary Warner
Eli Troyer

APPENDIX J -- HAZARDOUS WASTE FACILITY PERMITTING PROCESS FACT SHEET (1996)

United States Environmental Protection Agency | Solid Waste and Emergency Response (5305W) | EPA530-F-96-007 June 1996

EPA

The Hazardous Waste Facility Permitting Process

What Are Hazardous Wastes?

Hazardous wastes can be liquids, solids, or sludges. They can be by-products of manufacturing processes or discarded commercial products. If hazardous wastes are not handled properly, they pose a potential hazard to people and the environment. To ensure that companies handle waste safely and responsibly, EPA has written regulations that track hazardous wastes from the moment they are produced until their ultimate disposal. The regulations set standards for the hazardous waste management facilities that treat, store, and dispose of hazardous wastes.

What Is a Hazardous Waste Management Facility?

Hazardous waste management facilities receive hazardous wastes for treatment, storage, or disposal. These facilities are often referred to as treatment, storage, and disposal facilities, or TSDFs.

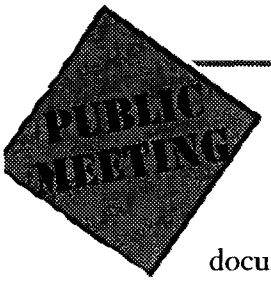
- *Treatment* facilities use various processes (such as incineration or oxidation) to alter the character or composition of hazardous wastes. Some treatment processes enable waste to be recovered and reused in manufacturing settings, while other treatment processes dramatically reduce the amount of hazardous waste.
- *Storage* facilities temporarily hold hazardous wastes until they are treated or disposed of.
- *Disposal* facilities permanently contain hazardous wastes. The most common type of disposal facility is a landfill, where hazardous wastes are disposed of in carefully constructed units designed to protect ground-water and surface-water resources.

What Laws and Regulations Govern TSDFs?

EPA has written detailed regulations to make sure that TSDFs operate safely and protect people and the environment. EPA wrote these regulations to implement the Resource Conservation and Recovery Act (RCRA) of 1976 and the Hazardous and Solid Waste Amendments of 1984. The U.S. Congress passed these laws to address public concerns about the management of hazardous waste.

EPA can authorize states to carry out the RCRA program. To receive authorization, state requirements must be as strict, or stricter, than the federal requirements. Federal or state agencies that implement RCRA are known as "permitting agencies."

♻ Printed on paper that contains at least 20 percent postconsumer fiber.



What Is a RCRA Permit?

A RCRA permit is a legally binding document that establishes the waste management activities that a facility can conduct and the conditions under which it can conduct them. The permit outlines facility design and operation, lays out safety standards, and describes activities that the facility must perform, such as monitoring and reporting. Permits typically require facilities to develop emergency plans, find insurance and financial backing, and train employees to handle hazards. Permits also can include facility-specific requirements such as groundwater monitoring. The permitting agency has the authority to issue or deny permits and is responsible for monitoring the facility to ensure that it is complying with the conditions in the permit. According to RCRA and its regulations, a TSDF cannot operate without a permit, with a few exceptions.

Who Needs a RCRA Permit?

All facilities that currently or plan to treat, store, or dispose of hazardous wastes must obtain a RCRA permit.

- *New TSDFs* must receive a permit before they even begin construction. They must prove that they can manage hazardous waste safely and responsibly. The permitting agency reviews the permit application and decides whether the facility is qualified to receive a RCRA permit. Once issued, a permit may last up to 10 years.
- *Operating TSDFs* with expiring permits must submit new permit applications six months before their existing permits run out.
- *TSDFs operating under Interim Status* must also apply for a permit. Congress granted "interim status" to facilities that already existed when RCRA was enacted. Interim status allows existing facilities to continue operating while their permit applications are being reviewed.

Who Does Not Need a RCRA Permit?

There are certain situations where a company is not required to obtain a RCRA a permit.

- *Businesses that generate hazardous waste* and transport it off site without storing it for long periods of time do not need a RCRA permit.
- *Businesses that transport hazardous waste* do not need a RCRA permit.
- *Businesses that store hazardous waste* for short periods of time without treating it do not need a permit.

What Are the Steps in the Permitting Process?

Step 1 Starting the Process

Before a business even submits a permit application, it must hold an informal meeting with the public. The business must announce the "preapplication" meeting by putting up a sign on or near the proposed facility property, running an advertisement on radio or television, and placing a display advertisement in a newspaper. At the meeting, the business explains the plans for the facility, including information about the proposed processes it will use and wastes it will handle. The public has the opportunity to ask questions and make suggestions. The business may choose to incorporate the public's suggestions into its application. The permitting agency uses the attendance list from the meeting to help set up a mailing list for the facility.

Step 2 Applying for a Permit

After considering input from the preapplication meeting, the business may decide to submit a permit application. Permit applications are often lengthy. They must include a description of the facility and address the following:

- How the facility will be designed, constructed, maintained, and operated to be protective of public health and the environment.
- How any emergencies and spills will be handled, should they occur.
- How the facility will clean up and finance any environmental contamination that occurs.
- How the facility will close and clean up once it is no longer operating.

FINAL REISSUED DENIE

Step 3 Receipt and Review of the Application

When the permitting agency receives a permit application, it sends a notice to everyone on the mailing list. The notice indicates that the agency has received the application and will make it available for public review. The permitting agency must then place a copy of the application in a public area for review.

Simultaneously, the permitting agency begins to review the application to make sure it contains all the information required by the regulations. The proposed design and operation of the facility are also evaluated by the permitting agency to determine if the facility can be built and operated safely.

Step 4 Revisions, Revisions, Revisions

After reviewing the application, the permitting agency may issue a Notice of Deficiency (NOD) to the applicant. NODs identify and request that the applicant provide any missing information. During the application review and revision process, the permitting agency may issue several NODs. Each time the permitting agency receives a response from the applicant, it reviews the information and, if necessary, issues another NOD until the application is complete. Given the complex and technical nature of the information, the review and revision process may take several years.

Step 5 Drafting the Permit for Public Review

When the revisions are complete, the agency makes a preliminary decision about whether to issue or deny the permit. If the agency decides that the application is complete and meets appropriate standards, the agency issues a draft permit containing the conditions under which the facility can operate if the permit receives final approval. If the permitting agency determines that an applicant cannot provide an application that meets the standards, the agency tentatively denies the permit and prepares a "notice of intent to deny."

The permitting agency announces its decision by sending a letter to everyone on the mailing list, placing a notice in a local paper, and broadcasting it over the radio. It also issues a fact sheet to explain the decision. Once the notice is issued, the public has 45 days to comment on the decision. Citizens also may request a public hearing by contacting the permitting agency. The permitting agency may also hold a hearing at its own discretion. The agency must give 30-day public notice before the hearing.

Step 6 The End Result: A Final Permit Decision

After carefully considering public comments, the permitting agency reconsiders the draft permit or the notice of intent to deny the permit. The agency must issue a "response to public comments," specifying any changes made to the draft permit. The agency then issues the final permit or denies the permit.

Even after issuing a permit, the permitting agency continues to monitor the construction and operation of the facility to make sure they are consistent with state and federal rules and with the application.

Several additional steps can also take place after the original permit is issued:

- ***Permit Appeals.*** Facility owners and the public both have a right to appeal the final permit decision. The appeal is usually decided upon by administrative law judges.
- ***Permit Modifications.*** If a facility changes its management procedures, mechanical operations, or the wastes it handles, then it must secure a permit modification. For modifications that significantly change facility operations, the public must receive early notice and have a chance to participate and comment. For minor modifications, the facility must notify the public within a week of making the change.
- ***Permit Renewals.*** The permitting agency can renew permits that are due to expire. Permit holders that are seeking a permit renewal must follow the same procedures as a facility seeking a new permit.
- ***Permit Terminations.*** If a facility violates the terms of its permit, the permitting agency can terminate the permit.

PUBLIC HEARING DRAFT

How Can the Public Participate?

Members of the public have valid concerns about hazardous waste management. They and other interested parties can contribute valuable information and ideas that improve the quality of both agency decisions and permit applications. EPA believes that public participation is a vital component of the permitting process. Accordingly, EPA has written regulations that create opportunities for the public to learn about RCRA activities and give input during the permitting process. The preapplication meeting, public comment and response periods, and public hearings are all instances where citizens can engage companies and regulators in a dialogue. Furthermore, EPA encourages permitting agencies, permit holders or applicants, and other interested parties to provide additional public participation activities where they will be helpful.

EPA also realizes that some of the most important public participation activities happen outside the formal permitting process. Citizens can contact environmental, public interest, and civic and community groups that have an interest in the facility and become involved in their activities. The permit holder or applicant may also create informal opportunities for public input and dialogue.

The permitting process gives citizens a number of opportunities to express their ideas and concerns. Here are several steps you can take to ensure that your voice is heard:

- Know whom to call at the permitting agency. Early in the process, call the agency to determine the contact for the project. This person's name also should be on fact sheets and other printed materials.
- Ask to have your name put on the facility mailing list for notices, fact sheets, and other documents distributed by the agency.
- Do your own research by talking to local officials, contacting research or industry organizations, reading permitting agency materials, and interacting with interested groups in the community.
- Submit written comments that are clear, concise, and well documented. Remember that, by law, permitting agencies must consider all significant written comments submitted during a formal comment period.
- Participate in public hearings and other meetings. Provide testimony that supports your position. Remember that a public hearing is not required unless a citizen specifically requests one in writing.
- If any material needs further explanation, or if you need to clear up some details about the facility or the permitting process, request an informational meeting with the appropriate official. You also may want to call the facility to meet with the staff or to request a tour or other information.
- Follow the process closely. Watch for permitting agency decisions and review the agency's responses to public comments. Remember that citizens may have an opportunity to appeal agency decisions.
- Remember that your interest and input are important to the permitting agency.

In Conclusion

The permitting process for a hazardous waste management facility requires a significant amount of time and effort. Each participant plays a distinct and essential role. *Permit applicants* must carefully consider the RCRA regulations when developing and submitting their applications and planning public involvement activities. The *permitting agency* must review the permit application to ensure that it is complete, adequate, and protective of public health and the environment. The agency must also coordinate this review to ensure community involvement. The *public* should become familiar with the permitting process and participate in it so that community concerns are heard and acted upon. This coordination of efforts will help to ensure that the environment and citizens of the United States are protected by proper management of hazardous wastes.

For More Information

For more information, call the RCRA Hotline at 800 424-9346 or TDD 800 553-7672 (hearing impaired). In the Washington, DC, area, call 703 412-9810 or TDD 703 412-3323. You can request the documents *RCRA Public Participation Manual* or *RCRA Expanded Public Participation Rule* (brochure). You can also obtain contact people and phone numbers for your state or regional hazardous waste agency. Additional information can be found in Title 40 *Code of Federal Regulations*, Parts 124, 270, and 271.

The *RCRA Expanded Public Participation Rule* brochure and this fact sheet are accessible on the Internet. Go to either *gopher.epa.gov* or *http://www.epa.gov*, and then Offices and Regions, Office of Solid Waste and Emergency Response, Office of Solid Waste.

APPENDIX K -- RCRA EXPANDED PUBLIC PARTICIPATION RULE (1995) AND BROCHURE

Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove "or GPS" from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on December 1, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

****Effective JAN 04, 1996*

Madera, CA Madera Muni, VOR or GPS RWY 30, Amdt 9 CANCELLED
Madera, CA Madera Muni, VOR RWY 30, Amdt 9
Webster City, IA, Webster City Muni, NDB or GPS RWY 32, Amdt 7 CANCELLED
Webster City, IA, Webster City Muni, NDB RWY 32, Amdt 8
Augusta, KS, Augusta Muni, VOR/DME RNAV or GPS RWY 36, Orig-A CANCELLED
Augusta, KS, Augusta Muni, VOR/DME RNAV RWY 36, Orig-A
Olathe, KS, Johnson County Executive, VOR or GPS RWY 35, Amdt 10 CANCELLED
Olathe, KS, Johnson County Executive, VOR RWY 35, Amdt 10
Eastport, ME, Eastport Muni, NDB or GPS RWY 15, Orig CANCELLED
Eastport, ME, Eastport Muni, NDB RWY 15, Orig
Harrisonville, MO, Lawrence Smith Memorial, VOR/DME or GPS RWY 35, Orig CANCELLED
Harrisonville, MO, Lawrence Smith Memorial, VOR/DME RWY 35, Orig
Omaha, NE, Millard, VOR/DME RNAV or GPS RWY 12, Amdt 6 CANCELLED
Omaha, NE, Millard, VOR/DME RNAV RWY 12, Amdt 6
Sidney, NE, Sidney Muni, VOR/DME OR TACAN or GPS RWY 30 Amdt 4 CANCELLED
Sidney, NE, Sidney Muni, VOR/DME OR TACAN RWY 30 Amdt 4
Clinton, OK, Clinton-Sherman, NDB or GPS RWY 17R, Amdt 10 CANCELLED
Clinton, OK, Clinton-Sherman, NDB RWY 17R, Amdt 10
Pauls Valley, OK, Pauls Valley Muni, NDB or GPS RWY 35, Amdt 2 CANCELLED
Pauls Valley, OK, Pauls Valley Muni, NDB RWY 35, Amdt 3
Gainesville, TX, Gainesville Muni, NDB or GPS RWY 17, Amdt 8 CANCELLED
Gainesville, TX, Gainesville Muni, NDB RWY 17, Amdt 8

[FR Doc. 95–30098 Filed 12–8–95; 8:45 am]

BILLING CODE 4910–33–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 124 and 270

[FRL–5319–4 RIN 2050–AD97]

RCRA Expanded Public Participation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing new regulations under the Resource Conservation and Recovery Act (RCRA). The new regulations will improve the process for permitting facilities that store, treat, or dispose of hazardous wastes by providing earlier opportunities for public involvement in the process and expanding public access to information throughout the permitting process and the operational lives of facilities.

EFFECTIVE DATE: June 11, 1996.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC) located at 1235 Jefferson Davis Highway, Arlington VA. The Docket Identification Number is F–95–PPCF–FFFFF (the docket number for the proposed rule is F–94–PPCP–FFFFF). The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, the public must make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of this rulemaking, contact Patricia Buzzell, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–8632, email address buzzell.tricia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Internet Access

An abstract and fact sheet on this rule are available on the Internet. Follow these instructions to access the information electronically:

Gopher: gopher.epa.gov
WWW: http://www.epa.gov

Dial-up: (919) 558–0335.

From the main EPA Gopher menu, select: EPA Offices and Regions/Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/Hazardous Waste/Permits and Permitting.

FTP: ftp.epa.gov
Login: anonymous
Password: Your Internet address

Files are located in /pub/gopher/OSWRCRA

Preamble Outline

I. Statutory Authority

EPA is issuing these regulations under the authority of sections 2002, 3004, 3005 and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

II. Background

A. Overview of the RCRA Permitting Program

In RCRA, Congress gave EPA the authority to write regulations, or "rules," to govern, among other things, the permitting of hazardous waste management facilities. EPA is issuing today's regulations to enhance public participation in the hazardous waste facility permitting process.

Under RCRA, EPA is responsible for regulating the "cradle to grave" management of hazardous wastes. Hazardous wastes come in many shapes and forms. They may be liquids, solids, or sludges. They may be the by-products of manufacturing processes, or simply commercial products—such as household cleaning fluids or battery acid—that have been discarded. EPA determines if wastes are hazardous by judging, among other things, the characteristics of the wastes and their potential to cause harm to human health and the environment when not properly managed. RCRA regulations identify hazardous wastes based on their characteristics and also provide a list of specific hazardous wastes (refer to 40 CFR 261 for more information). To manage hazardous waste in an environmentally sound manner, companies often need to store it, treat it (for instance, by burning it or mixing it with stabilizing chemicals), and/or dispose of it into specially built landfills. In most cases, a business that stores, treats, or disposes of hazardous waste, needs a permit under RCRA.

Section 3004 of RCRA requires owners and operators of facilities that treat, store, or dispose of hazardous wastes to comply with standards that are "necessary to protect human health and the environment." EPA or EPA-authorized States implement these standards by issuing RCRA permits to facilities that treat, store, or dispose of hazardous wastes. In some circumstances, existing facilities may continue to operate without a full RCRA permit under the "interim status" provision of RCRA § 3005(e). In RCRA, Congress gave EPA broad authority to provide for public participation in the RCRA permitting process. Section 7004(b) of RCRA requires EPA to provide for, encourage, and assist public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under the Act.

Under RCRA section 3006, States may seek EPA authorization to administer and enforce the RCRA program in lieu of EPA. Once a State adopts today's rule and receives EPA authorization for the rule, the State will become the primary implementor of the rule (see Section V. below for more information). In today's preamble, we refer to the primary implementing agency for this rule as "the permitting agency" or "the agency." "The Director" refers to the head of the primary implementing agency. We refer to EPA as "EPA" or "the Agency."

B. Shortcomings of the Current Program

Many stakeholders have expressed the concern that the current RCRA permitting process does not involve the public at an early stage in the process, does not provide adequate information, and does not provide an equitable opportunity to participate. EPA is responding to these concerns in today's rule. In fact, EPA has emphasized the need for more public involvement in all its activities. The Agency's Hazardous Waste Minimization and Combustion Strategy calls for the development of mechanisms to ensure that local communities are fully informed about the RCRA decision-making process and have an opportunity to participate in that process. Recommendations from the National Performance Review, the RCRA Implementation Study, and the Permits Improvement Team have all emphasized the need for expanded public participation in permitting. A number of sources outside the Agency (e.g., environmental groups, and business trade associations) have also supported enhanced public participation.

C. How Today's Rule Will Improve the Program

Today's final rule will require a prospective applicant to hold an informal public meeting before submitting an application for a RCRA permit. Also, the regulations will require the applicant to advertise the meeting in the newspaper, through a broadcast announcement (e.g., by radio or television), and on a sign posted at or near the property. This meeting will provide a chance for the community to interact with and provide input to a facility owner or operator before the owner or operator submits a permit application. The rule also directs the permitting agency to mail a notice to interested people when the facility submits its application. The notice will tell members of the public where they can examine the application at the same time that the agency reviews it.

In some cases, RCRA permits can be the subject of intense debate. When permits raise a lot of public interest, the public's demand for information increases. Today's rule will give the permitting agency the authority to require a facility owner or operator to set up an information repository at any time during the permitting process or the permit life. We anticipate that agencies will use this authority only in those permitting cases that raise a lot of public interest, or in other cases where the public needs more access to information. The repository will hold all information and documents that the permitting agency decides are necessary to fulfill the purposes for which the repository was established. Finally, today's rule will require combustion facilities (i.e., incinerators and other

facilities that burn hazardous wastes) to notify the public before they hold a trial burn.[1]

EPA anticipates that these regulations will provide an opportunity for the public to participate earlier in the permitting process. In addition, the rule will give the public increased access to facility and permitting information. Finally, we hope that the rule will help people become involved in the permitting process and increase understanding of hazardous waste management facilities.

D. The Rule: From Proposal to Final

EPA proposed the RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures rule on June 2, 1994 (59 FR 28680–28711). The proposed rule contained changes and additions to the RCRA public participation regulations (40 CFR 124) and RCRA Subtitle C permitting regulations (40 CFR 270).

Today, EPA is finalizing the public participation portion of the proposal (with a number of changes in response to comments received by the Agency during the comment period for the proposed rule—see Section IV below), which includes changes to both Parts 124 and 270. The Agency is not finalizing the proposed revisions to combustion permitting procedures at this time.

EPA decided to separate the two portions for a number of reasons. First, the public comments on the proposed rule were more favorable towards the public participation changes. On the other hand, the commenters were less satisfied with the proposed combustion permitting changes, particularly those changes regarding the trial burn. The Agency is currently considering and addressing the commenters' concerns on the proposed combustion permitting changes. In the meantime, EPA sees no reason to delay the important changes to the public participation provisions.

Moreover, EPA is committed to issuing comprehensive emissions standards for combustion facilities under RCRA and the Clean Air Act. The Agency anticipates issuing a proposed rule on these standards in the fall of 1995. Due to potential overlap between the procedures in the emissions standards proposed rule and the combustion permitting procedures in the June 2, 1994 proposed rule, EPA has decided to take more time to consider the permitting provisions in the June 2 proposal. We intend to find the best possible solution to coordinate these two rulemakings.

Finally, EPA realized that the proposed rule may have caused some confusion. A few commenters pointed to the different character of the public participation changes and the combustion permitting changes. The commenters expressed concern over combining these two dissimilar portions in the same rule. Moreover, a number of commenters seemed to be confused over the applicability of the rule. In particular, since the combustion permitting provisions would apply only to combustion facilities, and the proposed rule was an outgrowth of the Combustion Strategy, a number of commenters seemed confused over the applicability of the public participation procedures to all RCRA TSDFs.

III. Applicability of Today's Rule

Today's rule promulgates changes and additions to Parts 124 and 270 in the Code of Federal Regulations (CFR). The Part 124 changes, which include new and earlier public involvement steps and procedures, apply to every facility that has or is seeking a RCRA subtitle C permit to treat, store, or dispose of hazardous waste, unless exempted under a specific section. The changes to Part 270, in §§ 270.2, 270.14, and 270.30, also apply to every facility. The changes to §§ 270.62 and 270.66, however, apply only to combustion facilities.

The rule does not require RCRA facilities that are already involved in the permitting process to step back in the process to comply with the new requirements. Instead, the rule will apply to a facility according to what stage of the process the facility is in when the rule becomes effective. For instance, if a facility has submitted its part B permit application before the effective date of this rule, then the rule does not require the facility to hold a pre-application meeting under § 124.31. This facility would, however, have to comply with all requirements relating to steps in the permitting process that it has not yet undertaken.

IV. Review of Public Comments, Responses, and Changes From the Proposed Rule

The following (IV. A through E) is a section-by-section summary of the most significant comments on the proposed rule, EPA's responses to those comments, and an explanation of any changes from the proposed rule to the final. All of the public comments and EPA's comprehensive response to comments document on this rulemaking are available through the RCRA Docket (see the paragraph entitled ADDRESSES, above).

The most significant changes in the final rule involve our decision to use guidance, instead of rule language, to encourage facilities to strive toward some of the important goals in the proposed rule. EPA recognized in the proposal that some of the proposed regulatory provisions were very general and requested comment on how they could be effectively implemented (see, e.g., 59 FR 28702). In response, commenters argued that several portions of the proposed regulatory language were vague and would spawn disputes, controversy, and litigation. The commenters suggested that EPA relocate some of the proposed regulatory text to the preamble as guidance.

EPA found these comments persuasive in certain instances. The development of today's rule has, from the start, involved a balance between promoting broader, more equitable public participation while maintaining the flexibility for individual permit writers, facilities, and communities to adopt the most appropriate, site-specific approach consistent with the principles of fairness and openness. Some of the principles underlying the proposed and final rules are inherently difficult to prescribe through regulation. For example, it is possible to require an applicant to hold a meeting; it is much more difficult to require through regulation that the meeting be conducted in an equitable fashion, since the steps required to accomplish this objective will necessarily vary from situation to situation. Although the final rule retains most of the proposed regulatory changes, EPA concluded that, in certain instances, the need to maintain flexibility is inconsistent with a national regulatory approach. In these instances, as explained more fully in the sections below, EPA has decided to proceed by using guidance, rather than regulations, to encourage facilities to adopt and strive towards a number of the goals in the proposed rule. The Agency will provide some guidance in today's preamble; however, we also anticipate releasing a guidance document, in the near future, to help permitting agencies and facilities to implement today's rule.

The Agency believes that facility owners, State environmental agencies, tribes, and private citizens are often in the best position to determine what modes of communication and

[1] The owner or operator of a combustion unit must conduct a trial burn as part of the permitting process for a combustion unit. The trial burn is a demonstration period held by the owner or operator of a combustion unit to test the unit's ability to meet the regulatory performance standards for treatment of hazardous wastes. The permitting agency uses the results of the trial burn to establish operating conditions in the RCRA permit.

participation will work best in their communities. The final rule provides the flexibility necessary to find the best local solutions to ensure equal opportunities for all members of the community.

A. Equitable Public Participation and Environmental Justice

Proposed § 124.30 and Preamble. In section 124.30 of the proposed rule, entitled "Equitable Public Participation," EPA proposed to require facilities and permitting agencies to "make all reasonable efforts" to ensure equal opportunity for the public to participate in the permitting process. The proposed rule language defined "reasonable efforts" as including the use of multilingual fact sheets and interpreters at meetings and hearings, when the "affected community contains a significant non-English speaking population."

In the preamble to the proposed rule (see 59 FR 28686), EPA solicited comments on several key environmental justice issues for the RCRA permitting program: (1) The siting of hazardous waste facilities; (2) the manner in which EPA should respond when confronted with a challenge to a RCRA permit based on environmental justice issues; (3) environmental justice concerns in corrective action cleanups; and (4) how EPA programs can take account of "cumulative risk" and "cumulative effects" associated with the siting of a hazardous waste management facility. The Agency noted that, while it did not expect to address these issues in this rulemaking, public input on these topics would be helpful.

Synopsis of Major Comments on § 124.30 and Preamble. The major comments on this section of the proposal involved definitions. Commenters asked the Agency to define many of the terms in § 124.30, including "all reasonable efforts," "significant," "non-English speaking" and "affected community." The commenters were concerned about the disputes, controversy, and litigation that could arise from these undefined terms. Other commenters supported the concept of equitable public participation, particularly as an approach to addressing any environmental justice concerns that might be present.

The Agency received a number of comments supporting expanded public participation as an effective approach to addressing environmental justice issues. Commenters stated that additional opportunities for public involvement and access to information will increase the probability that all communities will have input into the permitting process, and should strengthen involvement of those who have felt disenfranchised from the process. Some commenters urged EPA to avoid a one-size-fits-all approach and allow flexibility for State, local, and facility leadership to make suitable determinations about how to address environmental justice issues.

EPA's Response to Commenters. EPA is committed to the principles of equitable public participation and equal treatment of all people under our environmental statutes and regulations. The regulatory changes we are making today will enhance the RCRA public participation process for all citizens. We urge all permitting agencies, permit holders, and applicants, to make all reasonable efforts to provide equal access to information and participation in the RCRA permitting process.

While we continue to promote equitable public participation, we have decided to address the objectives of § 124.30 in guidance rather than through regulatory language. In response to the concerns expressed by many commenters, we are not including § 124.30 in the final rule. The Agency agrees with the commenters who expressed concern that the language in the proposal was ambiguous, making compliance with the requirements difficult to evaluate and enforce, and could engender disputes and litigation without advancing the objectives of today's rulemaking.

As we noted earlier, EPA continues to support the principles embodied in § 124.30 of the proposed rule. We encourage permitting agencies and facilities to follow the spirit of that section and use all reasonable means to ensure that all segments of the population have an equal opportunity to participate in the permitting process and have equal access to information in the process. These means may include, but are not limited to, multilingual notices and fact sheets, as well as translators, in areas where the affected community contains significant numbers of people who do not speak English as a first language.

In lieu of a regulation, the Agency will take additional steps to encourage equitable public participation in RCRA permitting. In the near future, EPA will issue further guidance to assist facilities, permitting agencies, and communities in implementing the expanded public participation requirements in today's rule. In this guidance document, EPA plans to discuss additional options for increasing public participation by going beyond the regulatory requirements. The guidance document will address, in more detail, the approaches to equitable public participation that we are emphasizing in this preamble.

EPA believes that this rule presents significant opportunities to be responsive to environmental justice concerns in the context of public involvement. Prior to the promulgation of today's rule, the permitting process did not formally involve the public until the permitting agency issued a draft permit or an intent to deny a permit. In many cases, communities around RCRA facilities felt that the draft permit stage was too late to enter the process, that the facility and the permitting agency had already made all the major decisions by that point, and any comments the public offered would have no real effect. Insufficient opportunity for communities to become involved in environmental decision-making is a contributing factor to environmental justice concerns. The provisions in today's rule will address many of these concerns by expanding public participation and access to permitting information.

EPA continues to see public participation as an important activity that empowers communities to become actively involved in local waste management activities. The Agency believes that this rulemaking is an important step in empowering all communities, including communities of color and low-income communities.

EPA agrees with the commenters who stated that the expanded public participation requirements in today's rule will be useful tools for addressing environmental justice concerns. Today's rule provides all communities with a greater voice in decision making and a stronger opportunity to influence permit decisions early in the process. EPA also agrees with the commenters who stated that environmental justice issues should be addressed at a local level and on a site-specific basis. Local agencies and leaders have an important role to play in addressing environmental justice concerns. States and EPA Regional offices are the principal implementors of the RCRA permitting program, and have been directed to develop mechanisms that respond effectively to environmental justice concerns during permitting activities (RCRA Implementation Plan (RIP), 1995). In the RIP, EPA asked RCRA implementing agencies to continue their commitment to seek opportunities to address patterns of disproportionately high and adverse environmental effects and human health impacts on low-income communities and communities of color that may result from hazardous waste management activities. The States and Regions have been involved in

environmental justice pilot projects, which have included, among other activities, increasing public involvement by tailoring outreach activities to affected communities.

EPA and its Office of Solid Waste and Emergency Response (OSWER) also remain committed to addressing environmental justice concerns beyond those related to public participation. The preamble to the proposed rule (see 59 FR 28686) discussed OSWER's environmental justice efforts. Elliott P. Laws, OSWER Assistant Administrator, formed the OSWER Environmental Justice Task Force ("EJ Task Force") to begin addressing many of these issues. EPA released the "OSWER Environmental Justice Task Force Draft Final Report" (OSWER 9200.3–16 Draft) and its separate executive summary (OSWER 9200.3–16–1 Draft) on April 25, 1994. Since that time, the EPA Regional offices and the OSWER program offices have been implementing the recommendations outlined in the EJ Task Force's draft final report. The report was distributed to the National Environmental Justice Advisory Council (NEJAC) for comment. In June 1995, after careful consideration of all comments, EPA released the "OSWER Environmental Justice Action Agenda." The Action Agenda provides a concise summary of OSWER's current strategy and describes the implementation process for ensuring that major issues, identified by the NEJAC and others, continue to be recognized and addressed. A full report on implementation progress and accomplishments, entitled "Waste Programs Environmental Justice Accomplishments Report," was released concurrently with the Action Agenda. All of these documents are "living documents" and, as such, are a part of the process of continuously addressing environmental justice concerns. This process represents OSWER's commitment to adhere to the principles of Executive Order 12898, in which the President directed federal agencies to identify and address the environmental concerns and issues of minority and low-income communities. Furthermore, in an effort to make environmental justice an integral part of the way we do business, the Agency issued a policy directive, in September 1994 (OSWER 9200.3–17), that requires all future OSWER policy and guidance documents to consider environmental justice issues.

During the public comment period on the proposed rule, EPA received a large number of comments on preliminary recommendations that the EJ Task Force had developed regarding several other (i.e., beyond today's public involvement rule) key environmental justice issues facing the RCRA permitting program. The comments ranged from general observations to more detailed suggestions, particularly with regard to siting criteria, cumulative risk assessments, and the need to base decisions on sound science.

We are disseminating the comments that deal with these environmental justice issues in the following manner: (1) We are forwarding the comments on RCRA facility siting to the Office of Solid Waste's (OSW) RCRA Siting Workgroup and to the NEJAC's Waste and Facility Siting Subcommittee's Siting Workgroup; (2) we are forwarding the comments on issues affecting RCRA corrective action to the RCRA Subpart S Workgroup, which is developing a rule to establish corrective action requirements for releases of hazardous wastes or hazardous waste constituents to any environmental medium, including ground water, from any solid waste management unit, including regulated units; (3) we are sharing the comments on cumulative risk, multiple exposure, and synergistic effects with the EPA Science Policy Council, the group actively working to address these issues; and (4) the comments on how EPA should respond to RCRA permit challenges based on environmental justice issues are being addressed by OSWER with assistance from the Office of General Counsel, Office of Civil Rights, and any other appropriate party.

EPA also received several comments that did not approve of the Agency's decision to discuss and solicit comments on the more technical environmental justice issues in the context of a RCRA public involvement rule. Many commenters argued that these issues are broad, far-reaching, and impact a much larger constituency than the intended audience for the public participation rulemaking.

EPA acknowledges the breadth of these issues. The preamble to the proposed rule has not been the only forum for discussing these issues. As we discussed above, EPA has received and considered comments from additional stakeholders, including States, the NEJAC, environmental groups, environmental justice groups, and regulated industries in developing the "OSWER Environmental Justice Action Agenda." Furthermore, since the Action Agenda is a living document, OSWER will continue to seek external comments, suggestions and experiences as we strive to ensure environmental justice in all our programs.

B. Pre-Application Meeting and Notice

1. Applicability (Proposed § 124.31(d)). EPA proposed to exempt permit modifications, permit renewals, and permit applications submitted for the sole purpose of conducting post-closure activities from the requirements in § 124.31.

Synopsis of Major Comments on § 124.31(d). A number of commenters stated that the rule should require facilities seeking permit renewals to hold a pre-application meeting. Other commenters recommended that the pre-application meeting requirements apply to facilities making significant changes during the renewal process, or that the permitting agency should have discretion in applying the requirement to renewals. Opposing these commenters, several commenters supported the requirement as proposed and urged EPA to keep the exemption for renewals since many renewal applications simply continue "business as usual." In these cases, said the commenters, the community will have adequate opportunity to participate in the renewal process; for instance, at the draft permit stage.

EPA's Response to Commenters. EPA has decided to expand § 124.31 to cover facilities that make a significant change at permit renewal. For the purposes of § 124.31, a "significant" change in facility operations is a change that is equivalent to a class 3 modification in § 270.42, e.g., operating conditions change significantly.

The Agency believes that this approach is a common sense compromise that will ensure adequate public participation in the necessary cases. At the same time, the regulated community will have the assurance that facilities undergoing minor changes will be spared unnecessary administrative burden.

EPA will continue the exemption for facilities that submit permits for the purpose of conducting post-closure activities. As we stated in the proposed rule, the goals of the pre-application meeting (e.g., establishing an early dialogue between the facility and the public) do not apply at most post-closure facilities. EPA's experience is that the public has usually been concerned with permit decisions relating to active hazardous waste management operations, as opposed to decisions relating to closed facilities. In addition, most post-closure activities are mandatory (e.g., maintenance of a closed unit) and involve fewer discretionary judgments than are involved in issuing an operating permit. The existing public participation

requirements in Part 124 (e.g., the notice and comment period at the draft permit stage) will continue to apply. Since closure and post-closure plans are included in the permit application, and become part of the permit, they will be available for public review and comment along with the application and the draft permit. Any changes to these plans after permit issuance will follow the modification procedures in § 270.42; which also have public notice requirements. We think that the existing process provides sufficient public involvement in post-closure permitting.

While we are retaining the exemption for post-closure permit applications in the final rule, we have tried to clarify our intent in the applicability requirements. Specifically, we have clarified that the exemption applies to facilities seeking permits solely to conduct post-closure activities, as well as to facilities seeking permits to conduct post-closure activities along with corrective action. Our intent in the proposal, which remains our intent in the final rule, was to distinguish post-closure facilities from facilities with operating units. However, someone could have read the proposed rule as not providing an exemption for post-closure facilities with remaining corrective action obligations (which post-closure facilities often have). Because the rationale for exempting post-closure activities applies whether or not the facility is also performing corrective action, EPA has added language to §§ 124.31(a) and 124.33(a) to clarify our intent.

2. Meeting Requirements (Proposed § 124.31(a)–(b)). In these two paragraphs, EPA proposed to require the permit applicant to hold at least one meeting with the public before submitting the part B permit application. The proposed rule listed topics that the applicant must cover and required the applicant to submit a record of the meeting and a list of attendees.

Synopsis of the Major Comments on § 124.31(a)–(b). The commenters generally expressed support for the pre-application meeting. Few commenters opposed EPA's proposal to have a meeting early in the process, though many suggested changes to the proposed rule itself.

Several commenters thought that the pre-application stage is too early for a public meeting. Some commenters stated that neither the applicant nor the agency could provide the public with accurate and complete information about the facility at such an early stage. Moreover, they noted, the application could change dramatically between the pre-application meeting and application submittal.

Some commenters asked EPA to clarify the record-keeping requirements in the final rule. A number of commenters opposed the requirement, with some commenters opposing the term "record" because it would qualify the meeting summary as an official document and make it subject to litigation. Other commenters opposed the rule's requirement that the applicant submit the record as a component of the part B permit application.

Concerning whether the permitting agency should conduct, or even attend, the meeting, the comments varied. Some commenters supported agency attendance because the agency would provide the meeting with credibility and a source of accurate information. Other commenters expressed concern that agency attendance would interfere with the "open and informal dialogue" between the facility owner and the public.

Finally, many commenters supported alternatives to the pre-application meeting. Numerous commenters backed the idea of combining pre-application meetings with the siting meetings that many States already require. A few commenters noted that EPA should allow such a combination only where the State meeting fulfills all the requirements of the pre-application meeting. Another group of commenters supported other options, such as using an Intent-to-Submit form in place of the meeting or holding the meeting after application submittal.

EPA's Response to Commenters. Section 124.31(b) of the final rule requires the facility to hold a meeting prior to submitting the part B permit application; however, the rule language no longer lists specific topics that the facility must cover in the meeting, requiring instead that the facility solicit questions from the community and inform the community about proposed hazardous waste management activities. After the meeting, the facility must prepare a "summary" of the meeting and submit it as a component of the part B permit application. The agency should use its judgement in deciding whether to attend the meeting.

EPA disagrees with the commenters who stated that the pre-application stage is too early to hold a meeting with the public. The most important goal we hope to achieve from the pre-application meeting requirement is the opening of a dialogue between the permit applicant and the community. We believe that the applicant should open this dialogue at the beginning of the process. The meeting will give the public direct input to facility owners or operators; at the same time, facility owners or operators can gain an understanding of public expectations and attempt to address public concerns in their permit applications (see the discussion two paragraphs below). We hope that this requirement will help address the public concern that public involvement occurs too late in the RCRA permitting process. Although the Agency agrees with the commenters that the early timing of the meeting may prevent the agency and the applicant from having complete information, we believe that the benefits of early public involvement and early access to information outweigh the drawbacks of incomplete information.

In any case, EPA does not intend for the pre-application meeting to be a forum for examining technical aspects of the permit application in extensive detail; such technical examination is more suited to the draft permit stage. Instead, the pre-application meeting should provide an open, flexible, and informal occasion for the applicant and the public to discuss various aspects of a hazardous waste management facility's operations. We anticipate that the applicant and the public will share ideas, educate each other, and start building the framework for a solid working relationship. Of course, the public retains the opportunity to submit comments throughout the process.

EPA has also revised the pre-application meeting requirements in the final rule to make them more straightforward and more flexible than the requirements in the proposed rule. The Agency is trying to provide flexibility in the way that permit applicants hold pre-application meetings. To this end, we have removed the list of required discussion topics, proposed in § 124.31(a). In addition, we have removed from the rule provisions that the commenters considered vague, including the requirement that the applicant describe the facility "in sufficient detail to allow the community to understand the nature of the operations to be conducted at the facility and the implications for human health and the environment." We agree with commenters that such a requirement would be difficult to implement and enforce.

While we have removed such requirements from the final rule, we expect permit applicants to follow the spirit of the proposed requirements. For instance, we encourage permit applicants to address, at the level of detail that is practical at the time of the meeting, the topics we identified in § 124.31(a) of the proposed rule: the

type of facility, the location, the general processes involved, the types of wastes generated and managed, and implementation of waste minimization and pollution control measures. The discussions may also include such topics as the transportation routes to be used by waste transporters and planned procedures and equipment for preventing or responding to accidents or releases. These are examples of the types of issues that might be of particular concern to a community and about which the community might be able to provide useful suggestions to the applicant. The applicant might then be able to incorporate that information into the proposed facility design or operations, either as part of the initial application, if time allows, or at subsequent stages in the process (e.g., in submitting revisions to its application, or in responding to a Notice of Deficiency issued by the permitting agency). By learning about and addressing public concerns up front, the applicant may be able to prevent misunderstanding from escalating into community opposition.

Moreover, the applicant should make a good faith effort to provide the public with sufficient information about the proposed facility operations. While we do not expect applicants to go into extensive detail at the pre-application stage, they should provide the public with enough information to understand the facility operations and the potential impacts on human health and the environment. In addition, as we emphasized in the preamble to the proposed rule (59 FR 28691), the permit applicant should encourage full and equitable public participation by selecting a meeting date, time, and place that are convenient to the public.

The final rule requires the applicant to submit a "summary" of the pre-application meeting as a component of the part B permit application. EPA shares the concern of several commenters that "the record" could be subject to litigation, for instance, on the basis of inaccuracy. EPA's intent in this rule is to foster communication and mutual understanding, not to create divisiveness and additional points of dispute in the permitting process. Thus, we have deleted the word "record" and replaced it with "summary" in the final rule. We do not intend for the meeting summary to be a verbatim account of the meeting; the Agency is aware of how difficult it is to keep a word-for-word record of a public meeting. Applicants should make a good faith effort to provide an accurate summary of the meeting and a list of all attendees who wish to identify themselves (see § 124.31(b) of the final rule).

In accordance with our intent in the proposed rule, we are requiring the permit applicant, in the final rule, to submit the summary as a component of the part B permit application. Since the part B application is available for review by the public, requiring the meeting summary to be part of the application assures that people who are unable to attend the meeting will have an opportunity to learn what transpired at the meeting. In the proposed rule, however, the Agency neglected to add the summary to the list of part B requirements in § 270.14(b). We have added this reference in the final rule.

The pre-application meeting summary will be useful to the permitting agency. The summary will alert the agency to important community concerns, areas of potential conflict, and other issues that may be relevant to agency permitting decisions. In addition, the meeting attendee list will help generate a mailing list of interested citizens. (The permitting agency is responsible for developing a representative mailing list for public notices under § 124.10). The list of attendees from the pre-application meeting will assist the permitting agency in identifying people or organizations to include on the mailing list so that it represents everyone who demonstrates an interest in the facility and the permit process. It has been EPA's experience that mailing lists often are not fully developed until the permitting agency issues the draft permit for public comment. Since EPA seeks to increase public participation earlier in the process, generation of a mailing list should precede such activities. A mailing list developed pursuant to § 124.10 could also be available to enhance public participation in other Agency or community-based initiatives.

The actual timing of the meeting is flexible in the final rule. The Agency believes that flexibility is necessary because the optimal timing for the meeting will vary depending on a number of factors, including the nature of the facility and the public's familiarity with the proposed project and its owner/operator.

In today's rule, we require the facility to conduct the pre-application meeting. We believe that the applicant should conduct the meeting in an effort to establish a dialogue with the community. We encourage permitting agencies to attend pre-application meetings, in appropriate circumstances, but the agency should not run the pre-application meeting. Although agency attendance may, at times, be useful in gaining a better understanding of public perceptions and issues for a particular facility, it may undercut some of the main purposes of the meeting, such as opening a dialogue between the facility and the community, and clarifying for the public the role of the applicant in the permitting process.

In the proposed rule, EPA solicited comments (see 59 FR 28702) on the option of allowing a State siting meeting to substitute for the pre-application meeting. EPA is not including this option in the final rule, because doing so would defeat some of the purposes of the pre-application meeting (e.g., establishing an open dialogue on a range of RCRA permitting issues that may differ from siting issues). Some commenters suggested that siting meetings and pre-application meetings be combined. There is nothing in today's rule to preclude States and permit applicants from working together to combine these meetings. EPA encourages them to do so, provided that the combined meetings fulfill the pre-application meeting requirements in today's rule.

3. Notice of the Pre-Application Meeting (§ 124.31(c)). Paragraph (c) of proposed § 124.31 required the facility to give notice of the pre-application meeting at least 30 days prior to the meeting "in a manner that is likely to reach all affected members of the community." EPA proposed to require the facility to give the notice in three ways: as a display advertisement in a newspaper of general circulation; as a clearly-marked sign on the facility property; and as a radio broadcast. Each of these notices had to include the date, time and location of the meeting, a brief description of the purpose, a brief description of the facility, and a statement asking people who need special access to notify the applicant in advance.

Synopsis of the Major Comments on § 124.31(c). Most commenters expressed general support for the expanded notice requirements, but questioned specific aspects of the proposal. The commenters also asked for flexibility in choosing the types of notice that would best reach different communities.

The newspaper advertisement requirement brought up the most controversy. Some commenters challenged as vague the provision that the facility publish the notice in the local paper and also in papers of adjacent counties.

A number of commenters pointed out problems with requiring a large sign at the facility. Some commenters mentioned that nobody would pass near enough to some rural facilities to see the

sign. Other commenters reminded EPA that some communities have ordinances that ban large signs. The commenters urged that the rule be more flexible and allow applicants to place signs at nearby intersections or on town bulletin boards. Other commenters recommended that the agency approve the sign or grant waivers where communities ban signs.

The commenters did not express many objections to the radio requirement, but asked for overall flexibility in the notice requirements.

EPA's Response to Commenters. In response to these comments, EPA has enhanced the flexibility of the final rule. Instead of requiring the applicant to provide three specific types of public notice, as in the proposed rule, the final rule specifies only one type of notice (i.e., the display advertisement). The other notices must fall within broader categories—one must be a broadcast announcement and one must be a sign—but are otherwise flexible.

We have decided to retain the display ad requirement because of the expanded public notice it will provide; at the same time, we have increased the flexibility of the requirement by moving some of the proposed rule's more general provisions out of rule language and into guidance, both in today's preamble (see below) and in the future guidance document for implementing this rule.

Section 124.31(d) requires the applicant to keep documentation of the public notice and provide the documentation to the permitting agency upon request. The reason for this requirement is to provide proof of the public notice that can be verified by the permitting agency. We do not want this requirement to be burdensome for the facility. Instead, we encourage the facility to keep a simple file for the notice requirements. Items for inclusion in the file may include: copies of the newspaper announcement, a receipt or affidavit of the radio announcement, a photograph of the sign, or a receipt of purchase for the sign.

The Agency expects that applicants and permit holders will make a good faith effort to announce the pre-application meeting to as many members of the affected community as possible.

• The newspaper advertisement. The applicant must print a display advertisement in a newspaper of general circulation in the community. The display ad should be located at a spot in the paper calculated to give effective notice to the general public. The ad should be large enough to be seen easily by the reader. In addition to the display ad, we also encourage facilities to place advertisements in free newspapers and community bulletins.

In some cases, potential interest in the facility may extend beyond the host community. Under these circumstances, we encourage the applicant either to publish the display ad so that it reaches neighboring communities or to place additional ads in the newspapers of those communities.

• The visible and accessible sign. The final rule requires the applicant to post the notice on a clearly-marked sign at or near the facility. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass, on foot or by vehicle, by the site. The Agency anticipates that the signs will be similar in size to zoning notice signs required by local zoning boards. If a sign on the facility grounds is not practical or useful—for instance, if the facility is in a remote area—then the applicant should choose a suitable alternative, such as placing the sign at a nearby point of significant vehicular or pedestrian traffic. In the case that local zoning restrictions prohibit the use of such a sign in the immediate vicinity of the facility, the facility should pursue other available options, such as placing notices on a community bulletin board or a sign at the town hall or community center. EPA intends the requirement that the sign be posted "at or near" the facility to be interpreted flexibly, in view of local circumstances and our intent to inform the public about the meeting. In addition to the requirements of § 124.31, we encourage the applicant to place additional signs in nearby commercial, residential, or downtown areas.

• The broadcast media announcement. The final rule requires the applicant to broadcast the notice at least once on at least one local radio or television station. EPA expects that the applicant will broadcast the notice at a time and on a station that will effectively disseminate the notice. The applicant may employ another medium with prior approval of the Director. We encourage the applicant to consult the preamble to the proposed rule (59 FR 28690) for recommendations on choosing the best circumstances for the broadcast announcement.

EPA will soon issue a guidance document to assist facilities and agencies in implementing the expanded public participation requirements. The guidance document will include more detailed discussions on the approaches to broad and equitable public notice that we are emphasizing in today's preamble.

C. *Notice at Application Submittal (§ 124.32)*

1. Applicability (Proposed § 124.32(c)). The proposed rule required the permitting agency to send a notice to the facility mailing list upon receipt of a permit application. EPA proposed that the rule apply to all new and interim status facilities, but not to permit modifications or applications submitted for the sole purpose of conducting post-closure activities.

Synopsis of Major Comments on Proposed § 124.32(c). The commenters generally supported this provision of the proposed rule. A few commenters recommended that EPA apply the provision to modifications, post-closure permits, and interim status facilities.

EPA's Response to Commenters. The final rule retains the applicability standards of the proposed rule. We continue to believe that the notice at application submittal is an effective means to let the community know that the permitting agency has received a permit application. The notice allows members of the community to keep track of new or existing facilities and to review, concurrently with the permitting agency, the permit application, which will be available for review at a location specified by the permitting agency (either in the vicinity of the facility or at the permitting agency's office). We suggest that the permitting agency consult the public when choosing a suitable location to place the application materials for public review.

The notice requirement does not apply to permit modifications or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility. The permit modification requirements in § 270.42 already include provisions for providing public notice of modification requests. We explain the exemption for post-closure activities in section B.1. above.

2. Responsibility and Timing (Proposed § 124.32(a) and (b)). The proposed rule directed the permitting agency to give the notice "within a reasonable period of time after the application is received by the Director." The proposed rule also listed the information that must go in the notice.

Synopsis of Major Comments on Proposed § 124.32(a) and (b). Many of the commenters provided suggestions on who should be responsible for the notice at application submittal. The majority of these commenters supported EPA's proposal, agreeing that the Director should issue the notice. A few commenters expressed concern over the

timing of the notice. They suggested that EPA rewrite the rule to require the Director to issue the notice within 30 days of application submittal.

EPA's Response to Commenters. These provisions have not changed from the proposed rule to the final rule. EPA maintains its position that the permitting agency should be responsible for providing the public notice at application submittal. Providing the notice will demonstrate clearly that the permitting agency's role in the process has begun.

We anticipate that the permitting agencies will issue timely notices and, thus, we have decided not to prescribe a time frame for agency issuance of the notice at permit application.

D. Information Repository

1. Applicability/Use/Responsibility (Proposed §§ 124.33(a) and 270.30(m)). EPA proposed to give the Director the authority to require the facility to establish and maintain an information repository during the permitting process (§ 124.33(a)) or during the life of a permit (§ 270.30(m)). The purpose of the repository, as proposed, was to make information available to the public during the permit issuance process and during the life of a permit.

Synopsis of Comments on Proposed §§ 124.33(a) and 270.30(m). A number of the comments asked EPA for exemptions from the repository "requirement," especially for boilers and industrial furnaces (BIFs) and federal facilities that must fulfill similar standards under other rules. Many commenters asked for flexibility, suggesting that EPA allow the Director to decide when to require a repository. Some commenters suggested that the Director use this authority only in cases where the community shows true need or public interest when the facility is high. Making a contrary point, a group of commenters argued that the repository should be mandatory for all facilities. Another group of commenters insisted that the permitting agency should be responsible for the repository, or at least split the responsibility with the facility.

EPA's Response to Commenters. In the final rule, EPA has rewritten §§ 124.33(a) and 270.30(m) to better reflect our original intent in proposing the information repository requirement. Our intent was for permitting agencies to use the information repository requirement sparingly. We anticipate that the Director will require such a repository only in special cases where a significant amount of public concern has surfaced or where the community has unique information needs.

Many commenters suggested exemptions from the "information repository requirement." However, the information repository is not a requirement that applies to a pre-determined group of facilities. Instead, the information repository is a public involvement tool that today's rule makes available to permitting agencies for use on a case-by-case basis. Accordingly, there is no need for exemptions from §§ 124.33 or 270.30(m).

Some of the confusion over this section may be the result of the language in the proposed rule. We have reworded §§ 124.33 and 270.30(m) in the final rule to make clear that the Director shall assess a variety of factors, including the status of existing repositories and the community's proximity to a copy of the administrative record, when considering whether or not to require a repository at any facility. So, for instance, if the Director determines that public interest warrants a repository at hypothetical Facility X, but finds that a BIF repository already existing at the facility is responsive to the public interest, then the Director may determine that the facility has no need for a repository under §§ 124.33 or 270.30(m). Or, if the existing repository does not completely satisfy the need that the Director identified, then the Director may specify additional steps that the facility must take to make the repository meet the public need. At Facility X, for instance, the Director may require the facility to make available more information on the general permitting standards, or on the permit application and technical standards for the other units on site, aside from the BIF unit. The facility could then add this information to the existing repository if the repository meets the requirements of §§ 124.33 or 270.30(m).

2. Contents (Proposed § 124.33(b) and (e)). The proposed rule language required the repository to contain all "documents, reports, data, and other information deemed sufficient by the Director for public understanding," as well as information on public involvement activities and how to get on the facility mailing list.

Synopsis of the Major Comments on Proposed § 124.33(b) and (e). A number of commenters recommended specific documents and types of documents (e.g., the permit application, all relevant fact sheets) that EPA should require in the information repository provisions. Some commenters insisted that the content requirements in the proposed rule were too vague. Other commenters thought that EPA should ban certain materials (e.g., public relations literature) from the information repository.

EPA's Response to Commenters. We have changed the repository content requirements in the final rule. The new provision requires the repository to hold "all documents, reports, data, and information deemed necessary by the Director to fulfill the purposes for which the repository is established." We have tried to be as flexible as possible in this section since the permitting agency could require a facility to establish a repository at any stage during any permit process or for any time during the life of the facility. Moreover, the requirement to establish a repository will be imposed by the Director on a case-by-case basis; after taking into account the site-specific factors in each case, the Director will decide what materials are appropriate for the repository.

The final rule gives the Director the authority to limit the contents of the repository. While the rule creates no outright bans on materials, EPA anticipates that the Director will use his or her discretion to ensure that repository materials are relevant to permitting activities and to prevent parties from placing inappropriate materials in the repository. We encourage permitting agencies, in the spirit of equitable public participation and access to information, to consult the public regarding what materials would be most useful to members of the surrounding community.

3. Location (Proposed § 124.33(c)). The proposed rule stated that the facility should choose the location for the repository in a place with suitable public access. If the Director opposed the site, then the Director could choose a more appropriate location. The proposed rule also required the repository to be open during reasonable hours and to give the public access to photocopy service (or an alternative means for people to obtain copies).

Synopsis of Public Comments on § 124.33(c). Several commenters expressed concern over the geographic location of the repository. Other commenters asked that EPA rewrite the rule to allow for on-site repositories.

EPA's Response to Commenters. EPA has tried to be flexible in revising the final rule. While we expect that the Director will only infrequently require a repository, we anticipate that those situations will all be different. For this reason, we have avoided writing narrow prescriptions for the location of the repository. Instead, § 124.33(d) of the final rule retains the provision allowing the facility to choose the location. We encourage facilities, in the spirit of

equitable public participation and access to information, to involve the public when suggesting a location for the repository. The Director has the discretion to choose a more suitable location if he or she finds that the one chosen by the facility is unsuitable based on access, location, hours of availability, or other relevant criteria. The Director should exercise this authority sparingly; we are anticipating that, in the great majority of cases, the facility will choose a suitable location. EPA encourages facilities to establish repositories off-site (i.e., within the community where the facility is located) whenever an off-site repository is feasible and would be more readily accessible to the public. Today's rule does not, however, preclude the use of on-site repositories.

4. Timing and Duration (Proposed § 124.33(f)). The proposed rule required the facility to maintain and update the repository for a time period determined by the Director. The proposal also stated that the Director could require the repository at any time during the application process for a RCRA permit or during the active life of a facility.

Synopsis of the Major Comments on Proposed § 124.33(f). The commenters submitted a variety of comments concerning the timing and duration of the repository. Some commenters thought that permitting agencies need flexibility in applying the repository requirement. Others thought that EPA should require the repository to open and close at specific points during the permitting process. One group of commenters insisted that EPA include a provision in the rule to allow for automatic closure of the repository once the permit is issued, denied, or appealed.

EPA's Response to Commenters. In the final rule, EPA clarifies its intent that the Director have the discretion to apply the repository requirement at any time during the permitting process or the life of a facility. Given that it is within the Director's discretion whether to establish a repository at all, we believe that it would be inappropriate to prescribe specific timing and duration requirements that are triggered by the creation of a repository; rather, the Director should decide on questions of timing and duration on a case-by-case basis. The final rule continues the proposed rule's provision that the Director determine the duration of the repository. The final rule provides that the Director can close the repository, based on the same standards (found in paragraph (a)) that the Director uses when assessing the need for a repository.

E. Trial Burn Notices

1. Notice of the Trial Burn for Permitted Combustion Facilities (Proposed §§ 270.62(b)(6) and 270.66(d)(3)). Permits for new hazardous waste combustion facilities must include a plan, approved by the permitting agency as part of the permit, that describes how the facility will conduct the trial burn. However, because construction of a new facility may take a considerable period of time, the trial burn itself might not take place until several years after permit issuance. The proposed rule required the permitting agency to give public notice of the impending trial burn for permitted incinerators and BIFs. Under the proposed rule, the permitting agency would send a notice to the facility mailing list and appropriate units of State and local governments announcing the scheduled commencement and completion dates for the trial burn. The notice would also provide the public with contact information at the permitting agency and the facility and a location where members of the public could review the approved trial burn plan. The proposal required the permitting agency to mail the notice within a reasonable time period prior to the trial burn.

Synopsis of the Major Comments on Proposed §§ 270.62(b)(6) and 270.66(d)(3). We received both positive and negative comments on the proposed notice of trial burn for permitted combustion facilities. The supporters noted the importance of informing the public of the anticipated time period for conducting the burn, because a significant amount of time may elapse between issuing the permit and conducting the trial burn.

Those who opposed the trial burn notice asked what benefit would accrue from public notice of an impending, scheduled trial burn for a new (permitted) facility. One commenter asked EPA to discuss the purpose for requiring this notice from a new facility, considering that the schedule is set out in the permit and the trial burn plan is already open for public comment as part of the draft permit. Some commenters thought that the other permitting events already provide sufficient opportunity for public comment. Other commenters opposed the requirement that the permitting agency give the trial burn notice, claiming that delays would ensue when the agency could not publish the notice on time.

EPA's Response to Commenters. EPA has decided to finalize the trial burn notice provisions for permitted facilities as proposed. The Agency agrees with the commenters who noted the importance of keeping the community up to date on permitting activities at the facility. Several years may pass between the approval of the trial burn plan and the actual date of the trial burn. During the intervening time, the public may not necessarily remain up to date on activities at the facility. The trial burn is a significant step in the process of a combustor moving toward full operation; experience has shown that the public is often interested in knowing when the burn will occur so that citizens can review the trial burn results. Thus, we remain committed to giving notice of the impending trial burn at permitted facilities.

The final rule requires the permitting agency to send the notice to the facility mailing list. While we do not specify a time period during which the permitting agency should send out the notice, we anticipate that permitting agencies will typically notify the public at least 30 days before the trial burn.

The final rule does not provide for a comment period after the permitting agency gives notice of the trial burn dates. A number of commenters asked EPA what the purpose of such a notice would be, if not to open a comment period. Other commenters asked the Agency to make clear whether or not the rule would require a comment period during the trial burn stage. EPA decided that a comment period during the trial burn phase would not be necessary or appropriate. The public has already had the opportunity to be involved with, and comment on, the trial burn plan during the draft permit stage. Our intent in providing for the notice at this stage is to make the public aware of an impending trial burn. The notice will serve as an update, rather than the opening of a comment period.

Finally, EPA has clarified in §§ 270.62(b)(6) and 270.66(d)(3) that a new hazardous waste combustion facility applying for a permit may not commence its trial burn until after the permitting agency has issued the required notice. It was clear from the proposal that we intended for the permitting agency to issue the notice before the trial burn. However, the proposed rule language did not explicitly state the obvious corollary, which was that the facility may not commence the trial burn until after the notice.

EPA does not believe that the notice requirement established by today's rule will delay trial burns. The notice requirement is straightforward and easy to implement; we do not anticipate that permitting agencies will fail to issue the required notices in a timely fashion.

Because the notice is purely informational, EPA will be flexible in interpreting the requirement that the notice be mailed a reasonable time before the commencement of the trial burn. Ideally, the Agency anticipates that permitting agencies will mail the notice at least thirty days before the trial burn. However, as long as the notice is mailed sufficiently in advance of the scheduled trial burn so that the recipients would be expected to receive the notice prior to the commencement date, EPA would consider the notice timely.

It is EPA's intent that the trial burn notice requirements in §§ 270.62(b)(6) and 270.66(d)(3) apply only to initial trial burns, and not to subsequent trial burns that may be conducted as part of the permit modification procedures. EPA believes that the trial burn notices required by today's rule are not necessary in these latter circumstances, since the amount of time between modification approval and the subsequent trial burn is typically much shorter than the amount of time that may elapse between permit issuance and the initial trial burn. Moreover, the modification procedures in § 270.42 include provisions for involving the public throughout the modification submittal and approval process (e.g., through notices or public meetings). Of course, if there are substantial unforeseen delays between the approval of the modification request and the trial burn, EPA suggests that the permitting agency issue a notice in accordance with the procedures set forth in today's rule.

2. Notice of Planned Trial Burn Plan Approval for Interim Status Combustion Facilities (Proposed § 270.74(b) and (c)(3)). Trial burns at interim status facilities generally take place before permit issuance so that the permitting agency can set operating conditions in the permit based on the results of the trial burn. The proposed rule required the permitting agency to give public notice of the tentative approval of a trial burn plan for interim status incinerators and BIFs. The notice requirements are the same as those proposed for permitted incinerators and BIFs, except for an additional provision that the notice contain a schedule of activities that are required prior to permit issuance, including the permitting agency's anticipated schedule for trial burn plan approval and the actual trial burn.

Synopsis of Major Comments on § 270.74(b) and (c)(3). Many of the comments described in section E.1. above with regard to the trial burn notice for permitted incinerators and BIFs also are relevant to the trial burn notice for interim status incinerators and BIFs (e.g., comments on the timing of the notice). A number of commenters raised the issue of a comment period on the trial burn plan for interim status facilities. A few commenters supported the idea, some opposed it, and several more asked EPA to clarify whether or not we would require a comment period on the tentatively approved trial burn plan. One commenter noted that this additional information was critical for interim status facilities where the public has not yet had an opportunity for involvement.

EPA's Response to Commenters. EPA has decided to finalize the provisions for interim status facilities with two slight changes from the proposal. First, the final rule provides for notice of the Director's intention to approve a trial burn plan, rather than his or her "tentative approval." In response to commenter concerns that the notice could be an extra time-consuming step in the process, EPA has changed the language to better reflect its intent that the notice occurs in the final stages of review, rather than being a separate step following completion of review.

Second, we proposed to place the notice requirements in a newly created § 270.74, which contained interim status combustion permitting requirements. However, since EPA is not finalizing the combustion permitting sections of the proposed rule at this time, we have integrated the notice requirements with the regulations for the permitting of interim status combustion facilities, i.e., § 270.62(d) for incinerators and § 270.66(g) for BIFs.

Although the Agency has not changed the trial burn plan notice requirements for interim status combustors in the final rule, the requirements are in a different format than in the proposal. First, the notice requirements are now located in the centers of the paragraphs (§ 270.62(d) for incinerators and § 270.66(g) for BIFs) along with other permitting requirements. Since the notice contents for interim status facilities differ from the contents for permitted facilities with regard to announcing planned approval of the trial burn plan, we are amending §§ 270.62(d) and 270.66(g) to list the specific information that the permitting agency must include in the notices for interim status combustors. Second, we do not list the timing and distribution requirements for the notice for interim status facilities, as we did in the proposed rule. Instead, each of these paragraphs refers the reader to another paragraph (§ 270.62(b) and § 270.66(d), respectively) that covers the notice of the trial burn for permitted facilities. For instance, § 270.62(d) states that the agency shall issue the notice "in accordance with the timing and distribution requirements of (b)(6) of this section." The requirements in (b)(6) are the new notice requirements that we are issuing today for permitted combustion facilities (see section E.1. above). In following the standards in (b)(6), the permitting agency will send the notice to the facility mailing list and the appropriate units of State and local government within a reasonable period of time before the trial burn. Section 270.66(g) takes the same approach for BIFs by referring to paragraph (d) of that section.

For permitted combustion facilities, EPA has clarified in §§ 270.62(b)(6) and 270.66(d)(3) that a facility applying for a permit may not commence its trial burn until after the permitting agency has issued the required notice. EPA does not believe that comparable clarifying language is necessary in §§ 270.62(d) or 270.66(g) for the notice of planned approval of a trial burn plan for an interim status facility. EPA believes it is clear under these provisions that the permitting agency will not approve a plan and, consequently, the facility cannot commence its trial burn, until issuance of the required notice.

The role of the notice for interim status BIFs and incinerators is much the same as the notice for permitted facilities, i.e., to keep the public informed throughout the trial burn stage. The final rule does not require a comment period after the permitting agency gives notice of the planned approval of the trial burn plan and the trial burn dates for interim status facilities. The trial burn notice, like the other notices required by this rule, is primarily intended to keep the community informed while not slowing down the permitting process. Since interim status facilities are already operating, and continue to operate while the permitting agency evaluates the permit application, EPA does not believe it would generally be in the public interest to delay the evaluation process in order to provide a formal response to comments on the trial burn plan. However, if members of the public submit significant information or views relating to the trial burn plan, the Director should consider this information, and may choose to respond in writing at the time of plan approval. In addition, a formal comment period will, of course, still take place after draft permit issuance.

EPA believes that the final rule strikes the appropriate balance between public

involvement and the efficiency of the permitting process. The notice alerts the public of the impending trial burn, and of the opportunity to review the trial burn plan. Since EPA is not yet finalizing the other revisions to combustion permitting procedures proposed in § 270.74, trial burn plans for interim status combustors may not always be available for review with the rest of the application. Through today's notice requirement, the public will still have an opportunity to stay informed and to review the plan before the Director approves it.

EPA is currently considering and addressing the comments it received on the revised combustion permitting procedures. If those procedures are finalized and go into effect as proposed, including the provision requiring facilities to submit trial burn plans with permit applications, the public will have the opportunity to review and submit opinions or suggestions on the proposed trial burn plan at any time after the facility submits the application. At that time, EPA will have the opportunity to consider any such submissions in the process of reviewing the plan. Accordingly, EPA is not requiring a comment period for the planned trial burn plan approval in this rule, since such a requirement could likely be rendered unnecessary in the future.

V. State Authority

A. Applicability of Today's Rule in Authorized States

The overall effect of today's final rule is to increase the stringency of the RCRA permitting process. Therefore, States that are authorized to administer and enforce the RCRA program in lieu of EPA under section 3006 of RCRA are required to modify their programs by adopting equivalent requirements if necessary (see § 271.21(e)). States must submit their proposed program modifications to EPA for approval according to the schedules set forth in section V.B. below.

EPA is promulgating today's rule pursuant to statutory authority that existed prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984. As we explained in more detail in the proposed rule (59 FR 28703–04), EPA will implement §§ 124.31 (the pre-application meeting), 124.32 (the notice at application submittal), and 124.33 (the information repository) of this rule in authorized States only when EPA is processing permit applications for hazardous waste management units over which it has the basic permit issuance authority (e.g., BIFs in States not yet authorized to issue BIF permits). EPA has added language to §§ 124.31(a), 124.32(a), and 124.33(a) of the final rule to clarify that EPA will implement these sections only for such applications. For all other permit applications in authorized States, the requirements of these sections will not take effect until the States adopt and become authorized for this rule.[2]

Under this approach, EPA will be implementing §§ 124.31, 124.32, and 124.33 only where it is the basic permitting authority for the unit. EPA will, of course, implement these sections in non-authorized States. EPA will also implement these sections in authorized States when the permit application in question contains one or more hazardous waste management units for which the State is not authorized to issue RCRA permits and, thus, EPA has basic permit issuance authority. For example, EPA will implement today's rule when processing an application that includes a BIF if the State is not authorized to issue BIF permits. The facility with the BIF unit will be subject to all the applicable requirements in today's rule.

However, if the State is authorized to issue RCRA permits for all of the hazardous waste management units in an application, then EPA will not implement the requirements in §§ 124.31, 124.32, and 124.33. EPA will not implement those provisions in such a case, even though EPA may retain authority to issue a HSWA "rider" relating to the units in the application (e.g., authority to control air emissions from certain units under 40 CFR Part 264 Subparts AA, BB, and CC), or relating to the facility as a whole (e.g., corrective action authority under 40 CFR § 264.101). For example, EPA will not implement §§ 124.31, 124.32, and 124.33 when processing the corrective action portion of a tank storage permit application in an authorized State.

The Agency believes that this arrangement best implements the intent of today's rule. EPA designed the pre-application meeting, the notice at application submittal, and repository requirements to enhance communication and understanding between the public, the facility owners and operators, and the permitting agency. These requirements will foster a dialogue between facilities and communities with a focus on fundamental permitting issues. EPA believes that these interactions are properly part of the application process for the basic permit to conduct hazardous waste management operations, and not part of the process to evaluate and issue additional conditions through a HSWA rider. Accordingly, and consistent with the proposal, we have explicitly tied these requirements to the basic permit issuance authority for hazardous waste management units.

For most units in most States, the basic permit issuance authority rests with the State. Accordingly, EPA strongly urges authorized States to adopt this rule in an expeditious manner. Specifically, EPA encourages States that have not yet adopted the BIF rule to adopt the new public participation procedures concurrently with their BIF rules, rather than deferring adoption to the somewhat later deadline that applies to today's rule.

In adopting today's rule, authorized States should not include in their approved regulations the limiting language added to the final applicability sections of §§ 124.31, 124.32 and 124.33. This language includes both the limitation of the sections' applicability to "all applications seeking RCRA permits for hazardous waste management units over which EPA has permit issuance authority" and the definition of the phrase "hazardous waste management units over which EPA has permit issuance authority." Obviously, the reference to EPA would be inappropriate in a State rule. Moreover, even if the State changed the language to refer to the State environmental agency, the provision would be unnecessary because authorized States process RCRA permit applications and administer RCRA permits only at facilities with units over which they have permit issuance authority. Accordingly, EPA recommends that States not include in their regulations limiting language similar to that in today's final rulemaking.

[2] EPA is not including similar limiting language, like the language in §§ 124.31, 124.32, and 124.33, in the other provisions of today's rule. With respect to § 270.14, the requirement to submit the summary of the pre-application meeting with the Part B permit application expressly references § 124.31. Accordingly, where the regulations do not require a meeting, it is clear that the applicant does not need to provide a meeting summary. With respect to the information repository requirement of § 270.30(m), EPA will follow the general principles applicable to the inclusion of the § 270.30 "boilerplate" provisions in HSWA portions of RCRA permits (see, *e.g., In re General Motors Corp.*, RCRA Appeal Nos. 90–24, 90–25, at 23 (EAB Nov. 6, 1992)). Finally, §§ 270.62 and 270.66 apply only where EPA has permit issuance authority over incinerators and BIFs, respectively, so there is no need to limit the applicability of the specific requirements added to these sections today.

B. Schedules and Requirements for Authorization

40 CFR 271.21(e) requires States with final authorization to modify their programs to reflect federal program changes and submit the modifications to EPA for approval. The deadlines for State modifications are set out in § 271.21(e)(2) and depend upon the date of promulgation of final rules by EPA. Thus, because EPA has promulgated today's rule before June 30, 1996, States must modify their programs, if necessary, to adopt this rule before July 1, 1997 (or July 1, 1998 if a State statutory change is needed). States then must submit these program modifications to EPA according to the schedules in § 271.21(e)(4). Once EPA approves the modifications, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs may already have requirements similar to those we are proposing today. EPA has not assessed these State regulations against the final federal regulations to determine whether they meet the tests for authorization. Thus, similar provisions of State law are not authorized to operate in lieu of today's RCRA requirements until the State submits them to EPA, who then evaluates them against the final EPA regulations. Of course, States may continue to administer and enforce their existing standards in the meantime.

In developing today's final rule, EPA considered impacts on existing State programs. The public participation requirements may be viewed as performance objectives the Agency wants States to meet in their own authorized programs. It is not EPA's intent to restrict States from conducting similar activities that accomplish the same objectives. Therefore, EPA intends to be flexible in reviewing State program submissions and evaluating them against the requirements for authorization.

VI. Permits Improvement Team

In July 1994, EPA created a group of EPA, State, Tribal and local government officials (Permits Improvement Team) to examine and propose improvements to EPA's permit programs. As part of its efforts, the Permits Improvement Team is examining ways to streamline the permitting process, exploring possible alternatives to individual permits, and evaluating ways to enhance public involvement in the permitting process. The Team plans to develop recommendations in each of these areas, discuss them with stakeholders, and submit them to Agency management for consideration.

The public participation requirements that EPA is promulgating in today's rule are appropriate for the RCRA permitting program as it currently exists. If, however, the nature of the RCRA permitting program changes as a result of the Permits Improvement Team's efforts, then the Agency may amend these procedures, or develop additional procedures. For example, the Team is considering recommending several alternatives to individual permits, such as establishing general permits for RCRA non-commercial storage and treatment units. The process of issuing general permits is very different from the current RCRA permitting process; thus, different approaches for involving the public may be appropriate.

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether a regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the regulatory action.

The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency has determined that this rule is not a significant rule under Executive Order 12866. Pursuant to the terms of Executive Order 12866, this section of the preamble summarizes the potential economic impacts of the RCRA Expanded Public Participation rule.

Based upon the economic impact analysis for today's rule, the Agency's best estimate is that the expanded public participation requirements would result in an incremental national annual cost of $180,000 to $500,000.

A complete discussion of the economic impact analysis is available in the regulatory docket for today's rule in a report entitled "Economic Impact Analysis for the RCRA Expanded Public Participation Rule."

Cost Analysis. Today's rule includes several requirements that would result in direct costs to facilities submitting initial permit applications or submitting permit renewal applications that propose a significant change for facility operations (see § 124.31). The analysis estimates the costs to all affected facilities of (1) preparing a public notice announcing the intention to hold a public meeting; (2) disseminating the public notice in a local newspaper, over a broadcast medium, and by posting a sign; and (3) holding a public meeting and preparing a meeting summary.

In addition, the rule gives the Director the discretion to require a facility to set up an information repository, based on the level of public interest or other factors. This requirement can apply anywhere in the permitting process or at any time during the active life of a facility.

The total cost per facility of the above requirements is approximately $5,000 to $14,000. Over the next ten years, EPA estimates that between 300 to 450 facilities will incur these costs. The resulting total national annual cost, assuming a discount rate of 7% is estimated to be between $180,000 to $500,000 per year.

Summary of Benefits. The RCRA permitting program was developed to protect human health and the environment from the risks posed by the treatment, storage, and disposal of hazardous waste. By improving and clarifying the permitting process, today's rule produces environmental benefits that result from a more efficient permitting process. The following is an explanation of how each of the provisions of today's rule provides benefits.

The main benefit of the expanded public participation requirements of today's rule is to provide earlier opportunities for public involvement and expand public access to information throughout the permitting process and the operational lives of facilities. EPA believes that these requirements will give applicants and permitting agencies a better opportunity to address public concerns in making decisions about the facility and in subsequent permitting activities.

Providing the public with an expanded role in the permit process, by promoting community participation and

input throughout the permitting process, will also help foster continued community involvement after facilities become permitted.

In addition, expanding public involvement opportunities could, in some cases, streamline the permitting process, since the public will raise issues, and the applicant can address the issues, at an earlier stage in the process. Currently, the public is not formally involved in the permitting process until the draft permit stage, which occurs after the permitting agency and the permit applicant have discussed crucial parts of the part B permit application. The Agency anticipates that the earlier participation provided in this rule will address the public concern that major permit decisions may be made before the public has the opportunity to get involved in the process. This earlier involvement may well reduce costs associated with delays, litigation, and other products of disputes.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to consider "small entities" throughout the regulatory process. Section 603 of the RFA requires agencies to perform an initial screening analysis to determine whether small entities will be adversely affected by the regulation. If the analysis identifies affected small entities, then the agency must consider regulatory alternatives to mitigate the potential impacts. Small entities as described in the Act are only those "businesses, organizations and governmental jurisdictions subject to regulation."

In developing today's rule for expanding public involvement in the RCRA permitting process, EPA was sensitive to the needs and concerns of small businesses. The provisions set forth the minimum requirements necessary to fulfill the public involvement objectives in this rule. Additional examples of activities that facilities may choose to conduct are provided in the preamble for the proposed rule (59 FR 28680) and will be included in a future guidance document, rather than in this rule. EPA's intent is to provide flexibility for a facility to determine, in view of the facility-specific circumstances, the appropriate level of public involvement activities. In addition, EPA recognizes that, in some situations, an information repository could become resource-intensive for a facility or for the local community. EPA has addressed this concern by clarifying, in the final rule, that the information repository is not mandatory for all facilities. The rule makes clear our intent that the Director reserve the use of the information repository option only for the limited number of facilities that raise high levels of public interest or whose communities have a special need for more access to information.

EPA conducted a small entity impact screening analysis for the proposed rule and determined that there were no small entities significantly impacted (see 59 FR 28680–28711, Section VI.C.). Because the public participation requirements have not increased since the proposal, EPA has determined that the final rule also does not significantly impact small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0149.

This collection of information is estimated to have a public reporting burden averaging 89.60 hours per response, and to require 34.60 hours per recordkeeper annually. This total includes time for reviewing instructions, searching existing data sources, gathering and maintaining the necessary data, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

Display of OMB Control Numbers. EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. This amendment updates the table to accurately display those information requirements contained in this final rule. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the UMRA), P.L. 104–4, EPA generally must prepare a written statement, including a cost-benefit analysis, for rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must develop, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them about compliance with the regulatory requirements.

For the reasons explained in Section VI.A. above, EPA has determined that this rule does not contain a federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Rather, EPA projects the total annual costs imposed by today's rule to be less than $500,000. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As stated above, the total costs of the rule are very low. These minimal costs will be incurred by owners and operators of hazardous waste treatment, storage and disposal facilities, which are principally private entities, and federal government agencies. Accordingly, this rule does not impose any requirements that might significantly or uniquely affect small governments.

E. Enhancing the Intergovernmental Partnership

Executive Order 12875. Executive Order 12875 on enhancing the intergovernmental partnership charges federal agencies with establishing meaningful consultation and collaboration with State and local governments on matters that affect them. In most cases, State governments are the level of government that regulates hazardous waste.

EPA has consulted with State officials to develop today's rule. EPA invited several States, representing various parts of the country, to participate in this rulemaking process. These States reviewed and provided feedback on the draft proposal over a period of eight months, and the draft final rule over a period of five months. In addition, these States participated in monthly workgroup meetings via conference call. Their participation and immediate feedback in the workgroup process added considerable value to the rulemaking effort.

EPA contacted additional States in an effort to receive their specific feedback on general permitting and public involvement techniques. EPA solicited State input during a session of the 3rd Annual RCRA Public Involvement National Conference, in which sixteen State representatives participated. The State participants provided numerous helpful suggestions and ideas. In addition, the Agency utilized existing State groups, such as the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), to solicit input on the proposed rule at various stages in the development process. State personnel at the Commissioner level provided input to EPA at bi-monthly meetings of the EPA-State Task Force on Hazardous Waste Management. Through early involvement in the process, State representatives made valuable contributions to the development of today's rule. EPA also received comments from several States following publication of the proposed rule. Many of the States' concerns are addressed by the final rule.

The Relationship of Today's Rule with Indian Policy. Currently, EPA has the responsibility for ensuring the implementation and enforcement of the Subtitle C hazardous waste regulatory program on Indian lands. This responsibility includes the issuance of hazardous waste permits. However, consistent with EPA's Indian Policy of 1984, the Agency will look directly to, and work with, Tribal governments in determining the best way to implement the public involvement requirements in Indian country. This Indian policy recognizes the sovereignty of federally-recognized Tribes and commits EPA to a government-to-government relationship with the Tribes.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 124

Administrative practice and procedure, Hazardous Waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Permit application requirements, Waste treatment and disposal.

Dated: October 18, 1995.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations, is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding the new entries to the table to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR Citation	OMB Control No.
* * * * *	
PART 124—PROCEDURES FOR DECISIONMAKING	
124.31	2050–0149
124.32	2050–0149
124.33	2050–0149
PART 270—EPA-ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM	
270.62	2050–0149
270.66	2050–0149
40 CFR Citation	OMB Control No.
* * * * *	

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; and Clean Air Act, 42 U.S.C. 1857 *et seq.*

2. Subpart B is amended by adding text to read as follows:

Subpart B—Specific Procedures Applicable to RCRA Permits

Sec.

Subpart B—Specific Procedure Applicable to RCRA Permits

§ 124.31 Pre-application public meeting and notice.

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units, where the renewal application is proposing a significant change in facility operations. For the purposes of this section, a "significant change" is any change that would qualify as a class 3 permit modification under 40 CFR 270.42. For the purposes of this section only, "hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Prior to the submission of a part B RCRA permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary

opportunity for attendees to provide their names and addresses.

(c) The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under paragraph (b) of this section, and copies of any written comments or materials submitted at the meeting, to the permitting agency as a part of the part B application, in accordance with 40 CFR 270.14(b).

(d) The applicant must provide public notice of the pre-application meeting at least 30 days prior to the meeting. The applicant must maintain, and provide to the permitting agency upon request, documentation of the notice.

(1) The applicant shall provide public notice in all of the following forms:

(i) *A newspaper advertisement.* The applicant shall publish a notice, fulfilling the requirements in paragraph (d)(2) of this section, in a newspaper of general circulation in the county or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the Director shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent counties or equivalent jurisdictions, where the Director determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement.

(ii) *A visible and accessible sign.* The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in paragraph (d)(2) of this section. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site.

(iii) *A broadcast media announcement.* The applicant shall broadcast a notice, fulfilling the requirements in paragraph (d)(2) of this section, at least once on at least one local radio station or television station. The applicant may employ another medium with prior approval of the Director.

(iv) *A notice to the permitting agency.* The applicant shall send a copy of the newspaper notice to the permitting agency and to the appropriate units of State and local government, in accordance with § 124.10(c)(1)(x).

(2) The notices required under paragraph (d)(1) of this section must include:

(i) The date, time, and location of the meeting;

(ii) A brief description of the purpose of the meeting;

(iii) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

(iv) A statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and

(v) The name, address, and telephone number of a contact person for the applicant.

§ 124.32 Public notice requirements at the application stage.

(a) *Applicability.* The requirements of this section shall apply to all RCRA part B applications seeking initial permits for hazardous waste management units over which EPA has permit issuance authority. The requirements of this section shall also apply to RCRA part B applications seeking renewal of permits for such units under 40 CFR 270.51. For the purposes of this section only, "hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271. The requirements of this section do not apply to permit modifications under 40 CFR 270.42 or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

(b) Notification at application submittal.

(1) The Director shall provide public notice as set forth in § 124.10(c)(1)(ix), and notice to appropriate units of State and local government as set forth in § 124.10(c)(1)(x), that a part B permit application has been submitted to the Agency and is available for review.

(2) The notice shall be published within a reasonable period of time after the application is received by the Director. The notice must include:

(i) The name and telephone number of the applicant's contact person;

(ii) The name and telephone number of the permitting agency's contact office, and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

(iii) An address to which people can write in order to be put on the facility mailing list;

(iv) The location where copies of the permit application and any supporting documents can be viewed and copied;

(v) A brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and

(vi) The date that the application was submitted.

(c) Concurrent with the notice required under § 124.32(b) of this subpart, the Director must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the permitting agency's office.

§ 124.33 Information repository.

(a) *Applicability.* The requirements of this section apply to all applications seeking RCRA permits for hazardous waste management units over which EPA has permit issuance authority. For the purposes of this section only, "hazardous waste management units over which EPA has permit issuance authority" refers to hazardous waste management units for which the State where the units are located has not been authorized to issue RCRA permits pursuant to 40 CFR part 271.

(b) The Director may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the Director shall consider a variety of factors, including: the level of public interest; the type of facility; the presence of an existing repository; and the proximity to the nearest copy of the administrative record. If the Director determines, at any time after submittal of a permit application, that there is a need for a repository, then the Director shall notify the facility that it must establish and maintain an information repository. (See 40 CFR 270.30(m) for similar provisions relating to the information repository during the life of a permit).

(c) The information repository shall contain all documents, reports, data, and information deemed necessary by the Director to fulfill the purposes for which the repository is established. The Director shall have the discretion to limit the contents of the repository.

(d) The information repository shall be located and maintained at a site chosen by the facility. If the Director finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the Director shall specify a more appropriate site.

(e) The Director shall specify requirements for informing the public about the information repository. At a minimum, the Director shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

(f) The facility owner/operator shall be responsible for maintaining and

updating the repository with appropriate information throughout a time period specified by the Director. The Director may close the repository at his or her discretion, based on the factors in paragraph (b) of this section.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.2 is amended by revising the definition for "Facility mailing list" to read as follows:

§ 270.2 Definitions.

* * * * *

Facility mailing list means the mailing list for a facility maintained by EPA in accordance with 40 CFR 124.10(c)(1)(ix).

* * * * *

3. Section 270.14 is amended by adding paragraph (b)(22) to read as follows:

§ 270.14 Contents of part B: General requirements.

* * * * *

(b) * * *

(22) A summary of the pre-application meeting, along with a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, as required under § 124.31(c).

4. Section 270.30 is amended by adding paragraph (m) to read as follows:

§ 270.30 Conditions applicable to all permits.

* * * * *

(m) *Information repository.* The Director may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in 40 CFR 124.33(b). The information repository will be governed by the provisions in 40 CFR 124.33(c) through (f).

5. Section 270.61(b)(5) introductory text is amended by removing the reference § 124.11(b) and adding in its place § 124.10(b).

* * * * *

6. In § 270.62, paragraphs (b)(6) through (10) are redesignated as paragraphs (b)(7) through (11), and new paragraph (b)(6) is added as follows:

§ 270.62 Hazardous waste incinerator permits.

* * * * *

(b) * * *

(6) The Director must send a notice to all persons on the facility mailing list as set forth in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as set forth in 40 CFR 124.10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Director has issued such notice.

(i) This notice must be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.

(ii) This notice must contain:

(A) The name and telephone number of the applicant's contact person;

(B) The name and telephone number of the permitting agency's contact office;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

* * * * *

7. Paragraph (d) of § 270.62 is revised as follows:

§ 270.62 Hazardous waste incinerator permits.

* * * * *

(d) For the purpose of determining feasibility of compliance with the performance standards of § 264.343 of this chapter and of determining adequate operating conditions under § 264.345 of this chapter, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan and perform a trial burn in accordance with § 270.19(b) and paragraphs (b)(2) through (b)(5) and (b)(7) through (b)(10) of this section or, instead, submit other information as specified in § 270.19(c). The Director must announce his or her intention to approve the trial burn plan in accordance with the timing and distribution requirements of paragraph (b)(6) of this section. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time period during which the trial burn would be conducted. Applicants submitting information under § 270.19(a) are exempt from compliance with 40 CFR 264.343 and 264.345 and, therefore, are exempt from the requirement to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application must complete the trial burn and submit the results, specified in paragraph (b)(7) of this section, with part B of the permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant must contact the Director to establish a later date for submission of the part B application or the trial burn results. Trial burn results must be submitted prior to issuance of the permit. When the applicant submits a trial burn plan with part B of the permit application, the Director will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

8. In § 270.66, paragraphs (d) (3) through (5) are redesignated as paragraphs (d) (4) through (6), and new paragraph (d)(3) is added to read as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

* * * * *

(d) * * *

(3) The Director must send a notice to all persons on the facility mailing list as set forth in 40 CFR 124.10(c)(1)(ix) and to the appropriate units of State and local government as set forth in 40 CFR 124.10(c)(1)(x) announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the Director has issued such notice.

(i) This notice must be mailed within a reasonable time period before the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.

(ii) This notice must contain:

(A) The name and telephone number of applicant's contact person;

(B) The name and telephone number of the permitting agency contact office;

(C) The location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(D) An expected time period for commencement and completion of the trial burn.

* * * * *

9. Paragraph (g) of § 270.66 is revised as follows:

§ 270.66 Permits for boilers and industrial furnaces burning hazardous waste.

* * * * *

(g) *Interim status boilers and industrial furnaces.* For the purpose of determining feasibility of compliance with the performance standards of § 266.104 through 266.107 of this chapter and of determining adequate operating conditions under § 266.103 of this chapter, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of § 266.103 of this chapter must either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this section or submit other information as specified in § 270.22(a)(6). The Director must announce his or her intention to approve of the trial burn plan in accordance with the timing and distribution requirements of paragraph (d)(3) of this section. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time periods during which the trial burn would be conducted. Applicants who submit a trial burn plan and receive approval before submission of the part B permit application must complete the trial burn and submit the results specified in paragraph (f) of this section with the part B permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant must contact the Director to establish a later date for submission of the part B application or the trial burn results. If the applicant submits a trial burn plan with part B of the permit application, the trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the Director.

[FR Doc. 95–29896 Filed 12–8–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[SC–029–1–7177a; FRL–5316–5]

Approval and Promulgation of Implementation Plans: Approval of Revisions to the South Carolina State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the South Carolina State Implementation Plan (SIP) to incorporate new permitting regulations and to allow the State of South Carolina to issue Federally enforceable state construction and operating permits (FESCOP). On July 12, 1995, the State of South Carolina through the Department of Health and Environmental Control (DHEC) submitted a SIP revision which updates the procedural rules governing the issuance of air permits in South Carolina and fulfills the requirements necessary for a state FESCOP program to become Federally enforceable. In order to extend the Federal enforceability of South Carolina's FESCOP program to hazardous air pollutants (HAPs), EPA is also approving South Carolina's FESCOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA) so that South Carolina may issue Federally enforceable construction and operating permits for HAPs.

DATES: This final rule will be effective February 11, 1996, unless adverse or critical comments are received by January 10, 1996. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Scott Miller at the EPA Regional office listed below. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

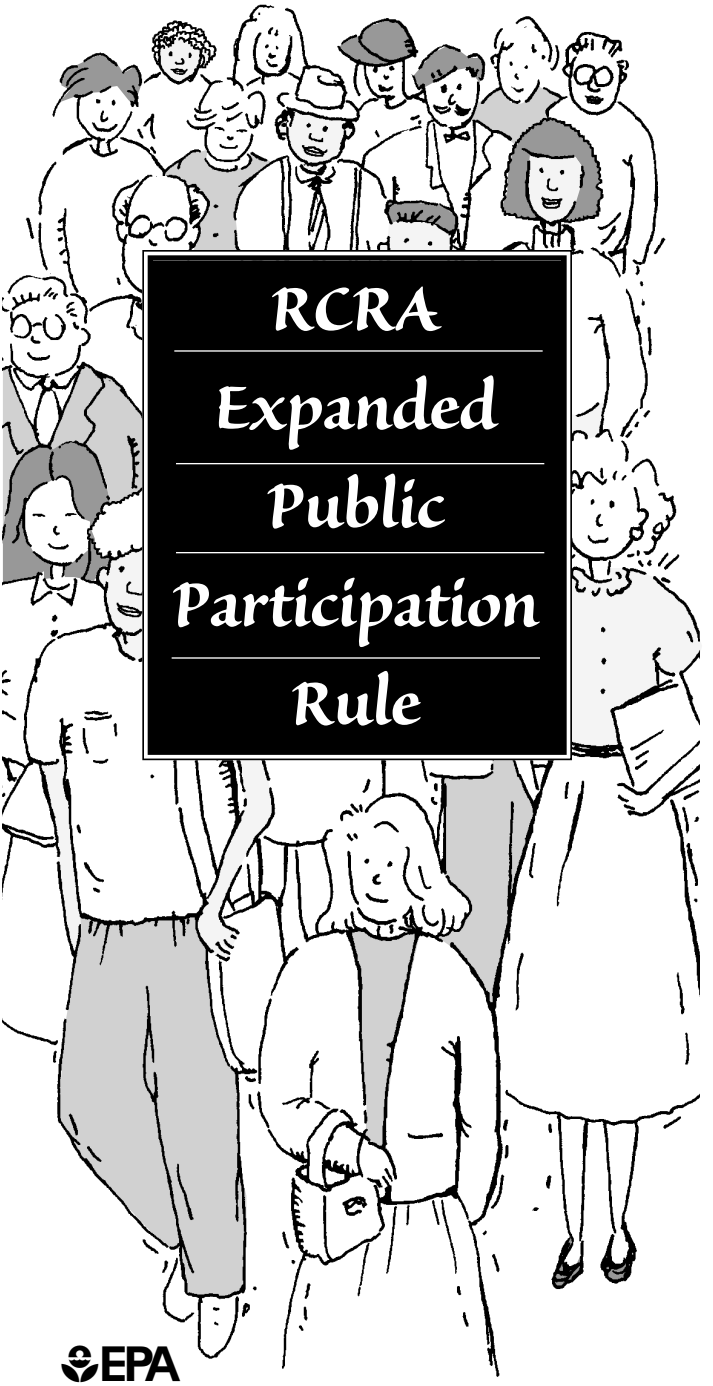
South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is (404) 347–3555 extension 4153. Reference file SC029.

SUPPLEMENTARY INFORMATION: On July 12, 1995, the State of South Carolina through the DHEC submitted a SIP revision designed to allow South Carolina to issue FESCOP which conform to EPA requirements for Federal enforceability as specified in a **Federal Register** notice, "Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules." (See 54 FR 22274, June 28, 1989). This voluntary SIP revision allows EPA and citizens under the Act to enforce terms and conditions of state-issued minor source construction and operating permits. Construction and operating permits that are issued under the State's minor source construction and operating permit program that is approved into the State SIP and under section 112(l) will provide Federally enforceable limits to an air pollution source's potential to emit. Limiting of a source's potential to emit through Federally enforceable construction and operating permits can affect a source's applicability to Federal regulations such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration (PSD) preconstruction permits for criteria pollutants and Federal air toxics requirements. EPA notes that the State will continue to issue construction and operating permits that are not intended to be Federally enforceable under regulations found at South Carolina Air Pollution Control Regulation (SCAPCR) 61–62.1 Section II.A and Section II.B.

In the aforementioned June 28, 1989, **Federal Register** document, EPA listed five criteria necessary to make a state agency's minor source construction and operating permit program Federally enforceable and, therefore, approvable into the SIP. This revision satisfies the five criteria for Federal enforceability of the State's minor source construction and operating permit program.

The first criterion for a State's construction and operating permit program to become Federally enforceable is EPA's approval of the permit program into the SIP. On July 12, 1995, the State of South Carolina submitted through the DHEC a SIP revision designed to meet the five criteria for Federal enforceability. This action will approve these regulations



RCRA Expanded Public Participation Rule

EPA

United States Environmental Protection Agency

EPA530-F-95-030
February 1996

The U.S. Environmental Protection Agency (EPA) developed the RCRA Expanded Public Participation Rule to empower communities to become more actively involved in local hazardous waste management.

This rule makes it easier for citizens to become involved earlier and more often in the process of permitting hazardous waste facilities. It also expands public access to information about facilities. As a result, the rule enables communities to become more active participants in important local environmental decisions. In addition, the rule addresses environmental justice concerns by providing opportunities for *all* members of a community to have a voice in the permitting process.

The ***RCRA Expanded Public Participation Rule*** also helps facilities. Earlier participation can eliminate confusion or delays in the permitting process that can occur when the public is not involved until much later. This helps ensure that the permitting process moves forward in a timely manner. By fostering better relationships with communities, the rule also can help improve facilities' images and reduce potential conflict. In addition, citizens are often able to provide valuable information regarding local conditions for facilities to consider in developing their permit applications. Furthermore, the rule is very flexible—it identifies the basic requirements needed to satisfy EPA's public participation goals and recommends additional activities that facilities might conduct.

The RCRA Expanded Public Participation Rule:

- *Involves the public earlier in the permitting process*
- *Provides more opportunities for public participation*
- *Expands public access to information*
- *Offers guidance on how facilities can improve public participation*

To Whom Does This Rule Apply?

The new rule applies to hazardous waste facilities that are seeking an initial or renewed permit under Subtitle C of the Resource Conservation and Recovery Act (RCRA). Hazardous waste facilities are those that generate, accumulate, treat, and/or dispose of hazardous wastes. To conduct their operations, they must obtain a permit from an EPA-authorized state/tribe or from EPA in states/tribes that are not authorized to administer RCRA permits.

The ***RCRA Expanded Public Participation Rule*** does not require facilities that are already involved in the permitting process to repeat a step in order to comply with the new regulations. The rule does require, however, that facilities comply with new requirements during steps that they have not yet undertaken. Authorized states/tribes must modify their permitting requirements to meet the new public participation regulations.

How Does the Rule Increase Public Involvement?

Prior to this rule, RCRA provided opportunities for formal public involvement at two key points in the permitting process: 1) when the permitting agency announced its intent to grant or deny a permit and 2) when a facility requested a modification of a permit that had already been granted.

Based on recommendations from environmental groups, business trade associations, and concerned citizens, EPA revised RCRA's permitting procedures to involve the public much earlier, to provide more opportunities for public involvement throughout the process, and to expand public access to information about the facility and its activities. Specifically, the rule improves public participation in the following four ways:

1. Permit applicants must **hold an informal public meeting** to inform community members of proposed hazardous waste management

activities before applying for a permit to conduct these activities.

2. The permitting agency must **announce the submission of a permit application** by sending a notice to everyone on the facility mailing list. The announcement will tell community members where they can examine the application while the agency reviews it.

3. The permitting agency may require a facility to **set up an information repository (or library)** at any point during the permitting process. The repository should include relevant documents, such as the permit application, reports, and any other information the permitting agency wishes to make available.

4. The permitting agency must **notify the public prior to a trial (or test) burn** at a combustion facility (i.e., an incinerator or other facility that burns hazardous waste) by sending a notice to everyone on the facility mailing list.

For More Information

Copies of the rule and relevant documents can be obtained by calling the RCRA Hotline at 800 424-9346 or TDD 800 553-7672. In the Washington, DC, area, call 703 412-9810 or TDD 703 412-3323. Documents can also be obtained by writing the RCRA Information Center (RIC), U.S. Environmental Protection Agency, Office of Solid Waste, 401 M Street, SW. (5305W) Washington, DC 20460.

Recycled/Recyclable
Printed on paper that contains at least 20 percent postconsumer fiber.

APPENDIX L -- PERMIT MODIFICATIONS FACT SHEET

United States
Environmental Protection
Agency

Solid Waste and
Emergency Response
(OS-305)

EPA/530-SW-89-050
September 1989

Modifying RCRA Permits

Introduction

The Resource Conservation and Recovery Act (RCRA) requires each hazardous waste treatment, storage, and disposal facility to manage hazardous waste in accordance with a permit issued by the Environmental Protection Agency (EPA) or a state agency that has a hazardous waste program approved by EPA. A RCRA permit establishes the facility's operating conditions for managing hazardous waste. EPA and state agencies use the permit to specify the administrative and technical standards for each facility. Over time, however, the facility needs to modify the permit to improve equipment or make changes in response to new standards. Recognizing this, EPA established procedures early in the program for modifying permits. The Agency has now revised these procedures to provide more flexibility to both owners and operators of facilities and EPA and to increase public involvement. This brochure briefly describes EPA's new procedures for modifying RCRA permits.

These procedures are effective now in states where EPA administers the RCRA program. However, authorized states will not use these procedures until they have adopted them as part of their own programs.

The Old Process

Acknowledges that a permit would need to be modified for various reasons during its life, EPA established in 1980 a process for modifying them. The process included different procedures for major and minor modifications. A minor permit modification allowed a limited number of minor changes to occur, after EPA reviewed and approved the modification request. There was no requirement for public notice and comment.

For major modifications, EPA would follow procedures that were almost the same as those for issuing an initial permit. These procedures included developing a draft permit modification, announcing in a local newspaper and on the radio the availability of the proposed modification, providing a 45-day public comment period, and, if requested, holding a public hearing. Public participation was limited to the specific permit conditions being modified.

A Need for Change

The old permit modification process was becoming increasingly unwieldy. It was impeding the ability of treatment, storage, and disposal facilities to respond quickly to improvements in technology and shifts in the types of wastes being generated. This made the routine changes necessary for effective operations more difficult to accomplish. Furthermore, the procedures often did not involve the public early enough in the modification process.

In response to these concerns, EPA developed new procedures with help from representatives from states and industrial, environmental, and public interest groups. The new process provides more flexibility for facilities to respond to changing conditions, clean up waste, and generally improve their waste management operations. In addition, the new procedures allow for more public involvement by expanding public notification and participation opportunities.

The Congress, in an effort to address the nation's growing concern about its hazardous and solid waste problem, enacted the Resource Conservation and Recovery Act (RCRA). The Hazardous and Solid Waste Amendments of 1984 greatly expanded RCRA and the Environmental Protection Agency's (EPA) authority to regulate the wastes.

As a result, EPA is developing regulations and programs to reduce, recycle, and treat wastes: restrict land disposal and require corrective action for releases of hazardous wastes, or their constituents, into the environment. EPA's Office of Solid Waste, through its publications, aims to foster public understanding and encourage citizen involvement in helping to manage the nation's waste problem.

The New Process

The new process establishes three classes of permit modifications and sets administrative procedures for approving modifications in each class.

Class One addresses routine and administrative changes. Lowest range of permit modifications.

Class Two primarily addresses improvements in technology and management techniques. Middle range of modifications.

Class Three deals with major changes to a facility and its operations. Highest range of modifications.

Class One Modifications

Class One modifications do not substantially alter the conditions in the permit or reduce the facility's ability to protect human health and the environment. Such changes may include

Improving administrative and routine functions.

Upgrading plans and records maintained by the facility.

Replacing some equipment with functionally equivalent equipment.

Most Class One changes do not require approval by the authorized permitting agency -- either EPA or a state -- before they are implemented. There are several types of changes, however, that may require such approval. EPA may deny any Class One modification.

Notifying the Public. Within 90 days of implementing a change, a facility making a Class One modification must notify the public by sending a notice to all parties on its mailing list. This mailing list includes people and organizations who have asked to be notified of the facility's activities. The list is maintained by the permitting agency. Citizens may be added to the mailing list by sending a written request to the agency. Any member of the public may ask EPA to review a Class One modification.

Class Two Modifications

Class Two modifications include those changes that enable a facility to respond to variations in the types and quantities of wastes that it manages, technological advancements, and new regulatory requirements. Class Two changes do not substantially alter the facility's design or the management practices prescribed by the permit. They do not reduce -- and in most cases should enhance -- the facility's ability to protect human health and the environment. Under some circumstances, the permitting agency may determine that the modification request should follow the more restrictive Class Three procedures.

Class Two modifications address change like

Increases of 25 percent or less in a facility's tank treatment or storage capacity.

Authorization to treat or store new wastes that do not require different management practices.

Modifications to improve the design of regulated units or improve management practices.

The new procedures require the facility to submit a request for approval of the change to the permitting agency. The request describes the change, explains why it is needed, and provides information showing that the change complies with EPA's technical standards for the facility. For Class Two modification, a facility may begin construction 60 days after submitting a request, although the permitting agency may delay all or part of the construction.

Involving the Public. The permit holder must notify people and organizations on the facility mailing list about the modification request by sending them a letter and publishing a notice in a major local newspaper. The notice must appear within seven days before or after the facility submits the request to the permitting agency. The newspaper notice marks the beginning of a 60-day comment period and announces the time and place of an informal public meeting.

This public comment period is an opportunity for the public to review the facility's permit modification plans at the same time as the permitting agency -- early in the process. All written comments submitted during the 60-day comment period will be considered by the agency before a final decision is made on the modification request.

The public meeting is conducted by the permittee and is held no fewer than 15 days after the start of the comment period and no less than 15 days before it ends. The purpose of this meeting is to provide for an exchange of views between the public and the facility's owner or operator and if possible, to resolve any issues concerning the permit modification. The meeting is less formal than the public hearings held when a new RCRA permit is under development. Because the meeting is intended to be a dialogue between the facility owner or operator and its neighbors, the permitting agency is not required to attend the meeting. EPA believes that the meeting will result in more public comments being submitted to the agency and perhaps voluntary revisions to the permitted facility's notification request.

To inform citizens about how the facility has met the conditions of the permit the permitting agency must make the facility's compliance history available to the public. A compliance history may include many of any permit violations, when violations have occurred, and how the violations have been corrected.

Default Provision. The procedures for Class Two modifications include a default provision to ensure that the permitting agency responds promptly to the facility's request. The agency must respond to a request within 90 days or, if the agency calls for an extension, 120 days. If the agency does not reach a final decision on the request within 120 days, the facility is automatically allowed to conduct the requested activities for 180 days. During this period, the facility must comply with all federal and state regulations governing hazardous

waste facilities. If the permitting agency still has not acted by day 250, the facility then must let the public know that the facility will become permanently authorized to conduct the proposed activities unless the agency approves or denies the request by day 300. At any time during the Class Two procedures, the agency may reclassify the request as Class Three if thee is significant public concern or if the permitting agency determines that the facility's proposal is too complex for the Class Two procedures. This reclassification would remove the possibility of an automatic decision by default.

Class Two Modification Schedule

Day 1	Modification request received by agency. Newspaper notice published and mailing list notified.
Days 15-45	Informal public meeting held.
Day 60	Written public comments due to agency.
Day 90	Agency response to Class Two modification request due. Deadline may be extended 30 days.
Day 120	If no response, requested activity may begin for 180 days.
Day 250	If still no response, public notified.
Day 300	If still no response, activity permanently authorized.

Class Three Modifications

Class Three modifications address changes that substantially alter a facility or its operation. For example, the following modification requests fall under Class Three:

- Requests to manage new wastes that require different management practices.
- Major changes to landfill, surface impoundment, and waste pile liner, leachate collection, and detection systems.
- Increases in tank, container, or incinerator capacity of more than 25 percent.
- Major changes to the facility's groundwater monitoring program.

Involving the Public. For Class Three modifications, the facility must initially follow the same public notice, comment, and meeting procedures as for Class Two modifications. This allows for early public review and comment on proposed changes. Then the permitting agency must prepare a draft permit modification, allow 45 days for public comment on the draft, hold a public hearing if requested, and then issue or deny the permit modification request.

Public Involvement Steps for Class Three Modifications:

The facility representative

- Requests a modification of the permit to the permitting agency.
- Notifies the public.
- Holds a public meeting

The permitting agency

- Allows 60 days for public comment on the modification requests.
- Prepare draft permit modification conditions.
- Notifies the public of the agency's draft permit conditions.
- Allows 45 fays for public comment on permit conditions.
- Holds a public hearing, if requested.
- Issues or denies the revised permit conditions.

Temporary Authorization

For certain Class Two or Three modifications, the permitting agency may grant a facility temporary authorization to perform retain activities for up to 180 days. For example, temporary authorization may be granted to ensure that cleanups, or corrective actions, and closure activities can be undertaken quickly and that sudden changes in operations not covered under a facility's permit can be addressed promptly. Activities performed under a temporary authorization must comply with the applicable waste management regulations. The facility must notify the public within seven days of making the request. The permitting agency may grant a temporary authorization without notifying the public. A facility may renew a temporary authorization only by requesting permit modification and initiating public participation.

Administering Permit Modifications

These procedures are effective only in states where EPA administers the RCRA program. States with hazardous waste programs equivalent to, or more stringent than, the federal program may be authorized by EPA to administered RCRA hazardous waste programs. Authorized states are not required to adopt this new permit modification process, although it is expected that many of them will. Therefore, for state-administered RCRA permits, the state agency may use different modification procedures until it adopts the new modification approach. However, EPA may use these new procedures in authorized states whenever it is necessary to change a RCRA permit to implement provisions imposed by federal law. EPA regional offices, listed below, maintain up-to-date information about which states are following this and other hazardous waste programs.

Getting Involved

EPA encourages community involvement in the permitting and permit modification processes. The revised permit modification procedures expand opportunities for the public to be notified and to participate. The procedures also allow for the expeditious approval of requests when there is no apparent public concern about proposed changes.

Citizen Involvement Steps

- Contact your EPA regional office or state agency to identify the permitting agency.
- Write the permitting agency and

request to be put on the mailing list to receive notices of permit modification requests.

Review modification requests.

State your support for, or objection to, the requested modification during the public comment period by providing written comments.

Participate in the public meetings. These informal meetings allow facility representatives to explain their permit modification requests and answer your questions.

For a copy of the new regulations governing the permit modification process and more information on the new permit modification process or other RCRA programs, call EPA's RCRA Hotline: 800-424-9346; in Washington, DC., the number is 382-3000. Or contact EPA Regional Offices:

Region I
JFK Federal Building
Boston, MA 02203
(617) 573-9644

Region II
26 Federal Plaza
New York, NY 10278
(212) 264-8683

Region III
841 Chestnut Building
Philadelphia, PA 19107
(215) 597-7940

Region IV
345 Courtland Street, N.E.
Atlanta, GA 30365
(404) 347-3433

Region V
230 S Dearborn Street
13th Floor (HR-11)
Chicago, IL 60604
(312) 353-0398

Region VI
First International Bldg..
1445 Ross Avenue
Dallas, TX 75202
(214) 655-6785

Region VII
726 Minnesota Avenue
Kansas City, KS 66101
(913) 236-2888

Region VIII
999 18th Street
One Denver Pl., Suite 1300
Denver, CO 80202-2413
(303) 293-1676

Region IX
215 Fremont Street
San Francisco, CA 94105
(415) 974-8026

Region X
1200 Sixth Avenue
Seattle, WA 98101
(206) 442-1099

United States
Environmental Protection
Agency
Office of Solid Waste
Washington, DC 20460

APPENDIX M -- PUBLIC PARTICIPATION RESOURCES AVAILABLE TO THE PERMITTING AGENCY

Two keys to developing an effective public participation program are knowing who within your agency or elsewhere can provide support on public participation activities and knowing where to obtain information. Most Regions have one person assigned as the **public involvement coordinator** (PIC). The PIC serves as a liaison between community members and permit writers, enforcement personnel (both EPA and state), facility owners and operators, and other individuals or groups. The PIC oversees the implementation of the overall public participation program. He or she may handle logistics for public meetings, develop and maintain mailing lists, and review and/or help prepare news releases, fact sheets, and informational materials.

Other individuals who may be able to assist with public participation activities include:

Other EPA Staff - Other members of the EPA Regional technical, legal, public affairs, project officer, or permit writer staffs are also valuable resources. It is essential that these staff coordinate their efforts. They can provide technical assessments of the facility for release to the public or provide information relative to permitting issues and aspects of enforcement, compliance, and corrective action activities developed for the facility. Graphic designers, typesetters, and other support staff can help you with your program. In addition, CERCLA community relations coordinators in your office who have sites in the same community could take care of some of your activities, or at least provide you with valuable advice.

State Personnel - In authorized states, most of the public participation responsibilities listed for EPA staff will be assumed by state personnel. Regardless of authorization status, state agencies should play an active role in the development and implementation of public participation programs. For example, agencies in unauthorized states can provide information such as names for inclusion on a mailing list, background information on a facility's history, and knowledge of community attitudes toward the facility.

Facility Staff - While oversight of the permitting and enforcement processes is the sole responsibility of the regulatory agency, facility owners or operators are responsible for conducting a number of activities. In addition, facilities resources and staff can provide for public participation activities that go beyond the regulatory requirements.

Public Interest Groups - Community groups, civic organizations, environmental groups, religious and educational organizations may all provide public participation activities that supplement the requirements. The agency may consider teaming with a local public interest group to provide opportunities for the public to learn more about the permitting process or technical issues. Public interest groups may be able to provide resources or personnel to help maintain repositories or to provide informational newsletters. The agency may also consider contacting an impartial civic organization (e.g., the League of Women Voters) to mediate at public meetings or other functions.

Contractors - Public participation contractors who work for your agency can provide support by conducting some of the more time-consuming activities, such as community interviews or logistics for public meetings.

If There's No One Who Can Help - You may be the only person available to conduct public participation activities, in which case you need to estimate your level of effort carefully so that you can choose the activities that will give you and members of the public the most benefit. You need to consider your schedule as well, and plan activities so that they complement your technical schedule and leave time for appropriate public participation.

Additional Sources of Assistance

Information Resources - Each EPA Regional office should have informational materials available to help plan public participation strategies and assist in assessing a community's needs and in implementing responsive activities. PICs should be able to guide you to specific manuals, guidance documents, and memoranda that elaborate on regulations and principles of public participation and give helpful tips on implementing successful programs. For example, the three-volume *RCRA Public Involvement Reference Catalog* (September

1990) is a repository of materials from which readers can gather ideas and information concerning the RCRA program and RCRA public participation. You may also want to research materials from other EPA programs, such as Superfund, or outside sources to gather ideas that may be useful in dealing with particular permitting situations.

Training - Training is generally available for staff in a variety of areas, including public participation, community relations, risk communication, and community outreach. If training specific to the RCRA program is not available, you can easily adapt community outreach activities used in other programs to your RCRA situation. The techniques and methods used for RCRA public participation programs -- such as public meetings, fact sheets, and information repositories -- are also used in other programs.

Other Materials - There also are ready-made resources available for you to use in your program. EPA has developed fact sheet templates for RCRA actions, storyboards that describe the permitting process, and other information materials to save you time in developing public involvement information. The Regional PIC can provide more information on these materials.

APPENDIX N -- IMPLEMENTATION OF RCRA EXPANDED PUBLIC PARTICIPATION RULE -- MEMO FROM ELLIOTT LAWS TO EPA REGIONAL ADMINISTRATORS (12/20/95)

MEMORANDUM

SUBJECT: Implementation of the RCRA Expanded Public Participation Rule

FROM: Elliott Laws, Assistant Administrator

TO: Regional Administrators
Regions I - X

The Agency will soon take a major step forward in its effort to promote public involvement and environmental justice by promulgating the "RCRA Expanded Public Participation Rule."

The final rule will improve the RCRA permitting process by: (1) providing earlier opportunities for public involvement in the process and (2) expanding public access to information throughout the permitting process and the operational lives of facilities. The rule's requirements include: a facility-led pre-application meeting; agency notice at application submittal; agency notice of impending trial burns; and a provision for information repositories.

Immediate Implementation

While the effective date of the rule will not arrive until six months after promulgation, I am recommending that all EPA Regions start meeting the goals of the final rule as soon as possible. The Regions, in turn, should encourage the States and individual RCRA facilities to meet these goals even as States are pursuing authorization for components (e.g., this rule, BIF permitting, and corrective action) of the RCRA program.

Early implementation of the final rule will allow the public to benefit immediately from the rule's new and important procedures. This early implementation will be useful for the entire program and help the Agency fulfill its commitment to meaningful public involvement in RCRA permitting.

I would like to express my appreciation to the Regions for working to achieve these goals since the Agency proposed the rule in June 1994. We are encouraged by the positive reception these new standards have received, and look forward to full implementation.

Guidance on Equitable and Flexible Public Participation

The development of the final rule involved a balance between broader, more equitable public participation and flexibility for individual permit writers, facilities, and communities to adopt the most appropriate, site-specific approaches. Some of the principles underlying the final rule would have been difficult to prescribe through regulation. We decided that, instead of trying to achieve these goals through regulatory language, the public interest would be served best by encouraging permitting agencies and permit applicants to adopt these principles through guidance.

Consistent with this approach, you should abide by the following principles in your permitting efforts:

- Using all reasonable means to ensure that all segments of the population have an equal opportunity to participate in the permitting process and have equal access to information in the process. These means may include, but are not limited to, multilingual notices and fact sheets, as well as translators, in areas where the affected community contains significant numbers of people who do not speak English as a first language;

- Addressing environmental justice concerns, in part, by expanding access to information (particularly in a multilingual format) and opportunities for public input (through tools such as information repositories); and

- Going beyond the regulatory requirements, where appropriate, to provide for a level of public involvement that is commensurate with public interest in the permitting issue.

I also encourage State permitting agencies and permit applicants to adopt these principles in their dealings with the RCRA program. These policies will improve the RCRA permitting program and promote the Agency's commitments in the area of equitable public participation.

We are providing further guidance for implementing the final rule and this policy directive in our update of the 1993 RCRA Public Involvement Manual (EPA530-R-93-006, September 1993). We anticipate issuing the new guidance document in Spring 1996. The revised manual will provide guidance to regulated facilities and affected communities, as well as permitting agencies.

If you need any additional information about the rule, the policies in this memorandum, or the upcoming guidance manual please contact Patricia Buzzell of my staff at (703) 308-8632.

cc: Michael Shapiro
Linda Garczynski, OSPS
Matt Hale
Frank McAlister
Patricia Buzzell
Fred Chanania
Paul Bangser, OGC
Hazardous Waste Management Division Directors, Regions I - X
Hazardous Waste Management Division Branch Chiefs, Regions I - X
RCRA Public Involvement Network
Lance Miller, Permits Improvement Team

APPENDIX 0 -- OVERVIEW OF PUBLIC PARTICIPATION IN THE ENTIRE RCRA PROGRAM (EXCERPT FROM 1990 RCRA ORIENTATION MANUAL)

SECTION VII

PUBLIC PARTICIPATION

OVERVIEW

GENERAL EPA PUBLIC PARTICIPATION REQUIREMENTS

- FREEDOM OF INFORMATION ACT

RCRA PUBLIC PARTICIPATION REQUIREMENTS

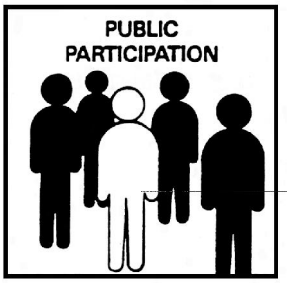
- STATUTORY REQUIREMENTS
- PROGRAM IMPLEMENTATION
- ENFORCEMENT
- REGULATIONS
- CONFIDENTIAL BUSINESS INFORMATION
- GUIDANCE

OUTREACH AND PUBLIC ASSISTANCE

- RCRA/SUPERFUND HOTLINE
- OFFICE OF OMBUDSMAN

SUMMARY

SECTION VII PUBLIC PARTICIPATION



OVERVIEW

The right of the public to participate in government decisions is basic to our democratic system. In few places is this right exercised more than in the area of hazardous waste management. The public is deeply concerned about, and often fretful of, the potential impacts of hazardous waste on their health and safety. In recognition of their rights and interest in hazardous waste management, and in a conscious attempt to include them in the decision-making process, the government gives the public numerous opportunities to get involved in all phases of the RCRA program.

The overall goal of public participation is to build trust and credibility, and to keep emotions, human energy, and conflicts focused on substantive issues and solutions. Public participation provides an opportunity for all interested parties to become informed and involved, and to influence program development and implementation. Further, EPA managers have found that active public participation provides a forum to identify and address concerns thus reducing conflict.

This chapter details the public participation framework established for EPA and, where applicable, specifically for RCRA. It includes descriptions of the statutory and regulatory requirements and a summary of guidance materials that address public participation.

GENERAL EPA PUBLIC PARTICIPATION REQUIREMENTS

In consideration of the importance of citizen involvement, Congress established public participation requirements that apply to all environmental programs administered by EPA. They are outlined in the Administrative Procedures Act ((aAPA) 5 U.S.C. Sections 551-559) and include:

Providing information and soliciting comments on all proposed and final Agency actions, e.g., the development of regulations

Incorporating public comments into the decision-making process, and

Establishing an appeals process for certain Agency decisions.

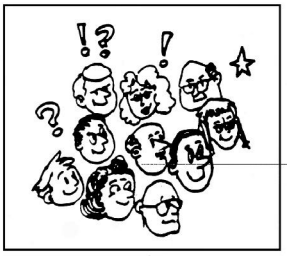
State employees should consult State administrative regulations for further guidance on public participation requirements. The participation requirements in the Federal APA assure the public a voice in EPA decision making.

Freedom of Information Act

The Freedom of Information Act (FOIA) -- which serves as the government's primary mechanism for handling information requests -- guarantees that the public will have access to government records, including those of the EPA. Specifically, it requires each Federal agency to establish procedures for handling FOIA requests regarding government statutes, regulations, standards, permit conditions, requirements, orders, or policies.

EPA, therefore, has pursued a policy of fully disclosing its records to the public, consistent with the rights of persons entitled to confidential business information (CBI), and the need for EPA to promote frank internal policy deliberations. EPA will disclose information to any requester to the fullest extent possible without unjustifiable expense or unnecessary delay.

FOIA requests are written for records held by or believed to be held by EPA. FOIA requests must reasonably describe the records in a manner that will permit proper identification of government documents or records. Although requestors do not need to name the specific documents in question, they must provide a clear description of the information they seek. The FOIA refers to all written requests, regardless of whether the requester refers to the FOIA or not. Any existing form of information may be covered, but the FOIA does not require the creation of new records. A FOIA request can be made by any person, corporation, or organization.



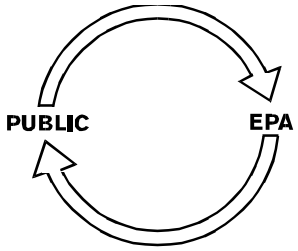
RCRA PUBLIC PARTICIPATION REQUIREMENTS

However, because the issues surrounding hazardous waste management often arouse intense public sentiments, the public participation framework developed under RCRA further expands citizen opportunity for involvement well beyond Agency-wide requirements. This framework has three parts:

Statutory requirements
Regulatory requirements, and
Guidance.

Statutory Requirements

When it implements the RCRA program within a State, EPA gives the public access to facility and site information relating to permitting, compliance, enforcement, and inspections. RCRA Section 3006 requires authorized States to make this information available to the public in a manner substantially similar in method and degree to EPA-implemented RCRA programs. In certain cases, however, the information may be confidential and unavailable to the public, e.g., when company trade secrets are involved. The following section discusses the specific requirements for dealing with confidential business information which are principally regulatory requirements.



Program Implementation

Section 3006 of RCRA requires that public comments be solicited before:

A State submits an application for Subtitle C final authorization

EPA decides to grant or deny a State authorization

EPA withdraws a State's authorization, and

EPA suspends or revokes a hazardous waste facility permit.

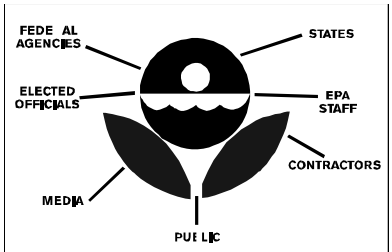
Enforcement

Section 7002 of RCRA gives fairly broad legal authority to ensure that the entire RCRA program is properly implemented. It allows a citizen to bring a civil suit against any person or government agency alleged to be in violation of any permit, standard, regulation, condition, requirement, or order that has become effective under the Act.

HSWA expanded citizen rights to bring suit against RCRA violators by allowing private individuals to initiate suits against any past or present generator, transporter, owner, or operator of a facility who has contributed to or is contributing to a condition that may present an imminent and substantial endangerment to human health and the environment.

However, the right of citizens to bring suits under Section 7002 is limited in certain situations. No suit may be brought if EPA or a State is already taking enforcement action against the alleged violator. HSWA further limits the reach of such suits by prohibiting them from impeding permit issuance or facility siting. Finally, citizens are prohibited from suing transporters for problems that arise following the delivery of hazardous waste.

Regulations



Who Is Involved In Public Participation?

The RCRA regulations under 40 CFR Part 25 focus on:

Ensuring that the public understands the RCRA program and any proposed changes to it

Responding to public concerns and including the public in the decision-making process

Developing a close link among EPA, States, and the public, and

Providing opportunities for public participation beyond what is required, whenever feasible.

To achieve these regulatory goals, agencies implementing RCRA are required to:

Provide free copies of reports upon request

Alert interested and affected parties of upcoming public hearings, and

Establish EPA-funded advisory groups when an issue warrants sustained input from a core group of citizens.

In addition to the 40 CFR Part 25 regulations, EPA's permitting regulations (40 CFR Part 124) also address public participation. They require the permitting agency to:

Notify the public of the intent to issue or deny a permit

Provide the public 45 days to comment on the permit application

Consider public comments regarding permit violations, and

Notify the public of proposed major modifications to an

operating permit.

In addition, 40 CFR Parts 264 and 265 require public notice and comments on RCRA closure plans.

Confidential Business Information

In the course of administering EPA programs, agency officials have access to material containing CBI, e.g. trade secrets and proprietary information. Because EPA must protect the rights of those who submit privileged information, employees are required to take all reasonable measures to prevent unauthorized disclosure of CBI Regulations regarding confidentiality are contained in 40 CFR Part 2, Subpart B. These apply to RCRA as well as other EPA programs.

These regulations identify the proper procedures businesses must employ to claim confidentiality. In addition, these regulations establish the guidelines EPA must use to determine the validity of the claim, and impose rules for handling CBI.

When EPA notifies a business that it must submit confidential information for review, EPA also must notify the business of its right to assert a claim of confidentiality. Businesses responding to EPA's queries must clearly identify all confidential documents, materials, and information. EPA then determines the validity of the CBI claim. Businesses can claim information as confidential if it meets certain criteria, e.g., it has been previously protected as confidential, or it is not reasonably obtainable by others.

Employees authorized to use CBI are responsible for the control of such information and they may discuss CBI only with other authorized persons. Any violations should be reported immediately. In addition, employees must not discuss CBI over the telephone and when holding confidential information, they must store the confidential materials in an approved container when not in use. Finally, when working with representatives of businesses that have submitted CBI, employees must verify the representatives' identities before discussing any of the confidential information.

Guidance

To supplement its statutory and regulatory requirements, EPA developed guidance documents regarding public participation in RCRA permitting. The guidance stresses the importance of:

Identifying public concerns early in the permitting process

Encouraging the exchange of information among EPA, the State, the permittee, and the community

Creating open and equal access to the permitting process, and

Anticipating conflicts and providing an efficient method of resolution.

In some cases, EPA or the State may develop a Public Involvement Plan. This plan outlines the steps and actions EPA will take to communicate with the public during the facility permitting process.

OUTREACH AND PUBLIC ASSISTANCE

A number of opportunities exist for the public to obtain RCRA program information and assistance, including fact sheets and pamphlets. Two particularly noteworthy programs include:

The RCRA/Superfund Hotline
The Office of Ombudsman.

RCRA/Superfund Hotline

Hazardous waste regulations often seem complex even to those familiar with EPA's programs. To assist the public in understanding the RCRA and Superfund programs, EPA created the RCRA/Superfund Hotline. Anyone may call the Hotline staff and ask them questions related to the RCRA and Superfund programs. The Hotline is staffed by professionals who are completely familiar with the latest issues and regulations affecting EPA's hazardous waste programs. The Hotline is open Monday through Friday from 8:30 AM to 7:30 PM, and may be contacted at either (202) 382-3000, or toll free (800) 424-9346.

Office of Ombudsman

In order to create a central clearinghouse for public concerns on matters relating to the implementation and enforcement of RCRA, EPA established the Office of Ombudsman and appointed a Hazardous Waste Ombudsman in Headquarters and each Region. The Ombudsman's primary responsibility is to respond to questions and complaints regarding EPA's hazardous waste program. In addition, the Ombudsman makes recommendations to the Administrator based on inquiries received. The Headquarters Ombudsman may be reached at:

Office of Ombudsman
U.S. Environmental Protection Agency
Office of Solid Waste and Emergency Response
Mail Code OS-130
401 M Street, SE
Washington, DC 20460
(202) 475-9361

SUMMARY

The public participation framework developed under RCRA expands citizen opportunity for involvement well beyond Agency-wide requirements (outlined in the Administrative Procedures Act and Freedom of Information Act). This framework consists of:

Statutory requirements
Regulations
Guidance.

RCRA-mandated programs integrate public comment into many decisions, including State authorization and facility permitting.

EPA adheres to legal requirements for the access to and release of information. In order to protect rights of private industry, EPA also has set standards for the use of privileged company data. EPA strictly regulates CBI by carefully limiting employee access to such information, by strictly controlling the use and storage of such information, and by verifying corporate identify before discussing such information.

To assist citizens with the RCRA program, EPA created a number of public outreach programs, the most noteworthy of these are the RCRA/Superfund Hotline and the Office of the Ombudsman.

APPENDIX P -- PUBLIC PARTICIPATION IN ENFORCEMENT AND COMPLIANCE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 5, 1987

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Guidance for Public Involvement in RCRA Section 3008(h) Actions

FROM: J. Winston Porter
Assistant Administrator

TO: ADDRESSEES

EPA is committed to providing meaningful opportunity to the public to be informed of and participate in decisions that affect them and their community. This memorandum provides guidance on public involvement actions taken under Section 3008(h) of the Resource Conservation and Recovery Act (RCRA).

It is highly likely that corrective action activities, which differ from normal operations at a facility, will generate public concern. The nature of the problem and the visibility of corrective action activities are two reasons for EPA to involve the public during the corrective action process. If the public is informed early, and allowed to be involved in the decision-making, it is less likely that there will be opposition to the decisions that are made. Also, valuable information can be obtained from concerned citizens who may know the site and facility's history.

Section 3008(h), the interim status corrective action authority, allows EPA to take enforcement action to require clean-up at a RCRA interim status facility when the Agency has information that there has been a release of hazardous waste or hazardous constituents. We anticipate that the cleanup program under Section 3008(h) will frequently be implemented with two orders. The first order would require the owner or operator to conduct a study to characterize the nature and extent of contamination, and to develop a remedy or alternative remedies as needed. Once a remedy has been selected, a second order would require design, construction, and implementation of that remedy.

MINIMUM PUBLIC INVOLVEMENT REQUIREMENTS

Although there will be many situations where much additional public involvement will be necessary, I would like to emphasize that there are minimum requirements for all 3008(h) orders, whether on consent or unilateral. Following the respondent's submission of its report on the RCRA Facility Investigation and Corrective Measures Study, the Agency will develop a proposed plan for corrective measures, or make the decision that no corrective measures are necessary. The Agency shall then (1) publish a notice and brief analysis of the proposed plan for corrective measures, or of its decision that no corrective measures are necessary, and make such information available to the public, and (2) provide a reasonable opportunity (ordinarily 30-45 days) for submission of written comments and, if the Regional Administrator deems it appropriate, a public meeting on the plan. If the Regional Administrator denies a request for a public meeting, he shall explain his decision in writing.

The Agency shall, as necessary, modify its proposed plan for corrective measures on the basis of written and oral comments received. Prior to issuance of the initial order for corrective measures the Agency shall prepare a responsiveness summary indicating whether and why it has accepted or rejected any significant comments. Following finalization of the order for corrective measures but before implementation of corrective measures, notice of the final plan for corrective measures shall be published and the plan shall be made available to the public.

Where, in the interest of protecting human health and the environment, it is important that interim corrective measures be implemented quickly, the public will have no advance opportunity for written or oral comments. Here, EPA will simply provide substantially contemporaneous notice to the public of interim measures being implemented.

EXPANDED PUBLIC INVOLVEMENT MAY BE NECESSARY

The degree of public involvement in a corrective action program will be determined by the amount of public interest in the site, the actual or potential hazard to human health or the environment and the type of clean-up action that will be undertaken. In general, if the Agency has identified releases and determined that they require investigation, the public should be informed that studies are underway. The Region may also want to hold additional public meetings if there is a lot of interest in the facility. The public should be made aware of significant

technical issues at the site. There will be occasions where affected citizens can make valuable contributions to remedy selection through participation in technical discussions with owners or operators and government representatives.

We strongly urge the use of a public involvement plan for sites in which there is likely to be significant public interest. At appropriate points during the process, fact sheets can be developed that should both inform the public and allay fears that could surface if no substantive knowledge were made available. A public involvement plan tailored to each site can also be very helpful. You may refer to Community Relations in Superfund: A Handbook March 1986, and Public Involvement Guidance in the Permitting Program , March 1986, Directive 9500.01, for further information on public involvement techniques and process. The regional RCRA public involvement coordinator can also offer valuable information and assistance.

There are limitations on the release or discussion of certain information during the §3008(h) enforcement process. This is especially true during negotiations. The confidentiality of statements made during the course of negotiations must be maintained. Our goal during negotiations is to encourage frank discussion of all issues, and try to resolve differences. Public disclosure of this information would jeopardize the success of the negotiations. Disclosures of strengths and weaknesses of a case, information that is privileged and protected under the law, enforcement strategy and timing would also jeopardize the government's enforcement position. If a case is referred to the Department of Justice to initiate litigation, further constraints may be placed upon public involvement. In this situation, the scope of public involvement should be discussed with the lead DOJ attorney.

Coordination among EPA and/or State personnel is very important. At some sites, RCRA Permits and Enforcement Personnel and Superfund will be involved, and a coordinated approach will serve the Agency and the public best. In order to establish a network whereby information can be exchanged, I would like each region to appoint a coordinator for public involvement in §3008(h) orders. This person may be from either your public involvement or enforcement staffs. Please call Jackie Tenusak of my staff at FTS 475-8729 with the name of your contact.

Thank you for your attention to this matter. Please do not hesitate to call me, or any of our public involvement staff, if you have questions.

ADDRESSEES

Regional Hazardous Waste Management Division Directors,
Regions I-X

RCRA Enforcement Section Chiefs
Regions I-X

RCRA Enforcement Branch Chiefs
Regions I-X

Public Involvement/Community Relations Coordinators
Regions I-X

cc: Pamela Garrow, OWPE
Olga Corey, OWPE
Vanessa Musgrave, OSW
Melissa Friedland, OERR

United States
Environmental Protection
Agency

Office of
Enforcement
(LE-133)

March 1990

The Public's Role In Environmental Enforcement

1. Introduction

What can the public do to stop pollution? This question is asked EPA every day by citizens who have seen a pollution problem in their community and want to solve it.

This leaflet presents the first basic steps any member of the public an take to help correct a pollution problem. It describes approaches that can help the reader deal with the type of violations most often encountered by the public. Unfortunately, space does not permit coverage of every possible rare case situation.

Section 2 tells you how to determine whether enforcement techniques can help in dealing with your particular pollution problem, and how to make observations that can be used effectively. It describes the basic steps you can use in any pollution case.

Sections 3 through 6 address the violations most often encountered by the public in the major categories of water pollution, air pollution, hazardous waste pollution, and toxic substances pollution. It describes some specialized steps that may be useful for each of those environmental media.

2. The First Steps

The two most important things to do when you see a potential pollution problem are: (1) make careful observations of the problem and (2) report it to the proper authorities.

You should fully record your observations. Write down when you observed the problem (both date and time), where you observed the pollution, and how you came to notice the pollution. If the pollution problem has occurred more than once or is continuing, write that down. If possible, try to identify the person or source responsible. If it is a truck dumping wastewater or garbage, write down the license plate of the truck, the type of truck if possible, and note any signs or emblems on the truck. If you have noticed a particular type of smell, write down your best description of the smell or odor. If the pollution is visible and you have a camera, take a picture. If possible, you may want a friend, neighbor, or family member to confirm your observations.

Once you have carefully observed the problem and written down your observations, you should call the appropriate local or state authorities to inform them of your observations. Look in your local telephone book in the government pages for the county or city office that might handle the problem. Typically, such offices will be listed as environmental, public health, public works, water pollution, air pollution, or hazardous waste agencies. If you cannot find a county or city office, look for a state government environmental office. It may require a few calls to find the correct offices, but hang in there!

Once you reach the appropriate office, give the official all the information on what you observed and ask him or her to look into the problem. You should ask the official whether the problem you have identified is likely to be illegal, how common it is, and how and when the office will investigate. Make sure you get the person's name and telephone number. If the person does not call back or respond promptly, call the person back and ask what is going on.

If the city or county environmental agency does not respond adequately to your telephone call, you may call back and ask to speak to the official supervisor or boss. If the supervisor is not available, get his or her name and address. You may then write this person a letter describing the problem you have observed and explaining your dissatisfaction with the office's response to it. Or you could contact the appropriate state environmental office directly, by telephone or letter. If you cannot get an adequate response from local or state environmental offices, or you cannot find a local or state office to call, you may call the U.S. EPA regional office that covers your area. A listing of all the U.S. EPA regional offices, with telephone numbers, is in the last section of this booklet.

If the pollution problem persists and the local, state, and regional U.S. EPA offices appear unwilling or unable to help, you may contact U.S. EPA headquarters in Washington, DC. If you do not believe the government agencies have adequately responded to the pollution problem, and you believe the pollution is illegal and the problem appears to be continuing, you may have certain individual rights under the citizen suit provisions of the various federal environmental laws that you can assert to remedy the

pollution problem yourself. You may wish to contact your own attorney or a public interest environmental group. A listing of national and state environmental groups is contained in the *Conservation Directory*, published annually by the National Wildlife Federation, Washington, D.C., and available in many public libraries. If you win such a lawsuit, the polluter will likely be required to correct the problem causing the pollution, pay penalties to the United States for violating the law, and pay your attorney's fees.

Finally, if you are told that the pollution problem you have observed is legal, but you believe it should not be legal, you are free to suggest changes in the law by writing to your U.S. Senator or Representative in Washington, D.C. or to your state governor or state legislators to inform them of the problem. Local libraries should have the names and addresses of these elected officials.

3. How to Identify And Respond to A Water Pollution Problem

Periodically, people may become concerned that pollution of a river, stream, lake, or ocean is occurring. This concern may be caused by the sight of an oil sheen on the surface of a river, stream, or lake. It might be caused by their observing a discoloration of the water in a stream or a pipe discharging apparently noxious liquids into a water body. Concern might also arise because an unusual odor is emanating from a body of water, or a bulldozer is seen filling in a marsh or wetland.

While some water pollution is an unfortunate consequence of modern industrial life, there are national, state and local laws that limited the amount and kinds of water pollution allowed, and in some cases these laws completely prohibit certain types of water pollution. Sometimes it will be easy for a citizen to identify water pollution that is a violation of the law, and sometimes it will be difficult to identify the water pollution problem without sophisticated equipment.

Here are a few general types of water pollution problems a citizen might observe:

Rivers and Lakes - A citizen might observe wastewater flowing out of a pipe directly into a stream, river, lake, or even an ocean. Persons are only allowed to discharge wastewater into a water body if they have receive a National Pollutant Discharge Elimination System ("NPDES") permit and they are complying with the requirements of that permit. NPDES permits limit the amount of pollutants which persons are allowed to discharge. Unfortunately, it is often difficult to tell with the naked eye if a person is complying with the terms of a NPDES permit. However, some reliable indicators of violations are a discharge that level visible oil or grease on the water, a discharge that has a distinct color or odor, or one that contains a lot of foam and solids. Further, if there are dead fish in the vicinity of the discharge, this is a strong indicator of a water pollution violation.

Citizens should be aware that all persons who discharge wastewater to U.S. waters must report their discharges. These monthly reports (commonly called Discharge Monitoring Reports, or "DMRs") indicate the amount of pollutants being discharged and whether the discharger has complied with its permit during the course of the month. These reports (DMRs) are available to the public through state environmental offices or EPA regional offices.

Wetlands or Marshes - Under the Federal Clean Water Act, persons are only allowed to fill wetlands (commonly known as marshes or swamps) pursuant to the terms of a special discharge permit, commonly called a Section 404 permit. "Filling a wetland" generally means that a person is placing fill or dredge material (like dirt or concrete) into the wetland in order to dry it out so that something can be built on the wetland. The Section 404 wetlands program is jointly administered by the U.S. Army Corps of Engineers and EPA. In general, the United States is committed to preserving its wetlands (sometimes called the "no-net loss" program) because of the valuable role wetlands play in our environment. In brief, wetlands provide a habitat for many forms of fish, wildlife, and

migratory birds; they help control flooding and erosion; and they filter out harmful chemicals that might otherwise enter nearby water bodies.

In general, there is usually no way to know if a wetland is being filled legally or illegally without knowing whether the person has a Section 404 permit and knowing the terms of that permit. However, if you notice fill activity going on in a suspicious manner, e.g., late at night, this may suggest that the wetland is being filled illegally. If you see a wetland being filled and are curious whether there is a permit authorizing such filling, you may call the local Army Corps of Engineers' office or the EPA regional offices in your state. If possible, you should tell the Army Corps or EPA the location of the wetland being filled, what kind of filling activity you noticed, and who is doing the filling.

Drinking Water - The Nation's drinking water is protected through the Federal Safety Drinking Water Act. Under this law, suppliers of drinking water are required to ensure that their water complies with federal standards (known as maximum contaminant levels, or "MCLs" for various pollutants and chemicals, such as coliform bacteria. If drinking water suppliers exceed a federal standard, they are required to immediately notify their users and implement measures to correct the problem. While you may not be able to tell if your drinking water is meeting all federal standards without testing equipment, if you notice any unusual smell, taste, or color in your water, you should immediately notify the person who supplies your water and the appropriate state agency.

In many of the circumstances when citizens become aware of a water pollution problem, there are actions that they can take to begin the process of correcting the problem and forcing the violator to comply with the law. The first step is always to make careful observations of the pollution event that you are observing. It is best to make a written record of the time and place of the sighting. As many details as possible should be recorded concerning the nature of the pollution, for instance its color, smell, location, and its "oiliness". It is extremely important, if possible, that the source of the pollution be identified, including the name and address of the perpetrator. If the pollution is visible and you have a camera, you may take a picture. If possible, you may want a friend, neighbor, or family member to confirm your observations.

Once you have carefully observed the problem and written down your observations, you should call the appropriate local or state authorities to inform them of your observations. Look in your local telephone book in the government pages for the county or city office that might handle the problem. Typically, such offices will be listed as environmental, public health, public works, or water pollution agencies. If you cannot find a county or city office, look for a state government environmental office.

As the next step, a determination must be made as to the legality of the discharge. If the discharge is, in fact, illegal, the perpetrator must be confronted, the discharging of pollutants or the filling of the wetland must be halted, and, if feasible, the environmental damage caused by the perpetrator's actions must be corrected. Confrontation of the polluter is most practically achieved by contacting the local, state, or federal environmental protection agency. In general, the state environmental agency is responsible for making a preliminary assessment of the legality of the pollution event observed, for investigating the vent, and, if necessary, for initiating an enforcement action to bring the polluter into compliance with the law. The citizen may also contact the U.S. EPA regional office that covers your state for assistance. A listing of all the U.S. EPA regional offices, with telephone numbers, is listed at the end of this booklet.

If the pollution problem persists and the local, state, and regional U.S. EPA offices appear unwilling or unable to help, you may contact U.S. EPA headquarters in Washington, D.C.

Lastly, if you do not believe the federal, state, or local governments have adequately responded to the pollution problem, and you believe the pollution is illegal and appears to be continuing, you may have certain individual rights under the citizen suit provisions of the various federal environmental laws that you can assert to remedy the pollution problem yourself. The Federal Clean Water Act provides that a citizen adversely affected by water pollution may bring a lawsuit on behalf of the United States to correct the problem. If you want to do this, you will probably need a lawyer to make an assessment of the illegality of the pollution event and your chances of succeeding in a lawsuit. There are a number of public interest organizations who can be contacted that are in the business of bringing this kind of lawsuit. (A listing of national and state

environmental groups is contained in the *Conservation Directory*, 1987, 32nd Edition, published by the National Wildlife Federation, Washington, DC) If you win such a lawsuit, the polluter will likely be required to correct the problem causing the pollution, pay penalties to the United States for violating the law, and pay your attorney's fees.

Finally, if you have obtained "insider" information that water pollution is occurring, the Clean Water Act protects you from recrimination if the polluter is your employer. Your employer may not fire you or otherwise discriminate against you based on your "blowing the whistle".

To repeat, there are two ways to proceed if you suspect that water pollution is occurring: either contact your state EPA or the U.S. EPA to disclose your information and/or initiate your own citizen's lawsuit.

4. Air Pollution

Smoke or Odor - There are several air pollution situations a citizen might observe. You might observe visible emissions of air pollutants, such as black clouds of smoke, coming from a source such as a factory or power plant. You might also notice a discharge of air pollution because you can smell a strong odor. In either of these situations, these discharges may or may not be a violation of the Clean Air Act.

The Clean Air Act does allow some pollution discharges. The goal of the Clean Air Act is to keep the overall concentration of the major air pollutants at a level that will protect the public health. States then decide how they are going to meet these air pollution goals. A state may decide not to regulate a particular category of air pollution sources at all and to concentrate its efforts elsewhere in meeting its goals. Regulated sources may have permits from the state allowing them to discharge a certain level of pollution.

The best course of action for a citizen to take in these two situations is first to try to determine the exact source of the pollution. If it is a visible discharge, take a photograph. Also, note the exact time, day and location you observe the pollution.

Then notify your local or state air pollution or environmental agency of your observations. They should be able to determine if the source you observed is regulated, and if so, whether the discharge of pollution you observed is legal. EPA usually defers to the state for enforcement. Only in limited, appropriate circumstances does EPA intervene to take enforcement action. However, if you have difficulty in getting a response from your state or local agency, contact the nearest regional office of EPA and report your observations.

Asbestos - Another situation a citizen might encounter involves construction work. Many old buildings contain the hazardous material, asbestos. Asbestos is extremely harmful to human health inhaled or ingested. When buildings containing asbestos are renovated or demolished, the asbestos is broken up and can become airborne and, therefore, a health hazard.

EPA regulations require all parties associated with renovations and demolitions involving asbestos to notify EPA of the work and follow certain work practice requirements aimed at eliminating or at least minimizing the amount of airborne asbestos. These requirements largely consist of wetting the asbestos at all stages of the process so that it does not become airborne. The regulations also require the asbestos to be stored and disposed of in a particular manner.

There are several ways a citizen might help identify a violation of the asbestos regulations. If you pass a construction site, you may notice large amounts of white dust coming from the site or scattered around the site. These could be violations if the debris in question contains asbestos. One way a citizen could verify that asbestos is involved is looking for a brand-name label stamped on insulation that is still intact.

Otherwise, trained inspectors will have to take samples and laboratory analysis of the debris must be done to verify that it contains asbestos.

The most effective action to take is to notify the nearest EPA regional office about the site.

EPA personnel can then check their records to see if they have received notice of the demolition or renovation, and can do an inspection if it seems likely that asbestos is involved.

Auto Warranties - The Clean Air Act requires that motor vehicles sold in the United States meet prescribed emissions standards. In order to ensure that vehicle emissions remain low for the useful life of the vehicle, manufacturers are required to provide broad emission warranty coverage for vehicles that are less than five years old and have been operated for less than 50,000 miles. This warranty applies to defects in any part whose primary purpose is to control emissions, such as the catalytic converter, and in any part that has an effect on emissions, such as the carburetor (except parts that have annual replacement intervals, such as spark plugs). Manufacturers must make emissions warranty repairs free of charge for any labor or parts. If you believe you are entitled to an emissions warranty repair, contact the person identified by the manufacturer in your owner's manual or warranty booklet.

If you are not satisfied with the manufacturer's response to your emissions warranty claim, you may contact EPA for assistance by writing: Field Operations and Support Division (EN-397F), U.S. Environmental Protection Agency, Washington, DC 20480.

Removing Emission Control Devices - The Clean Air Act also seeks to prevent automotive pollution by prohibiting the removal or rendering inoperative of emission-control devices by new and used car dealers, repair shops and fleet operators. In addition, gasoline retailers are prohibited from introducing leaded gasoline into motor vehicles which require unleaded gasoline, and gasoline that is sold as unleaded must not contain excess lead or alcohol. If you know of a violation of the anti-tampering or motor vehicle fuel rules, please contact EPA by writing to the address listed above.

The Clean Air Act also has a provision allowing citizens to sue any person alleged to be in violation of an emission standard under the Clean Air Act (42 U.S.C. section 7604).

5. Hazardous Waste

Abandoned Sites, Barrels, etc.

When citizens see leaking barrels (or barrels that look like they might leak), pits or lagoons on abandoned property, they should avoid contact with the materials, but note as thoroughly as possible their number, size, and condition (e.g., corroded, open, cracked) and the material leaking (e.g., color, texture, odor) and report these to the local fire department or the hazardous waste hotline (800-424-8802 or 202-367-2675).

If possible, take a photograph of the area, but do not get too close to the materials. If the substances are hazardous, the statute most likely involved is the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or the Superfund Law), and EPA or the state should take the lead. Under CERCLA, citizens have the opportunity to, and are encouraged to, involve themselves in the community relations program which includes citizen participation in the selection of a remedial action

A citizen may file suit against any person, including the United States, who is alleged to be in violation of any standard, regulation, condition, requirement or order that has become effective under CERCLA, provided that the citizen gives the violator, EPA, and the state sixty days 'notice of the intent' to sue. A citizen suit cannot be brought, however, if the United States is diligently prosecuting an action under CERCLA.

Hazardous Waste Facilities

When citizens encounter leaks, discharges or other suspect

emissions from a hazardous waste treatment, storage or disposal (TSD) facility, they should contact their state hazardous waste office or the local EPA Regional office to determine if the facility has a Resource Conservation and Recovery Act (RCRA) permit or has been granted interim status to operate while it applies for a RCRA permit. Any citizen may obtain copies of a TSD facility's permit and monitoring reports, which would document any violations, from the state agency or EPA Regional office.

A citizen may bring a civil judicial enforcement action against a RCRA violator provided he gives the violator, EPA, and the state sixty days notice of the intent to sue, during which time the state or EPA may pursue an enforcement action. With certain limitations, a citizen may also bring an action against any person who has contributed to or who is contributing to the past or present handling of any solid waste, including hazardous waste, that may present an imminent and substantial endangerment to human health or to the environment.

Transportation Spills

If you see a spill from a truck, train, barge or other vehicle, you should report it immediately to the local fire and police. If it is possible to read any labels on the vehicle, without getting too close, then you should report this information as well.

If you see a spill from a barge, ship, or other vessel into navigable waters or the ocean, such as an oil pill from a tanker, you should report the spill and location to the United States Guard, or call the hazardous waste hotline (1-800-424-8802) or (202) 267-2675).

Citizens who provide information leading to the arrest and conviction of persons who commit certain criminal violations under CERCLA may be eligible for a reward of up to $10,000. These awards are often offered in connection with a violator's failure to make a required report on a release of a hazardous substance or the destruction or concealment of required records.

6. Pesticides and Toxic Substances

When citizens encounter instances of pollution involving pesticides or toxic substances, the law that was actually violated will most often be the Clean Water Act, the Clean Air Act, or the Resource Conservation and Recovery Act. Most violations of the Toxic Substance Control Act or the Federal Insecticide, Fungicide and Rodenticide Act will be discovered only by persons with special training or with access to information that is not generally available to the public.

TSCA

Violations of the Toxic Substances Control Act (TSCA) that the public might observe include:

-- Demolition of a building containing asbestos without proper measures to keep the asbestos contained.

-- Improper storage or disposal of transformers containing PCBs (polychlorinated biphenyls).

-- Improper storage of asbestos.

If you think you are seeing such a violation, you should contact: Office of Compliance Monitoring (EN-342), U.S. Environmental Protection Agency, Washington, D.C. 20460, or call the National Response Center for Oil and Hazardous Material Spills at (800-424-8802).

Citizens suits are authorized under TSCA (15 U.S.C. section 2619). Citizens may sue violators of provisions concerning PCBs, asbestos, required testing of chemical substances, notification to EPA

before manufacturing or importing new chemicals, or beginning a significant new use of chemicals.

FIFRA

Citizens may encounter violations of the provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) that govern the use of pesticides. FIFRA requires that pesticides be used by the public only as specified on the label. Many pesticides are labeled for use only by specially licensed applicators. Others have been banned from almost all uses, except for particular uses where no other pesticide **[remainder of text missing]**.

Violations of FIFRA that citizens may observe include:

-- Sale or use of banned pesticides that are not registered with EPA. These would lack the EPA registration number that must appear on every pesticide label.

-- Use of pesticides in a manner inconsistent with the directions on the label.

-- Application of restricted-use pesticides by unlicensed applicators.

-- False or misleading labeling or advertisement of pesticides.

If you think you are seeing such a violation, you should contact: Office of Compliance Monitoring (EN-342), U.S. Environmental Protection Agency, Washington, DC 20460, or cal the National Response Center for Oil and Hazardous Material Spills at (800 424-8802.

There is no citizen suit authority under FIFRA.

EPCRA

The Emergency Planning and Community Right-to-Know Law (EPCRA) requires a wide range of businesses that manufacture, import, process, use or store chemicals to report certain information to federal, state and local governments. For example, these businesses are required to report annual estimates of the amounts and types of toxic chemicals they released or disposed of during each calendar year. The data must be reported to EPA and to state agencies, and they are available to the public through an EPA compilation called the Toxics Release Inventory. The data in this inventory may be used by the public to examine the practices of particular manufacturers.

If you believe that a business that was subject to the EPCRA requirement failed to report to the Toxics Release Inventory, you should contact: Of Compliance Monitoring (EN-342), U.S. Environmental Protection Agency, Washington, DC 20460. A business' failure to report toxic releases may also be challenged through a citizen suit under 42 U.S.C. section 11046(a)(1).

7. For Further Information

State and local governments have responsibility for enforcing most environmental laws in the area where you live. You can locate them through your telephone directory. In most communities, the responsible agency is the city or county health department. At the state level, there is usually an environmental agency that carries out the pollution-control laws, while an agriculture agency often handles regulation of pesticides.

EPA operates primarily through ten regional offices, which will help answer your questions if your state or local agencies have been unable to do so. Each region has a staff specializing in each of the environmental programs discussed in this publication. To locate a person who can help you, call the public affairs office in your EPA regional office.

These offices and the states they cover are:

Region 1:	Boston (617) 835-3424	CT, MA, ME NH, RI, VT
Region 2:	New York City (212) 264-2515	NY, NJ, PR, VI
Region 3:	Philadelphia (215) 597-9370	DE , DC, MD, PA, VA
Region 4:	Atlanta (404) 257-3004	AL, FL, GA, KY, MS, NC, SC, TN
Region 5:	Chicago (312) 353-2073	IL, IN, MI, MN, OH, WI
Region 6:	Dallas (214) 255-2200	AR, LA, NM, OK, TX
Region 7:	Kansas City (913) 757-2803	IS, KS, MO, NE
Region 8:	Denver (303) 564-7666	CO, MT, AND, SD, UT, WY
Region 9:	San Francisco (415) 484-1050	CA, HI, NV, Guam, American Samoa
Region 10:	Seattle (206) 399-1466	AK, ID, OR, WA

APPENDIX Q -- PUBLIC PARTICIPATION MANUAL REVISIONS -- TASK GROUP PARTICIPANTS

Ken Amaditz
US EPA, Office of Solid Waste
401 M Street, SW
Mail Code 5303W
Washington, DC 20460

Dale Armstrong
US EPA, Region 7
726 Minnesota Ave.
Kansas City, KS 66101

Patricia Buzzell
US EPA, Office of Solid Waste
401 M Street, SW
Mail Code 5303W
Washington, DC 20460

Neil Carman
Sierra Club Lone Star Chapter
PO Box 1931
Austin, TX 78767

Mike Cast
US Army Environmental Center
Attn: SFIM-AEC-PA (Mike Cast)
Aberdeen Proving Grounds, MD 21040

Harold Dunning
US EPA, Region 8
OCPI
999 18th Street, Suite 500
Denver, CO 80202-2466

William Fontenot
Community Liaison Officer
State of Louisiana Dept. of Justice
Baton Rouge, LA 70804-9095

Kathy Fredriksen
Chemical Manufacturers Assoc.
1300 Wilson Blvd.
Arlington, VA 22209

Marion Galant
Community Relations Manager
Colorado Dept. of Public Health and Environment
HMWMD-ADM-B2
4300 Cherry Creek Drive South
Denver, Colorado 80222-1530

Anne Hedges
Montana Environmental Information Center
PO Box 114
Helena, MT 59624

Margaret Kelch
Ross Environmental Services, Inc.
36790 Giles Road
Grafton, OH 44044

Toshia King
US EPA, Office of Solid Waste
401 M Street, SW
Mail Code 5303W
Washington, DC 20460

Sharon Lloyd O'Connor
League of Women Voters
1730 M Street, Nw
Washington, DC 20036

Greg Michaud
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, IL 62794-9276

Tom Poe
Solite Corporation
PO Box 27211
Richmond, VA 23261

Janet Rhodes
State of Washington
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Brenda Richardson
Anacostia Congress Heights Partnership
2301 Martin Luther King Ave., SE
Washington, DC 20020

Vicki Semones
US EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Additional Reviewers for Chapter 4

Jill Burton
North Carolina Dept. of Environment, Health and Natural Resources
PO Box 27687
Raleigh, NC 27611-7687

Hugh Davis
US EPA, Office of Solid Waste
401 M St., SW
Mail Code 5303W
Washington, DC 20460

Bob Hall
US EPA, Office of Solid Waste
401 M St., SW
Mail Code 5303W
Washington, DC 20460

Elizabeth McManus
US EPA, Office of Solid Waste
401 M St., SW
Mail Code 5303W
Washington, DC 20460

Henry Schuver
US EPA Region 2
290 Broadway
New York, NY 10007-1866

Stephanie Wallace
US EPA Region 8
Montana Office
Federal Building -- 301 Park Street
Drawer 10036
Helena, MT 59625-0096

APPENDIX R -- ACCESSING EPA INFORMATION

organization, telephone number, and an explanation of what they need. Questions are usually answered within one business day.

Underground Storage Tank Docket

Telephone Number: 703 603-9231
Hours: Monday to Friday, 9:00 a.m. to 4:00 p.m. EST

Provides documents and regulatory information pertinent to RCRA's Subtitle I (the Underground Storage Tank program).

Superfund Docket

Telephone Number: 703 603-9232
Hours: Monday to Friday, 9:00 a.m. to 4:00 p.m. EST

Provides rulemaking material pertinent to the Superfund Program and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Hazardous Waste Ombudsman Program

Telephone Numbers: 800 262-7937, 202 260-9361
Contact: Robert Martin

Assists private citizens and organizations that have been unable to voice a complaint or resolve problems through normal channels in coping with the complexities of hazardous waste and Superfund legislation. Each region has an ombudsman representative. For more information, call the RCRA/Superfund/EPCRA Hotline or the contact cited above.

Small Business Ombudsman Hotline

Telephone Numbers: 800 368-5888, 703 305-5938
Hours: Monday to Friday, 8:30 a.m. to 5:00 p.m. EST

Helps small businesses comply with environmental laws and EPA regulations.

Pollution Prevention Information Clearinghouse (PPIC)

Telephone Number: 202 260-1023

A center for dissemination of pollution prevention information. PPIC's services include document distribution, access to a circulating and periodicals collection, and outreach.

Public Information Center (PIC)

Telephone Number: 202 260-2080
Hours: Monday to Friday, 8:00 a.m. to 5:30 p.m. EST for phone calls, 10:00 a.m. to 4:00 p.m. EST for walk-in visitors

Provides general, nontechnical environmental information through its brochures, booklets, and pamphlets.

EPA Headquarters Library

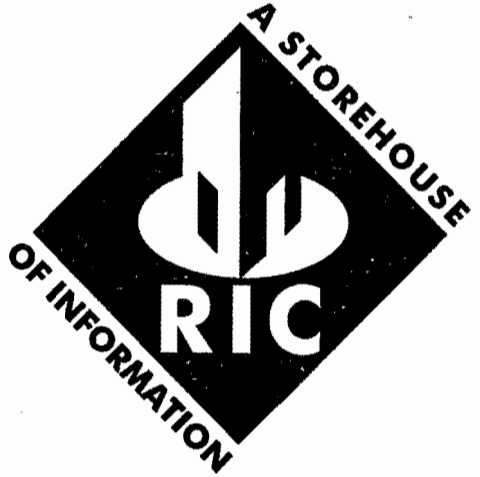
Reference Desk: 202 260-5921
Interlibrary Loan Desk: 202 260-5933
Hours: Monday to Friday, 9:00 a.m. to 5:00 p.m. EST for phone calls, 10:00 a.m. to 2:00 p.m. EST for walk-in visitors

The Headquarters Library is the reference library for the Agency. It offers a broad range of sources of environmental information including reports from various EPA offices and trade and environmental journals. The collection also features departments such as the "Water Collection," the "Hazardous Waste Collection," and "Infoterra," which accommodates foreign patrons' requests.

United States Environmental Protection Agency
EPA530-F-96-001
January 1996
Solid Waste and Emergency Response (5305W)

EPA

How To Access the RCRA Information Center



Congress passed the Resource Conservation and Recovery Act (RCRA) in 1976 to create a framework for the proper management of hazardous and nonhazardous solid waste. The Act is continuously evolving as Congress amends it to reflect the nation's changing solid waste needs.

For each modification to the Act, EPA develops regulations that spell out how the statute's broad policies are to be carried out. The RCRA Information Center (RIC) was formed to house both documents used in writing these regulations as well as EPA publications produced for public guidance on solid waste issues.

The documents stored in the RIC are divided into two basic categories: (1) documents involved in various stages of rulemaking; and (2) general documents discussing the various aspects of recycling, treatment, and disposal of hazardous and solid waste.

Rulemaking Dockets

- Docket files generated from RCRA-related rulings. Each file is composed of two sections: (1) technical support documents that were used by EPA in the development of the particular rule; and (2) comments from companies, individuals, environmental organizations, and various levels of government.
- Reprints of *Federal Registers* containing RCRA-related issues.
- Administrative Records, which are rulemaking dockets that have undergone litigation.

General Documents/Collections

- *Catalog of Hazardous and Solid Waste Publications*, which lists the RIC's most popular documents. The catalog is updated periodically.
- Guidance documents, which provide directions for implementing the regulations for disposal and treatment of hazardous and solid wastes.
- Brochures, booklets, and executive summaries of reports concerning waste reduction and disposal issues surrounding solid and hazardous wastes.
- A historical collection of Office of Solid Waste documents.
- Selected Office of Solid Waste correspondence written by EPA officials in response to questions from organizations and individuals concerning hazardous and solid waste regulations.
- Health and Environmental Effects Profiles (HEEPs) and Health and Environmental Effects Documents (HEEDs).

Hours and Location

- The RIC is open to the public from 9:00 a.m. to 4:00 p.m., Monday through Friday.
- The RIC is located at:

  Crystal Gateway I, First Floor
  1235 Jefferson Davis Highway
  Arlington, VA

- It is recommended that visitors make an appointment so that the material they wish to view is ready when they arrive.
- Patrons may call for assistance at 703 603-9230, send a fax to 703 603-9234, or send an e-mail to rcra-docket@epamail.epa.gov.
- Patrons may write to the following address:

  RCRA Information Center (5305W)
  U.S. Environmental Protection Agency
  401 M Street, SW
  Washington, DC 20460

  (Please note that this address is for mailing purposes only.)

Photocopying and Microfilming

Many documents are available only in the original and, therefore, must be photocopied. Patrons are allowed 100 free photocopies. Thereafter they are charged 15 cents per page. When necessary, an invoice stating how many copies were made, the cost of the order, and where to send a check will be issued to the patron.

Documents also are available on microfilm. The RIC staff help patrons locate needed documents and operate the microfilm machines. The billing fee for printing microfilm documents is the same as for photocopying documents.

Patrons who are outside of the metropolitan Washington, DC, area can request documents by telephone. The photocopying and microfilming fee is the same as for walk-in patrons. If an invoice is necessary, RIC staff can mail one with the order.

Additional EPA Sources of Hazardous and Solid Waste Information

The RCRA/Superfund/EPCRA Hotline

Telephone Numbers: 800 424-9346
TDD: 800 553-7672 (hearing impaired)
For Washington, DC, and outside the United States: 703 412-9810
TDD: 703 412-3323 (hearing impaired)
Hours: Monday to Friday, 9:00 a.m. to 6:00 p.m. EST

The Hotline answers questions concerning technical aspects of RCRA. It also provides clarifications of sections of the *Code of Federal Regulations* that pertain to RCRA. The Hotline also takes requests and makes referrals for obtaining OSW publications.

OSW Methods Information Communication Exchange (MICE)

Telephone Number: 703 821-4690

A telephone service implemented by the EPA Office of Solid Waste to answer technical questions on test methods used on organic and inorganic chemicals. These tests are discussed in the EPA document *Test Methods for Evaluating Solid Waste: Physical/Chemical Methods* (Document Number: SW-846).

Patrons can call MICE 24 hours a day and are requested to leave a message stating their name,

United States Environmental Protection Agency | Solid Waste and Emergency Response (5305W) | EPA530-F-95-014 September 1995

Office of Solid Waste

EPA

Environmental Fact Sheet

ELECTRONIC RESOURCES GUIDE

The Environmental Protection Agency's (EPA) Office of Solid Waste (OSW) has placed a wide variety of information about hazardous and non-hazardous solid waste on the Internet and on Bulletin Board Systems (BBSs) for access and retrieval by the general public. The information posted includes consumer information, supporting materials for rulemakings, policy and guidance documents, and datafiles from EPA's hazardous waste databases.

Internet Servers

EPA maintains information on Public Access Servers accessible via both the Internet and via modem. The servers carry many documents and resources related to OSW's program areas, including on-line search functions. Users may also access and search through archived Federal Registers (FR) dating back to October 1994. OSW documents and related FR releases are available through the following routes:

Gopher: gopher.epa.gov

OSW documents:
Offices and Regions -> Office of Solid Waste and Emergency Response -> Office of Solid Waste (RCRA)

Archived FRs (organized by date):
Rules, Regulations, and Legislation -> The FEDERAL REGISTER (FR) Environmental Subset -> FEDERAL REGISTER (FR) - Waste

World Wide Web (WWW): http://www.epa.gov

Same pathways as Gopher

Modem: (919) 558-0335

Same pathways as Gopher

Ftp: ftp.epa.gov (userid: anonymous, password: Internet e-mail address)

OSW documents are available under /pub/gopher/OSWRCRA

Electronic Mailing Lists (Listservers)

EPA maintains several free electronic mailing lists. Subscribers receive electronically mailed copies of documents as they are published. Archives of the documents are maintained on the EPA Public Access Servers (see above).

To subscribe to a mailing list, send an e-mail request to the following address:

listserver@unixmail.rtpnc.epa.gov

The subject line of the e-mail should read SUBSCRIBE TO LISTSERVERS. The text of the e-mail should read SUBSCRIBE <list name> <first name> <last name> (e.g. SUBSCRIBE EPA-WASTE JOHN SMITH). Some OSW-related mailing lists are:

- EPA-WASTE - Hazardous and Solid Waste Federal Registers
- HOTLINE_OSWER - RCRA/UST, Superfund, and EPCRA Monthly Hotline Report and updates
- EPA-PRESS - Environmental Protection Agency Press Releases

To receive a list of all EPA listservers, first subscribe to a list. After subscribing, send an e-mail request to listserver@unixmail.rtpnc.epa.gov. The subject line should read LISTS; the body of the message should also read LISTS.

Electronic Submissions to the RCRA Information Center

The RCRA Information Center (RIC) provides public access to regulatory materials supporting Agency actions under RCRA and distributes OSW publications. The RIC accepts electronic requests for paper copies of OSW publications and electronic comments on OSW rulemakings at the following Internet e-mail address: **rcra-docket@epamail.epa.gov**. Requests for OSW documents must include the name and mailing address of the requestor. Submissions of comments on rulemakings must be in ASCII format and must include the docket identification number.

For more information about OSW documents, the Catalogue of Hazardous and Solid Waste Publications (EPA530-B-93-002) is available on EPA's Internet server under Offices and Regions -> Office of Solid Waste and Emergency Response -> Office of Solid Waste (RCRA) -> RCRA: General.

Bulletin Board Systems

OSW contributes documents to a variety of electronic BBSs relevant to solid waste issues. Following are some OSW-related BBSs.

BBS Name	Modem	Internet Access	System Operator
Fedworld	(703) 321-8020	fedworld.gov http://www.fedworld.gov ftp.fedworld.gov	(703) 487-4608
SWICH BBS Solid Waste Information Clearinghouse	(301) 585-0204	None	(800) 677-9424
CLU-IN BBS Cleanup Information	(301) 589-8366	Through Fedworld (see above)	(301) 589-8368
RTK-NET BBS Right-to-Know Computer Network	(202) 234-8570	rtknet.org http://rtk.net	(202) 797-7200 (requires an account for access)

RCRA/UST, Superfund, and EPCRA Hotline

The RCRA/UST, Superfund, and EPCRA Hotline is a publicly-accessible service that provides information on several EPA programs, including information on accessing OSW's electronic resources. For information about specific documents, or to ask regulatory questions, the Hotline is available at (800) 424-9346, within the metropolitan DC area at (703) 412-9810, or TDD (800) 553-7672.

If you have comments, criticisms, or compliments about the efforts of OSW to use the Internet for providing public access to OSW information, please send them to: hearns.liza@epamail.epa.gov.

APPENDIX S -- POLLUTION PREVENTION & SMALL BUSINESS ASSISTANCE CONTACTS

State Pollution Prevention Programs

Source: National Pollution Prevention Roundtable, November 1995

Region 1

Connecticut Technical Assistance Program
(ConnTAP)
50 Columbus Blvd. 4th Floor
Hartford, CT 06106
Phone: 203/241-0777
Fax: 203/244-2017
Contact: Rita Lomasney

Maine Department of Environmental Protection
State House Station #17
Augusta, ME 04333
Phone: 207/287-2811
Fax: 207/287-2814
Contact: Ronald Dyer

Maine Waste Management Agency
160 Capitol Street, SHS# 154
Augusta, ME 04333-0154
Phone: 207/287-5300
Fax: 207/287-5425
Contact: Gayle Briggs

Massachusetts Dept of Environmental Protection
One Winter Street
Boston, MA 02202
Phone: 617/556-1075
Fax: 617/556-1049
Contact: Lee Dillard

Massachusetts Executive Office of Environmental Affairs
Office of Technical Assistance for Toxics Use Reduction
100 Cambridge Street; suite 2109
Boston, MA 02202
Phone: 617/727-3260
Fax: 617/727-3827
Contact: Barbara Kelley

Toxics Use Reduction Institute
University of Massachusetts at Lowell
1 University Avenue
Lowell, MA 01854-2881
Phone: 508/934-3275
Fax: 508/934-3050
Contact: Ken Geiser/Janet Clark

Rhode Island Dept of Environmental Management
Office Of Environmental Coordination P2 Section
83 Park Street
Providence, RI 02903
Phone: 401/277-3434
Fax: 401/277-2591
Contact: Richard Girasole, Jr.

Vermont Department of Environmental Conservation
Pollution Prevention Division
Environmental Assistance Div. West Office Building
103 South Main Street
Waterbury, VT 05671-0404
Phone: 802/241-3629
Fax: 802/241-3296
Contact: Paul Van Hollebeke

Region 2

New Jersey Department of Environmental Protection
Office of Pollution Prevention
CN423; 401 East State Street
Trenton, NJ 08625
Phone: 609/777-0518
Fax: 609/777-1330
Contact: Jeanne Herb

New Jersey Technical Assistance Program
for Industrial Pollution Prevention (NJTAP)
New Jersey Institute of Technology
CEES Building University Heights
Newark, NJ 07102-1982
Phone: 201/596-5864
Fax: 201/596-6367
Contact: Dr. Marcus J. Healey

New York State Dept of Environmental Conservation
Pollution Prevention Unit
50 Wolf Road
Albany, NY 12233-8010
Phone: 518/457-2480
Fax: 518/457-2570
Contact: William F. Eberle

Region 3

Pennsylvania Dept of Environmental Resources
Pollution Prevention Program
PO Box 8472
Harrisburg, PA 17105-8472
Phone: 717/787-7382
Fax: 717/787-1904
Contact: Meredith Hill

Pennsylvania Technical Assistance Program
Penn State University
117 Tech Center
University Park, PA 16802
Phone: 814/865-0427
Fax: 814/865--5909
Contact: Jack Gido

Delaware Department of Natural Resources and
Environmental Conservation
Pollution Prevention Program
P.O. Box 1401, 89 Kings Highway
Dover, DE 19903
Phone: 302/739-2411
Fax: 302/739-6242
Contact: Andrea Farrell

Virginia Department of Environmental Quality
Office of Pollution Prevention
PO Box 10009
Richmond, VA 23240-0009
Phone: 804/762-4344
Fax: 804/762-4346
Contact: Sharon K. Baxter

West Virginia Division of Environmental
Protection, Office of Water Resources
Pollution Prevention Services
2006 Robert C. Byrd Drive
Beckley, WV 25801-8320
Phone: 304/256-6850
Fax: 304/256-6948
Contact: Barbara Taylor

Region 4

Alabama Department of Environmental Management
Special Projects, P2 Unit
PO Box 301463
Montgomery, AL 36130-1463
Phone: 334/213-4303
Fax: 334/213-4399
Contact: Gary Ellis

Florida Dept of Environmental Resource Mgmt
Pollution Prevention Program
33 SW Second Avenue, Suite 800
Miami, FL 33130
Phone: 305/372-6804
Fax: 305/372-6729
Contact: Lori Cunniff

Georgia Department of Natural Resources
Pollution Prevention Assistance Division
7 Martin Luther King, Jr. Drive, Suite 450
Atlanta, GA 30334
Phone: 404/651-5120
Fax: 404/651-5130
Contact: G. Robert Kerr

Kentucky P2 Center
Rm 312 Ernest Hall, University of Louisville
Louisville, KY 40292
Phone: 502/852-7260
Fax: 502/852-0964
Contact: Cam Metcalf

Mississippi Dept of Environmental Quality
PO Box 10385
Jackson, MS 39289-0385
Phone: 601/961-5241
Fax: 601/961-5376
Contact: Thomas E. Whiten

North Carolina Department of Environment,
Health and Natural Resources
Office of Waste Reduction
PO Box 29569
Raleigh, NC 27626-9569
Phone: 919/715-6500
Contact: Gary Hunt

South Carolina Dept of Health & Env Control
Center for Waste Minimization
2600 Bull Street
Columbia, SC 29201
Phone: 803/734-4761
Fax: 803/734-9934
Contact: Robert E. Burgess

Univ of South Carolina Inst of Public Affairs
Hazardous Waste Management Research Fund
937 Assembly Street
Columbia, SC 29208
Phone: 803/777-8157
Fax: 803/777-4575
Contact: Doug Dobson

Region 5

Illinois Environmental Protection Agency
Office of Pollution Prevention
2200 Churchill Road PO Box 19276
Springfield, IL 62794-9276
Phone: 217/782-8700
Fax: 217/782-9142
Contact: Michael J. Hayes

Illinois Hazardous Waste Research and Information Center
One East Hazelwood Drive
Champaign, IL 61820
Phone: 217/333-8940
Fax: 217/333-8944
Contact: David Thomas

Indiana P2 7 Safe Materials Institute
1291 Cumberland Avenue, Suite C1
West Lafayette, IN 47906
Phone: 317/494-6450
Fax: 317494-6422
Contacts: Lynn A. Corson, Ph.D or James R. Nooman

Indiana Dept of Environmental Management
Office of P2 & Technical Assistance
100 North Senate Avenue P.O. Box 6015
Indianapolis, IN 46206-6015
Phone: 317/232-8172
Fax: 317/233-5627
Contact: Tom Netner

Michigan Department of Natural Resources
Assistance
PO Box 30457
Lansing, MI 48909-7957
Phone: 517/335-7310
Fax: 517/335-4729
Contact: Karl Zollner, Jr.

Minnesota Office of Environmental Assistance
520 Lafayette Road, 2nd Floor
St. Paul, MN 55155
Phone: 612/215-0242
Fax: 612/215-0246
Contact: Kevin McDonald

Minnesota Pollution Control Agency
Pollution Prevention Program
520 Lafayette Road
Phone: 612/296-8643
Fax: 612/297-8676
Contact: Eric Kilberg

Ohio Environmental Protection Agency
Office of Pollution Prevention
PO Box 1049
Columbus, OH 43216-1049
Phone: 614/644-3469
Fax: 614/728-1245
Contact: Michael W. Kelley, Anthony Sasson, Roger Hannahs

Wisconsin Department of Natural Resources
Hazardous Waste Minimization Program
PO Box 7921
Madison, WI 53707
Phone: 608/267-3763
Fax: 608/267-2768
Contact: Lynn Persson

Wisconsin Department of Natural Resources
Pollution Prevention Program
PO Box 7921
101 S. Webster
Madison, WI 53707
Phone: 608/267-9700
Fax: 608/267-5231
Contact: Tom Eggert

Region 6

Oklahoma Department of Environmental Quality
Pollution Prevention Program
1000 NE 10th Street
Oklahoma City, OK 73117-1212
Phone: 405/271-1400
Fax: 405/271-1317
Contact: Dianne Wilkins

Texas Natural Resource Conservation Commission
Office of Pollution Prevention and Recycling
P.O. Box 13087
Austin, TX 78711-3087
Phone: 512/239-3100
Fax: 512/239-3165
Contact: Andrew C. Neblett

University of Texas at Arlington
Environmental Institute for Technology Transfer
PO Box 19050
Arlington, TX 76019
Phone: 817/273-2300
Fax: 817/794-5653
Contact: Gerald Nehman

Region 7

Iowa Department of Natural Resources
Waste Reduction Assistance Program
Wallace State Office Building
Des Moines, IA 50319-0034
Phone: 515/281-8941
Fax: 515/281-8895
Contact: Larry Gibson

Iowa Waste Reduction Center
University of Northern Iowa
Cedar Falls, IA 50614-0185
Phone: 319/273-2079
Fax: 319/273-2926
Contact: John L. Konefes

Kansas Department of Health and Environment
Office of Pollution Prevention
Building 283, Forbes Field
Topeka, KS 66620
Phone: 913/296-6603
Fax: 913/296-3266
Contact: Theresa Hodges

Missouri Department of Natural Resources
Technical Assistance Program
Pollution Prevention Program
P.O. Box 176
Jefferson City, MO 65102
Phone: 314-526-6627
Fax: 314/526-5808
Contact: Becky Shannon

Region 8

Colorado Dept of Public Health & Environment
Pollution Prevention Unit
4300 Cherry Creek Drive South
Denver, CO 80222
Phone: 303/692-3003
Fax: 303/782-4969
Contact: Parry Burnap

Montana Pollution Prevention Program
Montana State University Extension Service
109 Taylor Hall
Bozeman, MT 59717
Phone: 406/994-3451
Fax: 406/994-5417
Contact: Dr. Michael P. Vogel

State of Montana Water Quality Division
PO Box 200901
Helena, MT 59620
Phone: 406/444-7343
Fax: 406/444-1374
Contact: Patrick Burke

Energy and Environmental Research Center
University of North Dakota
PO Box 9018
Grand Forks, ND 58202-9018
Phone: 701/777-5000
Fax: 701/777-5181
Contact: Gerald Groenewold

North Dakota Department of Health
Environmental Health Section
P.O. Box 5520
Bismarck, ND 58506-5520
Phone: 701/328-5153
Fax: 701/328-5200
Contact: Jeffrey L. Burgess

South Dakota Department of Environment &
Natural Resources
Pollution Prevention Program
Joe Foss Building
523 E. Capitol Avenue
Pierre, SD 57501-3181
Phone: 605/773-4216
Fax: 605/773-4068
Contact: Dr. Dennis Clarke

Utah Department of Environmental Quality
Office of Planning and Public Affairs
168 N 1950 W. P.O. Box 144810
Salt Lake City, UT 84114-4810
Phone: 801/536-4477
Fax: 801/536-4401
Contact: Stephanie Bernkopf or Sonia Wallace

Wyoming Department of Environmental Quality
Solid and Hazardous Waste Division
122 West 25th Street
Cheyenne, WY 82002
Phone: 307/777-6105
Fax: 307/777-5973
Contact: Patricia Gallagher

Region 9

Arizona Department of Environmental Quality
3033 N Central Avenue
Phoenix, AZ 85012
Phone: 602/207-4337
Fax: 602/207-4872
Contact: Linda Allen

California State Department Toxic Substances Control
Office of Pollution Prevention and Technology Development
PO Box 806
Sacramento, CA 95812-0806
Phone: 916/322-3670
Fax: 916/327-4494
Contact: David Hartley, Kim Wilhelm, Kathy Barwick, Alan Ingham

State of Hawaii Department of Health
Waste Minimization Division
919 Ala Moana Blvd., Room 212
Honolulu, HI 96814
Phone: 808/586-4373
Fax: 808/586-7509
Contact: Jane Dewell, Waste Minimization Coordinator

Nevada Small Business Development Center
Business Environmental Program
MS-032 University of Nevada at Reno
Reno, NV 89557-0100
Phone: 702/784-1717
Fax: 702/784-1375
Contact: Kevin Dick

Guam Environmental Protection Agency
PO Box 22439
Guam Main Facility
Barrigada, Guam 96921
Phone: 671-472-8863
Fax: 671/477-9402
Contact: Joseph C. Cruz

Region 10

Idaho Division of Environmental Quality
Prevention and Certification Bureau
1410 North Hilton
Boise, ID 83706
Phone: 208/334-5860
Fax: 208/334-0576
Contact: Katie Sewell

Oregon Department of Environmental Quality
Toxics Use and Hazardous Waste Reduction Program
811 SW 6th Avenue
Portland, OR 97204
Phone: 503/229-5918
Fax: 503/229-6977
Contact: Sandy Gurkewitz

Washington State Department of Ecology
Hazardous Waste and Toxics Reduction Program
PO Box 47600
Olympia, WA 98504
Phone: 360/407-6086
Fax: 360/407-6989
Contact: Thomas Eaton

Local, County and Regional Pollution Prevention Programs

Source: National Pollution Prevention Roundtable, November 1995

Region 1

Northeast Waste Management Officials' Association (NEWMOA)
129 Portland Street
Boston, MA 02114
Phone: 617/367-8558
Fax: 617/367-0449
Contact: Terri Goldberg

New Hampshire WasteCap
122 North Main Street
Concord, NH 03301
Phone: 603/224-5388
Fax: 603/224-2872
Contact: Barbara Bernstein

Region 2

Erie County Dept of Environment and Planning
Erie County Office of Pollution Prevention
95 Franklin St. Rm. 1077
Buffalo, NY- 14202
Phone: 716/858-7674
Fax: 716/858-7713
Contact: Tom Hersey

Region 3

Metro Washington Council of Governments
Department of Environmental Programs
777 North Capitol St., NE Suite 300
Washington, DC 20002-4201
Phone: 202/962-3355
Fax: 202/962-3201
Contact: George L. Nichols

Allegheny County Health Department
Div of Environmental Toxics and P2
Building #3, 3901 Penn Avenue
Pittsburgh, PA 15224-1345
Phone: 412/578-8375
Fax: 412/578-8065
Contact: Wilder D. Bancroft

Center for Hazardous Materials Research
320 William Pitt Way
Pittsburgh, PA 15238
Phone: 412/826-5320
Fax: 412/826-5552
Contact: Roger L. Price, P.E./Stephen T. Ostheim

Pennsylvania Technical Assistance Program
Penn State University
117 Tech Center
University Park, PA 16802
Phone: 814/865-0427
Fax: 814/865-5909
Contact: Jack Gido

Region 4

Alabama WRATT Foundation
Box 1010
Muscle Shoals, AL 35662-1010
Phone: 205/386-2807
Fax: 205/386-2674
Contact: Roy Nicholson, C.O.O.

Dade County Department of Environmental Resources Management
Pollution Prevention Program
33 SW Second Ave., Suite 1200
Miami, FL 33130
Phone: 305/372-6825
Fax: 305/372-6760
Contact: Nichole Hefty

Tennessee Valley Authority
Industrial Waste Reduction
400 West Summit Hill Drive
Knoxville, TN 37902-1499
Phone: 615/632-8489
Fax: 615/632-3616
Contact: Steve Hillenbrand

Region 7

Great Plains-Rocky Mountains Hazardous Substance Research Center
Kansas State University
101 Ward Hall
Manhattan, KS 66506
Phone: 913/532-4313
Fax: 913/532-5985
Contact: Larry Erickson

Lincoln/Lancaster County Health Department
Environmental Health Division
3140 N Street
Lincoln, NE 68510
Phone: 402/441-8040
Fax: 402/441-8323
Contact: Richard Yoder

Region 9

City of Phoenix
Water Services Department Pollution Control Division
2303 W. Durango
Phoenix, AZ 85009
Phone: 602/262-6997
Fax: 602/534-7151
Contact: Jenee Gavette

Chief Administrator Officer's Hazardous Waste Management Program
3801 3rd Street, Suite 600
San Francisco, CA 94124
Phone: 415/695-7337
Fax: 415/695-7377
Contact: Alex Dong

City of Irvine
1 Civic Center Plaza
Irvine, CA 92713-9575
Phone: 714/724-6356
Fax: 714/724-6440
Contact: Jan Noce

City of Los Angeles Board of Public Works
Hazardous and Toxic Materials Office
201 N Figueroa Street, Suite 200
Los Angeles, CA 90012
Phone: 213/580-1079
Fax: 213/580-1084
Contact: Donna Toy-Chen

Co of Riverside Department of Health Services
Hazardous Materials Division
P.O. Box 7600 (AEH)
Riverside, CA 92513-7600
Phone: 909/358-5055
Fax: 909/358-5017
Contact: Doug Thompson

Co Sanitation Districts of Los Angeles County
Industrial Waste Section
P.O. Box 4998
Whittier, CA 90607
Phone: 310/699-7411
Fax: 310/692-5103
Contact: Mischelle Mische/Ann Heil

Monterey County Health Department
Division of Environmental Health
Hazardous Materials/Solid Waste Branch
1270 Natividad Rd
Salinas, CA 93906
Phone: 408/755-4541
Fax: 408/755-4880
Contact: Jon Jennings

Nevada County Hazardous Waste Task Force
950 Maidu
Nevada City, CA 95959
Phone: 916/265-1768
Fax: 916/265-7056
Contact: Daryl Kent/Traci LoBianco

Orange County Health Care Agency
Environmental Health Division
2009 E. Edinger
Santa Ana, CA 92705
Phone: 714/667-3700
Fax: 714/972-0749
Contact: Pearl Hoftiezer

San Diego County Pollution Prevention Program
PO Box 85261
San Diego, CA 92186-5261
Phone: 619/338-2215
Fax: 619/338-2848
Contact: Linda Giannelli Pratt

Ventura County Environmental Health Division
800 S. Victoria Avenue
Ventura, CA 93009-1730
Phone: 805/654-2127
Fax: 805/654-2480
Contact: Steve Kephart

Region 10

Thurston County Hazardous Waste Program
2000 Lakeridge Drive, SW
Olympia, WA 98502
Phone: 360/754-4663
Fax: 360/754-2954
Contact: Sally Toteff

Department of Commerce: Manufacturing Extension Program Centers

Region 1

Connecticut State Technology Extension Program
170 Middle Turnpike
Storrs, CT 06269-2041
Phone: 203/486-2585
Fax: 203/486-3049
Contact: Peter Laplaca

Massachusetts Manufacturing Partnership (MMP)
Bay State Skills Corp.
101 Summer Street 4th Floor
Boston, MA 02110
Phone: 617/292-5100
Fax: 617/292-5105
Contact: Jan Pounds

Region 2

Hudson Valley Manufacturing Outreach Center
Hudson Valley Technology Development Center
300 Westgate Business Center Suite 210
Fishkill, NY 12524
Phone: 914/896-6934
Contact: Douglas Koop

Manufacturing Outreach Center of New York - Southern Tier
UniPEG
61 Court St., 6th Floor
Binghamton, NY 13901
Phone: 607/774-0022
Fax: 607/774-0026
Contact: E. Kay Adams

New York City Manufacturing Outreach Center
NY ITAC
253 Broadway Room 302
New York, NY 10007
Phone: 212/240-6920
Fax: 212/240-6879
Contact: Jeffrey Potent

New York Manufacturing Extension Partnership (NYMEP)
385 Jordan Road
Troy, NY 12180-8347
Phone: 518/283-1010
Fax: 518/283-1212
Contact: John F. Crews

Western New York Tech Development Center
1576 Sweet Home Road
Amherst, NY 14228
Phone: 716/636-3626
Fax: 716/636-3630
Contact: William Welisevich

Region 3

Delaware Manufacturing Alliance
Delaware Technology Park
One Innovation Way, Suite 301
Newark, DE 19711
Phone: 302/452-2522
Fax: 302/452-1101
Contact: John J. Shwed

Maryland Manufacturing Modernization Network
Maryland Department of Economic Development
Division of Business
217 East Redwood Street
Baltimore, MD 21202
Phone: 410/333-0206
Fax: 410/333-1836
Contact: Edwin Gregg, Jr.

Northeast Pennsylvania Manufacturing Extension Program
Manufacturers Resource Center
125 Goodman Drive
Bethlehem, PA 18015
Phone: 610/758-5599
Contact: Edith Ritter

Western PA Manufacturing Extension Program
4516 Henry Street
Pittsburgh, PA 15213
Phone: 412/687-0200 ext. 234
Contact: Ray Cristman

A.I. Philpott Manufacturing Center
231 East Church Street
Martinsville, VA 24112
Phone: 703/666-8890
Contact: John D. Hudson, Jr.

Region 4

Georgia Manufacturing Extension Alliance
Georgia Institute of Technology
223 O'Keefe Building
Atlanta, GA 30332
Phone: 404/894-8989
Fax: 404/853-9172
Contact: Charles Estes

Kentucky Technology Service
P.O. Box 1125
Lexington, KY 40589
Phone: 606/252-7801
Fax: 606/252-7900
Contact: Donald L. Smith

Region 5

Chicago Manufacturing Center
HWRIC-Clean Manufacturing Program
Homan Square
3333 West Arthington
Chicago, IL 60624
Phone: 312/265-2180
Fax: 312/265-8336
Contact: Malcolm Boyle

Industrial Technology Institute
Midwest Manufacturing Technology Center
(MMTC)
Energy and Environmental Program
PO Box 1485 2901 Hubbard Road
Ann Arbor, MI 48106
Phone: 313/769-4234
Fax: 313/769-4021
Contact: Kenneth J. Saulter, Christine A. Branson

Minnesota Technology Inc.
Upper Midwest Manufacturing Technology Center
(UMMTC)
111 Third Avenue South, Suite 400
Minneapolis, MN 55401
Phone: 612/654-5201
Contact: Sandy Voight

Great Lakes Manufacturing Technology Center
(GLMTC)
Prospect Park Building, 4600 Prospect Avenue
Cleveland, OH 44103-4314
Phone: 216/432-5350

Plastics Technology Deployment Center
Prospect Park Building
4600 Prospect Avenue
Cleveland, OH 44103
Phone: 216/432-5340
Fax: 216/361-2088
Contact: David Thomas-Greaves

Region 6

New Mexico Industry Network Corporations
1601 Randolph Road SE, Suite 210
Albuquerque, NM 87106
Phone: 505/272-7800
Fax: 505/272-7810
Contact: Randy W. Grissom

OK Alliance for Manufacturing Excellence, Inc.
252 South Main, Suite 500
Tulsa, OK 74103
Phone: 918/592-0722
Fax: 918/592-1417
Contact: Edmund J. Farrell

Region 7

Iowa Manufacturing Technology Center
2006 South Ankeny Blvd. ATC Building, 3E
Ankeny, IA 50021
Phone: 515/965-7040
Fax: 515/965-7050
Contact: Dr. Del Sheppard

Mid-American Manufacturing Technology Center
(MAMTC)
10561 Barkley, Suite 602
Overland Park, KS 66208
Phone: 913/649-4333
Fax: 913/649-4498
Contact: Paul Clay

Region 8

MAMTC Colorado Regional Office
Rockwell Hall
Colorado State University
Fort Collins, CO 80523
Phone: 303/224-3744
Contact: Craig Carlile

Region 9

California Manufacturing Technology Center
(CMTC)
13430 Hawthorne Blvd.
Hawthorne, CA 90250
Phone: 310/355-3060
Fax: 310/676-8630
Contact: Larry Godby

Pollution Prevention Center
Institute for Research and Technical Assistance
2800 Olympic Blvd. Suite 101
Santa Monica, CA 90404
Phone: 310/453-0450
Fax: 310/453-2660
Contact: Katy Wolf

Under Development

MAMTEC Southern Regional Office
Rolla, MO

Nebraska Industrial Competitiveness Service
Lincoln, NE

Defense Enterprise Empowerment Center
Kettering, OH

Tennessee Manufacturing Extension Program
Nashville, TN

VA Alliance for Manufacturing Competitiveness
Richmond, VA

Northwest WI Manufacturing Outreach Center
Menomonie, WI

State Small Business Assistance Programs

Source: National Pollution Prevention Roundtable, November 1995

Region 1

Connecticut Dept. Of Environmental Protection
Small Business Assistance Program
79 Elm Street
Hartford, CT 06106-5127
Phone: 203/424-3382
Fax: 203/424-4063
Contact: Tracy R. Babbidge, Kirsten Cohen

New Hampshire Small Business Technical &
Environmental Compliance Assistance Program
64 North Main Street, 2nd floor
Concord, NH 03302-2033
Phone: 603/271-1370
Fax: 603/271-1381
Contact: Rudolph A. Cartier, Jr., P.E.

Region 2

New York State Dept of Economic Development
Environmental Ombudsman Unit
Division for Small Business
1515 Broadway 51st floor
New York, NY 10036
Phone: 212/827-6157 or 800/STAT-ENY ext. 157
Fax: 212/827-6158
Contact: Doreen Monteleone, Ph.D.

Region 3

Maryland Department of Environment
Air and Radiation Management Administration
Small Business Assistance Program
2500 Broening Hwy.
Baltimore, MD 21224
Phone: 800/433-1AIR or 413/631-3165
Fax: 410/631-3896
Contact: Linda Moran

Region 4

Alabama Dept. of Environmental Management
Ombudsman
PO Box 301463
Montgomery, AL 36130-1463
Phone: 800/533-2336
Fax: 334/271-7950
Contact: Blake Roper

Florida Department of Environmental Protection
Small Business Assistance Program
2600 Blair Stone Rd.
Tallahassee, FL 32399-2400
Phone: 904/488-1344
Fax: 904/922-6979
Contact: Joe Schlessel

Tennessee Clean Air Assistance Program
Clean Air Small Business Assistance Program
401 Church St., 8th Floor, L&C Annex
Nashville, TN 37243-1551
Phone: 615/532-0760
Fax: 615/532-0231
Contact: Linda F. Sadler

Region 5

Minnesota Pollution Control Agency
Small Business Assistance Program
520 Lafayette Road
St. Paul, MN 55155
Phone: 612/297-2316
Fax: 612/297-7709
Contact: Leo Raudys

Wisconsin Department of Natural Resources
Small Business Assistance Program
PO Box 7921 AM/7
Madison, WI 53707-7921
Phone: 608/267-3136
Fax: 608/267-0560
Contact: Robert Baggot

Region 6

Arkansas Industrial Development Commission
Industrial Waste Minimization Program
One State Capital Mall
Little Rock, AR 72201
Phone: 501/682-7322
Fax: 501/682-7341
Contact: Ed Davis

Louisiana Department of Environmental Quality
Air Quality Department
Small Business Assistance Program
7920 Blue Bonnett Blvd.
Baton Rouge, LA 70810
Phone: 504/765-2453
Fax: 504/765-0921
Contact: Victor Tompkins

Louisiana Governor's Office of Permits
Small Business Assistance Program Ombudsman
1885 Wooddale Blvd. 1st floor, PO Box 94095
Baton Rouge, LA 70806
Phone: 504/922-3252
Fax: 504/922-3256
Contact: Martha Madden

Texas Natural Resources Conservation Commission
Small Business Advocate
PO Box 13087
Austin, TX 78753
Phone: 800/447-2827 or 512/239-1066
Fax: 512/239-1065
Contact: Tamra Shae Oatman

Texas Natural Resources Conservation Commission
Small Business Technical Assistance Program
PO Box 13087 MC 115
Austin, TX 78711-3087
Phone: 512/239-1112
Fax: 512/239-1055
Contact: Kerry Drake

Region 7

Iowa Air Emissions Assistance Program
75 BRC/UNI
Cedar Falls, IA 50614-0185
Phone: 319/273-2079
Fax: 319/273-2926
Contact: Mark Trapani

Kansas Department of Health and Environment
Office of Pollution Prevention
Forbes Field, Building 283
Topeka, KS 66620
Phone: 913/296-0669 or 800/357-6087
Fax: 913/291-3266
Contact: Janet Neff, Public Advocate

Nebraska Department of Environmental Quality
Office of P2
PO Box 98922
Lincoln, NE 68509-8922
Phone: 402/471-2266
Fax: 402/471-2909
Contact: Wanda Blasnitz

Region 8

Montana Small Business Assistance Program
PO Box 200501
Helena, MT 59620-0501
Phone: 406/444-2960
Fax: 406/444-1872
Contact: Mark Lembrecht

North Dakota Department of Health
Ombudsman
PO Box 5520
Bismarck, ND 58506-5520
Phone: 701/328-5153
Fax: 701/328-5200
Contact: Jeff Burgess

Utah Department of Environmental Quality
Division of Air Quality
Small Business Assistance Program
150 N. 1950 W. 84116
Salt Lake City, UT 84114-4820
Phone: 801/536-4056
Fax: 801/536-4099
Contact: Frances Bernards

Utah Department of Environmental Quality
Office of Planning and Public Affairs
168 N. 1950 W., PO Box 144810
Salt Lake City, UT 84114-4810
Phone: 801/536-4477
Fax: 801/536-4401
Contact: Stephanie Bernkopf or Sonja Wallace

Wyoming Department of Environmental Quality
Air Quality Division
Small Business Assistance Program
122 W. 25th Street
Cheyenne, WY 82002
Phone: 307/777-7391
Fax: 307/777-5616
Contact: Charles N. Raffelson

Region 9

California Air Resources Board
Small Business Assistance Program
PO Box 2815
Sacramento, CA 95812
Phone: 916/322-3976
Fax: 916/445-5745
Contact: Victor Espinosa

Nevada Small Business Development Center
Business Environmental Program
MS-032 University of Nevada at Reno
Reno, NV 89557-0100
Phone: 702/784-1717
Fax: 702/784-1395
Contact: Kevin Dick

Region 10

Alaska Dept of Environmental Conservation
Air Quality Small Business Assistance Program
555 Cordova Street
Anchorage, AK 99501
Phone: 907/269-7500
Fax: 907/273-9652
Contact: Marianne See

Oregon Department of Environmental Quality
Air Quality Small Business Assistance Program
811 SW 6th Avenue
Portland, OR 97204-13909
Phone: 503/229-5946
Fax: 503/229-5675
Contact: Terry Obteshka

Washington State Department of Ecology
Air Quality Division Business Assistance Program
PO Box 47600
Olympia, WA 98504-7600
Phone: 206/407-6805
Fax: 206/407-6802
Contact: Jerry Jewett

REFERENCE LIST OF PUBLIC PARTICIPATION AND RISK COMMUNICATION LITERATURE

(June 1996)

INTRODUCTION

EPA compiled the following reference list of public participation and risk communication literature from items submitted by people involved in various aspects of environmental matters. We hope that it provides a useful starting point for learning of additional sources of information that may help all stakeholders in environmental decisionmaking.

To initially solicit items for the reference list, EPA published a notice in the Federal Register (61 FR 15942, April 10, 1996), soliciting items in a variety of subjects areas: community organizing, community involvement and participation, environmental justice, risk communication, creative problem-solving, alternative dispute resolutions, participatory activities, environmental activism, and information-sharing (technical documents or data related to permitting are not included). Given the process by which the list was compiled, we are assuming that the reference list may not be comprehensive and may not necessarily represent a balanced cross-section of sources.[1] Items on the list should, however, provide useful information to those seeking to learn more about public participation, risk communication, and environmental programs.

The items submitted in response to the FR notice vary with regard to subject matter, format, and the level of detail provided. In cases where abstracts are available, the reader is referred to the Abstracts section following the reference list. Some of the abstracts also provide information on how to obtain a copy of the item (unfortunately, information on how to obtain copies is not readily available for all of the items). To supplement the list, EPA is including several documents developed by the Agency that may provide useful information (these items are available from the Agency). **Please note that EPA does not have copies of all of the items on the list.**

EPA intends to update the list periodically; any additional items people wish to propose for inclusion in the reference list may be submitted to the RCRA Permits Branch, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Please do not send the original document. Include the full names of all authors, full titles, publisher, date of publication, city where the work was published, an abstract, and an address and/or phone number where one can write or call to obtain the publication (if applicable).

This reference list is also available through the RCRA Hotline at 1-800-424- 9346 (TDD 1-800-553-7672) or in the Washington metropolitan area at (703) 412-9810 (TDD 703-412-3323), or through the RCRA Information Center, in Docket Number F-95-PPCF-FFFFF, located at 1235 Jefferson Davis Highway, Arlington, VA, (703) 603-9230.

---

[1] Inclusion of items in this reference list does not constitute Agency endorsement.

REFERENCE LIST

Annotated Bibliography 1990-1994 in re environmental justice literature (see Abstracts).

Can We Talk? An Industry Workshop on Community Outreach Techniques, Illinois Environmental Protection Agency, Office of Community Relations and Office of Pollution Prevention, and the League of Women Voters of Illinois, May, 1995.

Catalogue of Hazardous and Solid Waste Publications, Sixth Edition, US EPA Office of Solid Waste and Emergency Response, EPA530-B-92-001, June, 1992.

Center for Environmental Communication Publications List, Rutgers University, May 1995 (see Abstracts).

"Commercial Solid and Hazardous Waste Disposal Projects on Indian Lands," by Jana L. Walker and Kevin Gover, in 10 Yale Journal on Reg. 229, Winter 1993 (see Abstracts).

"Common Sense Initiative Seeks to Simplify Environmental Regulatory Scheme," Elsevier Science Inc., in The Hazardous Waste Consultant, Volume 14, Issue 3, May/June 1996 (see Abstracts).

Community Outreach, Chemical Manufacturers Association, Washington, DC, 1990.

Community Relations in Superfund: A Handbook, US EPA Office of Emergency and Remedial Response, Washington, DC, 20460, EPA/540/R-92/009, PB92-963341, January, 1992.

"Corrective Action for Releases From Solid Waste Management Units at Hazardous Waste Management Facilities; Advance Notice of Proposed Rulemaking," Federal Register, Vol. 61, p19432, May 1, 1996.

"Corrective Action for Solid Waste Management Units at Hazardous Waste Facilities; Proposed Rule," Federal Register, Vol. 55., No. 145, p30798, July 27, 1990 (also known as the "Proposed Subpart S rule").

"EPA Pursues Options for Post-Closure Permitting and Corrective Action Enforcement," Elsevier Science Inc., in The Hazardous Waste Consultant, Volume 13, Issue 1, January/February 1995 (see Abstracts).

"Escaping Environmental Paternalism: One Tribe's Approach to Developing a Commerican Waste Disposal Project in Indian Country," by Kevin Gover and Jana L. Walker, in 63 University of Colorado Law Review 933, 1992 (see Abstracts).

"Executive Order 12898 of February 11, 1994: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," Federal Register, Vol. 59, No. 32, p7929, February 16, 1994.

"Proposed Rule Outlines New Trial Burn and Public Participation Requirements for Permitting Process," Elsevier Science Inc., in The Hazardous Waste Consultant, Volume 12, Issue 4, July/August 1994 (see Abstracts).

"Public Reactions Towards Incineration" in ISWA TIMES, Issue No 1 (pages 6-10), 1996.

"RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures; Proposed Rule," Federal Register, Vol. 59, No.105, p28690, June 2, 1994.

"RCRA Expanded Public Participation; Final Rule," Federal Register, Vol. 60, No.237, p63417, December 11, 1995.

RCRA Orientation Manual 1990 edition, US EPA Office of Solid Waste, Washington, DC, 20460, EPA/530-SW-90-036.

"Requirements Finalized for Expanded Public Participation in TSD Facility Permitting," Elsevier Science Inc., in The Hazardous Waste Consultant, Volume 14, Issue 2, March/April 1996 (see Abstracts).

Responding to Community Outrage: Strategies for Effective Risk Communication. Peter M. Sandman, Ph.D., Published by the American Industrial Hygiene Association 2700 Prosperity Ave., Suite 250, Fairfax, Virginia 22031. Phone (730) 849-8888.

"Runder Tisch zur Deponiestandortsuche Bremen [Round Table on Landfill Siting in Bremen] [in German]," Peter M. Wiedemann, Cornelia R. Karger, Frank Claus, and Dieter Gremler, in Arbeiten zur Risiko-Kommunikation (Studies in Risk Communication), Vol. 46, Published by Program Group Humans, Environment, Technology (MUT), Forschungszentrum Juelich GmBH, Juelich, Germany, September 1994 (see Abstracts).

Sites for Our Solid Waste - A Guidebook for Effective Public Involvement, US EPA Office of Solid Waste and Emergency Response and Office of Policy, Planning, and Evaluation, Washington, DC, 20460, EPA/530-SW-90-019, March, 1990.

Superfund: EPA's Community Relations Efforts Could Be More Effective, US General Accounting Office, Washington, DC, 20548, Report to Congressional Requestors, GAO/RCED-94-156, April, 1994.

Taking Action: An Environmental Guide for You and Your Community, United Nations Environmental Program, April, 1996.

The Nation's Hazardous Waste Management Program at a Crossroads - The RCRA Implementation Study, US EPA Office of Solid Waste and Emergency Response, Washington, DC, 20460, EPA/530-SW-90-069, July 1990.

The Solid Waste Handbook: A Practical Guide, (public involvement pages 274-280), William

"Proposed Rule Outlines New Trial Burn and Public Participation Requirements for Permitting Process," Elsevier Science Inc., in The Hazardous Waste Consultant, Volume 12, Issue 4, July/August 1994 (see Abstracts).

"Public Reactions Towards Incineration" in ISWA TIMES, Issue No 1 (pages 6-10), 1996.

"RCRA Expanded Public Participation and Revisions to Combustion Permitting Procedures; Proposed Rule," Federal Register, Vol. 59, No.105, p28690, June 2, 1994.

"RCRA Expanded Public Participation; Final Rule," Federal Register, Vol. 60, No.237, p63417, December 11, 1995.

RCRA Orientation Manual 1990 edition, US EPA Office of Solid Waste, Washington, DC, 20460, EPA/530-SW-90-036.

"Requirements Finalized for Expanded Public Participation in TSD Facility Permitting," Elsevier Science Inc., in The Hazardous Waste Consultant, Volume 14, Issue 2, March/April 1996 (see Abstracts).

Responding to Community Outrage: Strategies for Effective Risk Communication. Peter M. Sandman, Ph.D., Published by the American Industrial Hygiene Association 2700 Prosperity Ave., Suite 250, Fairfax, Virginia 22031. Phone (730) 849-8888.

"Runder Tisch zur Deponiestandortsuche Bremen [Round Table on Landfill Siting in Bremen] [in German]," Peter M. Wiedemann, Cornelia R. Karger, Frank Claus, and Dieter Gremler, in Arbeiten zur Risiko-Kommunikation (Studies in Risk Communication), Vol. 46, Published by Program Group Humans, Environment, Technology (MUT), Forschungszentrum Juelich GmBH, Juelich, Germany, September 1994 (see Abstracts).

Sites for Our Solid Waste - A Guidebook for Effective Public Involvement, US EPA Office of Solid Waste and Emergency Response and Office of Policy, Planning, and Evaluation, Washington, DC, 20460, EPA/530-SW-90-019, March, 1990.

Superfund: EPA's Community Relations Efforts Could Be More Effective, US General Accounting Office, Washington, DC, 20548, Report to Congressional Requestors, GAO/RCED-94-156, April, 1994.

Taking Action: An Environmental Guide for You and Your Community, United Nations Environmental Program, April, 1996.

The Nation's Hazardous Waste Management Program at a Crossroads - The RCRA Implementation Study, US EPA Office of Solid Waste and Emergency Response, Washington, DC, 20460, EPA/530-SW-90-069, July 1990.

The Solid Waste Handbook: A Practical Guide, (public involvement pages 274-280), William

D. Robinson, P.E. (Editor), Published by Wiley - Interscience (a division of John Wiley & Sons, Inc.), 605 Third Avenue, New York, NY 10158, 1986.

"Waste Incineration: Controversy and Risk Communication," Philip C.R. Gray, in European Review of Applied Psychology - Special Issue on Risk Communication, Vol 45, No. 1. pp. 29-34, Published by ASE/NFER-Nelson, Windsor, England, 1995 (see Abstracts).

"Who's at the Table? The Challenge of Fostering Public Participation in Hazardous Waste Decisions (Draft)," Arlene K. Wong and Clinton A. Highfill, Center for Policy Alternatives, 1875 Connecticut Ave., NW, Suite 710, Washington, DC 20009.

ABSTRACTS

"Commercial Solid and Hazardous Waste Disposal Projects on Indian Lands," Jana L. Walker and Kevin Gover, in 10 Yale J. on Reg. 229, Winter 1993. (See also "Escaping Environmental Paternalism: One Tribe's Approach to Developing a Commerican Waste Disposal Project in Indian Country," Kevin Gover and Jana L. Walker, in 63 U. Colo. L. Rev. 933, 1992.)

Abstract: The above two law review articles concern the efforts of the Campo Band of Mission Indians, a federally-recognized Indian tribe, to develop a solid waste landfill on its reservation. The articles discuss these efforts in light of how the tribe overcame various obstacles arising from the fact that RCRA has not yet been amended to allow tribes to participate fully as is the case under the Clean Water Act, Clean Air Act, and Safe Drinking Water Act. The articles also discuss how the tribe addressed issues involving state, local, and grassroots interests.

"Common Sense Initiative Seeks to Simplify Environmental Regulatory Scheme," Elsevier Science Inc., in The Hazardous Waste Consultant, Volume 14, Issue 3, May/June 1996.

Available from Elsevier Science Inc., Order Processing at (212) 633-3950, or Fax (212) 633-3795. Published by Elsevier Sciences Inc., 655 Avenue of the Americas, New York, NY 10010-5107.

Abstract: (pages 2.32-2.37) This article provides an overview of EPA's common sense initiative (CSI) and outlines the progress of the program to date. CSI, launched in 1994, investigates ways to improve the regulatory system to encourage common sense, innovation, and flexibility while still protecting human health and the environment. Six subcommittees have been formed, each representing one of the following industries: 1) automobile manufacturing, 2) computer and electronic manufacturing, 3) iron and steel manufacturing, 4) metal finishing, 5) petroleum refining, and 6) printing. The subcommittees are comprised of individuals representing local, state, and federal governments; environmental groups at the community and national levels; environmental justice groups; labor organizations; and the industry itself. The subcommittees have undertaken a number of projects to 1) clearly understand the regulatory demands placed on companies, and 2) develop and test strategies for improving the regulatory process. Areas that the subcommittees may focus on include: promoting broader opportunities for public participation in the permitting process, regulation coordination and consolidation, pollution prevention strategies, streamlining of reporting requirements, compliance assistance and enforcement, and use of innovative technologies.

"EPA Pursues Options for Post-Closure Permitting and Corrective Action Enforcement," Elsevier Science Inc., in The Hazardous Waste Consultant, Volume 13, Issue 1, January/February 1995.

Available from Elsevier Science Inc., Order Processing at (212) 633-3950, or Fax (212) 633-3795. Published by Elsevier Sciences Inc., 655 Avenue of the Americas, New York, NY 10010-5107.

Abstract: (pages 2.21-2.23) As an alternative to obtaining post-closure permits, EPA proposed the use of enforceable orders [e.g., corrective action orders under RCRA Section 3008(h)] to require post-closure care at regulated hazardous waste management units (November 8, 1994; 59 FR 55778). As proposed, the regulations would require public participation during corrective action enforcement similar, but not identical, to that required during issuance of the post-closure permit. The post-closure permit application process

provides for public participation and public input to the post-closure permit requirements. As explained in this article, EPA would provide an opportunity for public participation either at the time a determination is made that no corrective action is required at the facility or at the time of remedy selection if corrective action is required.

"Escaping Environmental Paternalism: One Tribe's Approach to Developing a Commerican Waste Disposal Project in Indian Country," Kevin Gover and Jana L. Walker, in 63 U. Colo. L. Rev. 933, 1992. (See also "Commercial Solid and Hazardous Waste Disposal Projects on Indian Lands," Jana L. Walker and Kevin Gover, in 10 Yale J. on Reg. 229, Winter 1993.)

Abstract: The above two law review articles concern the efforts of the Campo Band of Mission Indians, a federally-recognized Indian tribe, to develop a solid waste landfill on its reservation. The articles discuss these efforts in light of how the tribe overcame various obstacles arising from the fact that RCRA has not yet been amended to allow tribes to participate fully as is the case under the Clean Water Act, Clean Air Act, and Safe Drinking Water Act. The articles also discuss how the tribe addressed issues involving state, local, and grassroots interests.

Fairness and Competence in Citizen Participation: Evaluating Models for Environmental Discourse, Ortwin Renn, Thomas Webler, and Peter Wiedemann (Editors), Published by Kluwer Academic Publishers, Dordrecht, Netherlands/Boston/London, 1995.

Abstract: Direct public participation in solving environmental problems is a vital issue for citizens and governments of modern democracies. More frequently, governments are experimenting with approaches that give citizens greater say in the environmental discourse. "Fairness and Competence in Citizen Participation" addresses the crucial question: How can we measure the performance of citizen participation processes? It takes a novel approach to this problem by viewing public participation as a communicative act. Drawing on Juergen Habermas' Critical Theory of Communicative Action, a normative framework is developed around the central principles of procedural fairness and competence in knowledge-verification. A milestone in the area of citizen participation and applied critical theory, this book provides a sound theoretical and methodological basis for systematic evaluation of models for environmental discourse. Eight models for citizen participation - from both Europe and North America - are studied. Each model is evaluated and critiqued in a pair of chapters written by prominent scholars in the field. Planners and citizens alike will find the advice emanating from the evaluations of pragmatic value.

"Information needs concerning a planned waste incineration facility," Peter M. Wiedemann, Holger Schuetz, and Hans Peter Peters, in Risk Analysis Vol. 11 (2), pp 229-237, Published by Plenum Press, New York, 1991.

Address for copies: Program Group Humans, Environment, Technology (MUT) Forschungszentrum (Research Centre) Juelich GmBH D-52425 Juelich, Germany. Tel: +49-2461-614806, Fax: +49-2461-612950

Abstract: (Key words: waste incineration, risks, information needs of the public, risk communication) Waste management has become a major environmental issue in Germany. The siting of waste incineration especially arouses strong local opposition. The study presented here is related to such a case (i.e., a planned waste incineration facility in a small West German village). The study is based on a telephone survey aimed at the information needs of the residents. Two topics are stressed: (1) the thematic relevance of the siting

project as seen by the public; and (2) the residents' information needs. The results show that a majority of residents are concerned about the planned facility and the most important topics of their information needs refer to the risks and the safety systems of the facility, as well as information about waste management alternatives. Furthermore, the information needs depend on the personal relevance of the issue and the perceived knowledge deficit about it. Conclusions are drawn with regard to the design of a risk communication program. Here, four groups of residents are distinguished in terms of knowledge and motivation and, thus, need to be approached in different ways.

"Introduction to Risk Perception and Risk Communication," Peter M. Wiedemann, in Studies in Risk Communication, Vol. 38, Published by Program Group Humans, Environment, Technology (MUT), Forschungszentrum Juelich GmBH, Juelich, Germany, April 1993.

Address for copies: Program Group Humans, Environment, Technology (MUT) Forschungszentrum (Research Centre) Juelich GmBH D-52425 Juelich, Germany. Tel: +49-2461-614806, Fax: +49-2461-612950

Abstract: This report provides an overview for those not familiar with risk perception and risk communication research. It begins with the essentials of risk perception, and in the second part describes risk communication issues. The first part covers: (1) What is risk perception research about? (2) What is risk perception research and what research methods are applied? (3) Objectives and main results of risk perception research. The second part discusses: (1) What are the themes, tasks and objectives of risk communication? (2) What is risk communication research? (3) What are the main results of risk communication research?

"Pitfalls and Stumbling Blocks in Negotiation Processes," Cornelia R. Karger and Peter M. Wiedemann, in Studies in Risk Communication, Vol. 45, Published by Program Group Humans, Environment, Technology (MUT), Forschungszentrum Juelich GmBH , Juelich Germany, July 1994.

Address for copies: Program Group Humans, Environment, Technology (MUT) Forschungszentrum (Research Centre) Juelich GmBH D-52425 Juelich, Germany. Tel: +49-2461-614806, Fax: +49-2461-612950

Abstract: This report discusses potential difficulties in the application of negotiation processes, such as round tables. It begins by looking at negotiations as decision-making processes. Pitfalls covered are those involved in evaluating one's own party,. the other party, the subject or the course of the negotiations, or the negotiated result. The consequent demands on the mediator, and some guidelines for dealing with these, are drawn out at the end.

"Proposed Rule Outlines New Trial Burn and Public Participation Requirements for Permitting Process," Elsevier Science Inc., in The Hazardous Waste Consultant, Volume 12, Issue 4, July/August 1994.

Available from Elsevier Science Inc., Order Processing at (212) 633-3950, or Fax (212) 633-3795. Published by Elsevier Sciences Inc., 655 Avenue of the Americas, New York, NY 10010-5107.

Abstract: (pages 2.6-2.15) On June 2, 1994, EPA proposed changes (59 FR 28680) to the permitting process

for interim status incinerators and boilers and industrial furnaces (BIFs). Also proposed were new opportunities for public involvement in the permitting process for all RCRA facilities. This article compares the public participation regulations in effect to the new proposed regulations. In response to the emphasis on environmental justice, EPA proposed provisions which allow the public more input into decisions about facilities that may impact their communities. In particular, EPA is encouraging the involvement of low income and minority communities.

"Requirements Finalized for Expanded Public Participation in TSD Facility Permitting," Elsevier Science Inc., in The Hazardous Waste Consultant, Volume 14, Issue 2, March/April 1996.

Available from Elsevier Science Inc., Order Processing at (212) 633-3950, or Fax (212) 633-3795. Published by Elsevier Sciences Inc., 655 Avenue of the Americas, New York, NY 10010-5107.

Abstract: (pages 2.2-2.6) This article provides analysis of EPA's recently finalized regulations (December 11, 1995; 60 FR 63417) that expand public participation opportunities during all phases of hazardous waste treatment, storage, and disposal (TSD) facility permitting. As discussed in the article, the intent of the rule is to increase public participation during the Subtitle C permitting process by providing earlier opportunities for involvement and by improving public access to information throughout the permitting process and operational lives of TSD facilities. The article covers the applicability of the new requirements, provides background information on public participation during permitting, and describes the expanded public participation requirements in detail, including the requirements for public notification of trial burns at regulated combustion facilities. The stages of the permitting process that require a pre-application meeting and/or public notice are presented in a tabular format. In addition, a flow chart leads the user through the revised permitting process, including the expanded public participation requirements, for Subtitle C TSD facilities.

"Runder Tisch zur Deponiestandortsuche Bremen [Round Table on Landfill Siting in Bremen] [in German]," Peter M. Wiedemann, Cornelia R. Karger, Frank Claus, and Dieter Gremler, in Arbeiten zur Risiko-Kommunikation (Studies in Risk Communication), Vol. 46, Published by Program Group Humans, Environment, Technology (MUT), Forschungszentrum Juelich GmBH, Juelich, Germany, September 1994.

Address for copies: Program Group Humans, Environment, Technology (MUT) Forschungszentrum (Research Centre) Juelich GmBH D-52425 Juelich, Germany. Tel: +49-2461-614806, Fax: +49-2461-612950

Abstract: This report (in German) describes the round table mediation process used to approach the selection of potential landfill sites in the German State of Bremen in 1993-94. The round table involved representatives of the authorities, environmental groups, business and other interested parties, and was run by neutral mediators. The process began with discussion of ground rules and working methods. Criteria for the selection of sites, as well as a list of suitable sites for closer examination, were successfully agreed during the process.

"Waste Incineration: Controversy and Risk Communication," Philip C.R. Gray, in European Review of Applied Psychology - Special Issue on Risk Communication, Vol 45, No. 1. pp. 29-34, Published by ASE/NFER-Nelson, Windsor, England, 1995.

Address for copies: Program Group Humans, Environment, Technology (MUT) Forschungszentrum (Research Centre) Juelich GmBH D-52425 Juelich, Germany. Tel: +49-2461-614806, Fax: +49-2461-612950

Abstract: (Key words: risk communication, waste incineration, conflict) This paper analyses risk communication during a controversy over a proposed hazardous waste incinerator in Northern Ireland during 1991. The company involved put a low priority on communication until significant opposition had appeared. The opposition feared health and environmental risks, and emphasized the lack of consultation and public involvement, while the company emphasized its safety competence and the low level of risks. The company viewed its decision context (private decision) differently to the community (public decision). This resulted in communication by the company that was ineffective in answering local fears, and a dispute that involved various costs to the company (and community). The paper explores why the company did not apply risk communication knowledge, and possible lessons for managing similar situations in future.

ANNOTATED BIBLIOGRAPHY 1990-1994

Environmental justice literature has blossomed over the past five years (1990-1994). This bibliography was compiled as an information resource for students, academics, public policy-makers, environmentalists, and activists. The listings highlight the interdisciplinarity of the environmental justice field. They are by no means meant to be exhaustive. New articles, monographs, reports, and books are being readied for the press as this directory is being printed. This growing body of literature is a clear indicator that environmental justice has captured the interest of a wide range of authors.

ENVIRONMENTAL JUSTICE AND ENVIRONMENTAL EQUITY

Beasley, Conger. "Of pollution and poverty: Reaping America's unseemly harvest," *Buzzworm* v2, n3 (May/June 1990): 40-47.

This article examines the environmental, economic, and health injustices against the nation's migrant farm workers of whom 90 percent to 95 percent are people of color.

_____. "Of pollution and poverty: Keeping watch in Cancer Alley." *Buzzworm* v2, n4 (July/August 1990): 39-45.

The author examines the poisoning of the lower Mississippi River by the petrochemical industry and the destruction of people and communities. Many of the African American communities were founded by former slaves.

_____. "Of pollution and poverty: Deadly threat on native lands." *Buzzworm* v2, n5 (September/October 1990): 39-45.

Because of their quasi-sovereign status, Nation American reservations have become the "new" targets of environmental threats, ranging from household garbage to hazardous and nuclear wastes. Most reservations do not have the environmental and economic infrastructure to handle such waste in an environmentally sound manner.

Brajer, V. & Hall, J. "Recent evidence on the distribution of air pollution effects." *Contemporary Policy Issues* v10, (April 1992).

Using Toxic Release Inventory and Geographic Information System mapping, this study associates levels of exposure to ozone and fine particulate matter in the South Coast Air Basin of California with resident income, race, age and education using a Regional Human Exposure Model. Results are consonant with earlier research in most respects, except that population density is negatively related to exposure. People of color and children receive the greatest exposure levels.

Bruce, Calvin E. "Environmentalism and student activism." *Black Collegian* v23, n4 (March-April 1993): 52 (5 pages).

This issue examines the racial dynamics of environmental problems and gives advice to African-American collegians on solving this problem. It also includes a directory of key organizations.

Bullard, Robert D. "Grassroots flowering: The environmental justice movement comes of age," *The Amicus Journal* v16, n1 (Spring 1994): 32-37.

A historical analysis of the environmental justice movement, where it came from and where it is headed. The author covers struggles in the 1960s through 1994 and credits grassroots activism with forcing and keeping the issues on the national agenda.

_____. "Urban infrastructure: Social, environmental and health risks to African Americans." Pp. 183-196, Billy J. Tidwell (ed.), *The State of Black America 1992*. New York: National Urban League, 1992.

Each year the National Urban League publishes a new volume in its *State of Black America* series. This issue was the first time the national civil rights organization examined the link between urban infrastructure, environment, and health issues in the African American community.

_____. "Environmental justice for all." *EnviroAction* Environmental News Digest for the National Wildlife Federation (November 1991).

Environmental justice has been introduced into the agendas of some national environmental groups. This article was first presented as a Scholar-in-Residence lecture at the National Wildlife Federation.

_____. "The quest for environmental equity: Mobilizing the African American community for social change." *Society and Natural Resources* 3 (1990): 301-311.

The struggles of rural, suburban, and urban African American communities are examined in this article. Local leaders adapt the lesson learned from the civil rights movement to mobilize their community around environmental justice.

Bullard, Robert & Wright, Beverly H. "Environmental justice for all: Community perspectives on health and research needs." *Toxicology and Industrial Health* v9, n5 (September/October 1993): 821-842.

This paper was first presented at a government-sponsored health research workshop. It examines health and research concerns of communities of color and underrepresented stakeholders and presents an environmental justice framework for addressing environmental and health research inequities.

Burke, Lauretta M. "Race & environmental equity: A geographic analysis in Los Angeles." *Geo Info Systems*, October 1993.

This article is an excerpt from a larger report that evaluates the significance of race and class on environmental

pollution in Los Angeles using Toxic Release Inventory data.

Cable, Sherry & Benson, Michael. "Acting locally: environmental injustice and the emergence of grass-roots environmental organizations." *Social Problems* v40, n4 (November 1993): 464 (14 pages).

The authors examine the emergence of grassroots environmental organizations. They conclude that these organizations represent a new trend in the environmental movement, and are part of a broader historical process involving the evolution of the legal culture and the social control of corporate conduct in the United States.

Camia, Catalina. "Poor, minorities want voices in environmental choices." *Congressional Quarterly Weekly Report* v51, n34, August 21, 1993.

The author interviews civil rights leaders who are pressing Congress for help. Activist have mounted their own assault on environmental injustice, unequal protection, and environmental racism.

Capek, Stella M. "The 'environmental justice' frame: A conceptual discussion and an application." (Special Issue on Environmental Justice) *Social Problems* v40, n1 (February 1993): 5 (20 pages).

This paper identifies some of the most salient dimensions of the 'environmental justice' framework as it has emerged from local community struggles over toxic contamination in the United States, and provides an empirical case study of the contaminated Carver Terrace neighborhood of Texarkana, Texas. Carver Terrace, an African American community consisting mostly of homeowners, organized a federal buy-out and relocation after being declared a Superfund site in 1984.

Carroll, Ginny. "When pollution hits home." *National Wildlife* 29 (August/September 1991): 30-39.

The environmental problems in Louisiana's "Cancer Alley" abound. Residents of the mostly African American community of Wallace was rezoned by the local parish council to make way for the Formosa Plastics rayon plant.

Collin, Robert W. "Environmental equity and the need for government intervention." *Environment* v35, n9 (November 1993): 41.

The author discusses a 1990 Greenpeace report that documents that communities of color have a greater number of incinerators in their neighborhoods and that suggests federal regulation could successfully address the problem if the focus was on environmental damage rather than the intent of racial discrimination.

Cordera-Guzman, Hector R. "Lessons from operation bootstrap." *NACLA Report on the Americas* v27, n3 (November/December 1993): 7 (4 pages).

Beginning in the 1950s, Puerto Rico's development was tied to market-oriented reforms and to the U.S. economy. The mixed results for the people and environment give some clues to what Mexico can look forward to in a North American Free Trade Agreement-dominated future.

Doyle, Kevin. "Environmental justice: A growing movement." *Black Collegian* v24, n4 (March-April 1994): 36 (4 pages).

This article traces the environmental justice movement from the 1980s to the 1990s. The author sees the movement evolving as a way to counter unfair public policies. Pressure from the movement resulted in the establishment of EPA's Environmental Justice Office, which has sponsored a variety of research and educational projects that keep the general public informed about numerous environmental issues.

Edwards, Mencer Donahue. "Sustainability and people of color." *EPA Journal* v18, n4 (September-October 1992): 50 (2 pages).

Sustainable development may be a means to achieve social justice for peoples of color in the United States. Sustainability must be linked with social, economic, and environmental justice at home and abroad.

Gottlieb, Robert. "A question of class: The workplace experience." *Socialist Review* v22, n4 (October-December 1992): 131 (35 pages).

Environmental justice extends into the workplace. Modern industrial facilities that produce less pollution ultimately result in more secure jobs and cleaner air for the whole community.

Hair, Jay D. "Providing for justice as well as jobs." (advice to President Clinton) *National Wildlife* v31, n2 (February-March 1993): 30.

The CEO of the nation's largest environmental organization gives advise to the new Clinton administration. It is not enough that there should be environmental justice but also that environmental racism should be eliminated.

Hahn-Baker, David. "Rocky roads to consensus." *The Amicus Journal* v16, n1 (Spring 1994): 41 (3 pages).

The rift between traditional environmental groups and environmental justice activists remains to be resolved despite the continued efforts to unite the ideas of the two camps. This division was evident in the controversy that surrounded the North American Free Trade Agreement in 1993.

Ingram, Helen; Milich, Lenard & Varnady, Robert G. "Managing transboundary resources: Lessons from Ambos Nogales." *Environment* v36, n4 (May 1994): 6-9, 28-38.

This case study of water management in Ambos Nogales reveals the pitfalls and possibilities for improvement in managing natural resources shared by the United States and Mexico.

Lavelle, Marianne. "Residents want 'justice,' the EPA offers 'equity.'" *National Law Journal* v15, n3 (September 21, 1992): s12.

The author examines activists' response to the creation

of EPA's Office of Environmental Equity. Environmental justice leaders give EPA head William K. Riley passing marks for his efforts, but charge the Bush administration and the agency in general with a lack of interest in environmental justice.

Lee, Charles. "Developing working definitions of urban environmental justice." *Earth Island Journal* v8, n4 (Fall 1993): 39 (4 pages).
The focus is on the urban environmental crisis where people of color are condemned to live in polluted areas. Many of the residents and their communities are considered disposable. Urban rebuilding and environmental justice are compatible goals.

Lewis, Victor. "A message to white environmentalists." *Earth Island Journal* v7, n4 (Fall 1992): 41.
Environmental, economic, and health injustice hit female workers, young workers, very old workers, and workers of color the hardest. White environmentalists need to join in the call for wealth redistribution and an end to exploitation of disenfranchised and powerless groups.

Puckett, Jim. "Disposing of the waste-trade: Closing the recycling loophole." *The Ecologist* v24, n2 (March/April 1994).
This article reviews the importance of the Basil Convention and the attempts to control the transboundary movement of hazardous wastes. It also examines strategies to close the recycling loopholes and thus achieve an effective global ban on international waste trade.

Ramirez, Odessa. "The loss of native lands and economic blackmail." *Social Justice* v19, n2 (Summer 1992): 78-86.
This article examines the loss of indigenous peoples' lands in exchange for so-called "economic relief." Examples of environmental "blackmail" are examined in Canada and the United States.

Reath, Viki. "EPA to use civil rights act in siting decision." *Environment Week* v6, n36 (October 7, 1993): 1 (2 pages).
This article examines EPA's new strategy of applying Title VI of the Civil Rights Act to enforcement. Included are interviews with NAACP Legal Defense Fund lawyer Bill Lee and several other environmental justice leaders.

_____. "EPA, Commission investigating civil rights allegations." *Environment Week* v6, n40 (October 14, 1993): 1 (2 pages).
This article discusses EPA's and the U.S. Civil Rights Commission's investigation of civil rights allegations in siting four hazardous waste facilities in Mississippi and Louisiana.

_____. "EPA to probe Texas environmental justice complaint." *Environment Week* v7, n14 (April 7, 1994): 1 (2 pages).
This article describes the complaint against the Texas Natural Resources Conservation Commission challenging its permitting of a commercial hazardous waste incinerator along the Houston Ship Channel.

Schaffer, Gwen. "Asian Americans organize for justice." *Environmental Action* v25, n4 (Winter 1994): 30 (4 pages).
Asian Americans are beginning to network around environmental issues including occupational health, toxics, and land-use problems that adversely affect their communities.

Schneider, Paul. "Respect for the Earth: The environmentalism of Chief Oren Lyons stems from his Iroquois heritage." *Audubon* v96, n2 (March-April 1994): 110 (5 pages).
Environmentalists could learn a great deal from Native Americans and other indigenous peoples. One such leader is Chief Oren Lyons, who lives in the Onondaga Nation Territory outside of Syracuse, N.Y.

Schueler, Donald. "Southern Exposure." *Sierra* v77 (November/December 1992): 42-49.
The South still hold the unique distinction as having the most polluted air, water, and ground of any region in the country as a result of lax enforcement of environmental laws and a "look-the-other-way" government policy.

Selcraig, Bruce. "Border patrol." *Sierra* v79, n3 (May-June 1994): 58 (10 pages).
Environmental activist Domingo Gonzalez crusades against *maquiladoras* of Mexico. He has witnessed the squalid *colonias* of Matamoros, Mexico, across the border from Brownsville, Texas. Domingo is the co-founder of the Coalition for Justice in the Maquiladoras, which attempts to educate the public and the media about the health effects on the local population.

Shaffer, Gwen. "Asian Americans organize for justice." *Environmental Action Magazine* v25, n4 (Winter 1994): 30 (4 pages).
Asian Americans are becoming increasingly aware of environmental and economic justice issues and have formed several advocacy groups to provide education and support.

Small, Gail. "War stories: Environmental justice in Indian country." *The Amicus Journal* v16, n1 (Spring 1994): 38-41.
As a member of the Northern Cheyenne Indian Tribe, Gail Small examines the complex environmental justice issues facing sovereign Indian nations.

Spears, Ellen. "Freedom buses roll along cancer alley." *Southern Changes*, Southern Regional Council, Atlanta, v15, n1 (Spring 1993).
More than 2,000 activists attended an environmental justice/labor conference in New Orleans in December 1992. The tour of "Cancer Alley" illuminated the many problems faced by residents along the Mississippi River.

Starkey, Deb. "Environmental justice: win, lose or draw?" *State Legislatures* v20, n3 (March 1994): 27 (4 pages).
People of color and their communities are endangered by their close proximity to a disproportionate number of health-threatening facilities, such as hazardous waste dumps and incinerators. The Clinton administration has

begun some environmental justice initiatives, but more still has to be done.

Truax, Hawley. "Beyond white environmentalism: Minorities and the environment." *Environmental Action* v21 (1990): 19-30.
This article profiles several people of color leaders in the environmental movement and calls for more outreach to the poor, working class, and people of color communities.

Wernette, D.R. & Nieves, L.A. "Breathing polluted air." *EPA Journal* v18 (March/April 1992): 16-17.
Two National Argonne Laboratory researchers examine air pollution in the United States and conclude that African Americans and Latinos live in the most polluted counties in the nation.

Wheeler, David L. "When the poor face environmental risks." *Chronicle of Higher Education* v40, n25 (February 23, 1994): A10 (2 pages).
This article explores the "Health Research and Needs to Ensure Environmental Justice" symposium. The government-sponsored symposium was held in February 1994 in Arlington, Va., and attracted more than 1,000 research scientists, academicians, environmental justice activists, civil rights leaders, and "impacted" community residents.

Wright, Beverly H. & Bullard, Robert D. "Hazards in the workplace and black health." *National Journal of Sociology* v4 (1990): 45-62.
African American workers often occupy the lowest paying and dirtiest jobs. Workplace hazards, racial discrimination, and "job blackmail" present a special case for African American workers who are twice as likely to be unemployed than their white counterparts.

Zimmerman, Rae. "Social equity and environmental risk." *Risk Analysis* v13, n6 (1993): 649-666.
This article examines inactive hazardous waste disposal sites on the National Priorities List (NPL) and their location relative to communities of color and distribution of cleanup plans or Record of Decision. The author finds that the percentage of African Americans and Latinos aggregated at the Census Place level in communities with NPL sites was greater than is typical nationwide.

ENVIRONMENTAL RACISM

Bullard, Robert D. "The threat of environmental racism." *Natural Resources & Environment* v7 (Winter 1993): 23-26, 55-56.
This articles examines the problems faced by people of color when they challenge discriminatory environmental practices using civil rights laws.

_____. "Waste and racism: A stacked deck?" *Forum for Applied Research and Public Policy* v8 (Spring 1993): 29-45.
Institutionalized racism has influenced waste facility siting patterns, resulting in communities of color bearing a disproportionate burden for treatment, storage, and disposal facilities.

_____. "Environmental racism." *Environmental Protection* v2, n4 (June 1991): 25-26.
This article details some interesting case studies and examples where communities of color receive less environmental protection than their white counterparts.

_____. "Ecological inequities and the new South: Black communities under siege." *Journal of Ethnic Studies* v17 (Winter 1990): 101-115.
Because of differential treatment and the legacy of "Jim Crow," many African American communities in the South are endangered communities.

_____. "Overcoming racism in environmental decisionmaking." *Environment* v36, n4 (May 1994): 10-20, 39-44.
The author explores links between environmental measures and social justice and catalogs numerous examples of policies that force people of color and the politically disenfranchised to bear environmental burdens.

Cohen, Linc. "Waste dumps toxic traps for minorities." *The Chicago Reporter* v21, n4 (April 1992).
This article discusses environmental racism within the context of Chicago and environmental justice activists battling waste dumps in their communities.

Coyle, Marcia. "Company will not build plant; lawyers hail victory. (Formosa Plastics Corp. will not add another factory to Louisiana's 'Cancer Alley')" *National Law Journal* v15, n7 (October 19, 1992): 3.
A two-year legal battle ends with the Formosa Plastics Corp.'s decision not to build a $700-million rayon and pulp processing plant in a low-income, African American area of Louisiana known as 'Cancer Alley.' Environmentalists, civil rights groups and health organizations had claimed that the project constituted environmental racism. The *National Law Journal* included Wallace, La.'s fight with Formosa in the paper's September 21, 1992, supplement "Unequal Protection: The Racial Divide in Environmental Law."

Ervin, Mike. "The toxic doughnut: Toxic wastes in minority neighborhoods." *Progressive* v56, n1 (January 1992): 15.
The community of Altgeld Gardens, a public housing project on Chicago's South Side, is encircled by environmental and health threats. Hazel Johnson, an activist from Altgeld Gardens and founder of People for Community Recovery, has tagged her neighborhood a "toxic doughnut."

Grossman, Karl. "From toxic racism to environmental justice." *E magazine* v3, n3 (June 1992): 28-35.
The author explores the evolution and growth of the environmental justice movement. Perspectives are presented from interviews with several founders of the movement.

_____. "Environmental racism." *Crisis* v98, n4 (April 1991): 14-17, 31-32.

This was one of the first articles published in an NAACP magazine founded by W.E.B. Du Bois on environmental racism. Interviews are conducted with key leaders in the environmental justice movement.

Jetter, Alexis. "The poisoning of a dream (environmental activist Patsy Ruth Oliver)." *Vogue* v183, n11 (November 1993): 213 (4 pages).

Patsy Ruth Oliver fought against environmental racism, toxic pollution of communities inhabited by minorities. Her own community of Texarkana, Texas, suffered serious health problems from underground toxic waste. The EPA had deemed the area safe, but Congress later overturned this ruling.

Jones, Stephen C. "EPA targets environmental racism." (part 1) *National Law Journal* v15, n49 (August 9, 1993): 28.

The EPA's Office of Environmental Equity has begun focusing on efforts to educate the public on environmental racism. In the courts, the most common basis for environmental racism cases has so far been the equal protection clause. Legislation to help bring about environmental justice has been introduced in Congress.

_____. "Inequities of industrial siting addressed." (environmental racism, part 2) *National Law Journal* v15, n50 (August 16, 1993): 20.

Claims of environmental racism can be brought under Title VI of the 1964 Civil Rights Act. The act prohibits federal fund from being used to discriminate based on race and color. When using Title VI, plaintiffs need only prove disparate impact rather than discriminatory intent, which would be required under an equal protection claim.

Lavelle, Marianne. "Transition meets with minorities: Environmental activists." *National Law Journal* v15, n15 (December 14, 1992): 3.

People of color leaders of environmental justice groups met with members of the Clinton-Gore transition team to urge them to address issues of environmental racism. Richard Moore of the SouthWest Network for Environmental and Economic Justice was instrumental in bringing these meetings about and believes environmental spokespeople should have input into the selection of EPA officials.

_____. "Environmental racism targeted; congressional hearing." *National Law Journal* v15, n26 (March 1, 1993): 3.

The House Judiciary Committee's subcommittee on civil and constitutional rights will hold hearings on environmental racism. Chairman Don Edwards said part of his inspiration for the hearings was the National Law Journal report on the subject in the September 21, 1992, issue. Lack of equity for minority communities under the Superfund program and environmental enforcement of Indian reservation lands will be among the areas investigated.

_____ & Coyle, Marcia. "Unequal protection: The racial divide on environmental law." *National Law Journal* (September 21, 1993).

This special supplement examines the different treatment of communities of color and white communities under EPA's Superfund program. The authors conclude that white communities receive quicker action and more comprehensive cleanup strategies than communities of color even when income is held constant.

MacLachlan, Claudia. "Tension underlies rapport with grassroots groups." *National Law Journal* v15, n3 (September 21, 1992): 10.

In 1990, two grassroots groups, the Gulf Coast Tenants' Leadership Development Program and the SouthWest Organizing Project, charged the large, mainstream environmental groups also known as the "Big Ten" with lack of attention to toxic dangers in low-income communities and communities of color.

MacLean, Alair. "Bigotry and poison." (Gulf Coast Tenants' Organization, Louisiana) *Progressive* v57, n1 (January 1993): 14.

Gulf Coast Tenants Organizations are fighting environmental racism in the location of polluting industries along the 85-mile stretch of the Mississippi River from Baton Rouge to New Orleans known as "Cancer Alley."

Martinez, Elizabeth. "Defending the Earth in '92: A people's challenge to the EPA." *Social Justice* v19, n2 (Summer 1992): 95 (11 pages).

Environmental racism has been relentlessly pursued by concerned organizations after the publication of the United Church of Christ Commission for Racial Justice's 1987 *Toxic Wastes and Race* study. The SouthWest Organizing Project based in Albuquerque, N.M., has been active in combating environmental and economic injustice.

Meyer, Eugene L. "Environmental racism: Why is it always dumped in our backyard? Minority groups take a stand." *Audubon* v94, n1 (January-February 1992): 30 (3 pages).

Civil rights activist Rev. Benjamin F. Chavis Jr. coined the term 'environmental racism' in 1982. He echoed this battle cry during the struggle against the siting of a hazardous waste landfill in mostly African American Warren County, North Carolina. Warren County was not unique but represented a pattern across the United States.

Multinational Monitor. "The politics of race and pollution: An interview with Robert Bullard." (University of California sociology professor) v13, n6 (June 1992):21 (5 pages).

Sociologist Robert Bullard talks about his work in communities of color and their concern about environmental justice. He says persons of color are often excluded from decision-making processes that affect their communities' health and environment. As a result, locally undesirable land uses and other potential health threats are diverted towards economically and politically disenfranchised communities. However, communities of color

are learning to organize themselves, and some have succeeded in their efforts to counter environmental racism.

Panel Discussion. "A place at the table: A Sierra roundtable on race, justice, and the environment." *Sierra* v78, n3 (May-June 1993): 50 (11 pages).

Environmental justice advocates examine and evaluate the major environmental groups and their work on issues concerning communities of color. The panelists conclude that the groups have contributed to elitism and racism within the larger environmental movement.

Rees, Matthew. "Black and green: Race and environmentalism." *New Republic* v206, n9 (March 2, 1992): 15 (2 pages).

People of color environmental activists voice their concern on the problem of eco-racism, which is typified by the location of waste facilities and other environmentally dubious projects in their neighborhoods. They also charge mainstream environmental organizations with ignoring their concerns.

Satchell, Michael. "A whiff of discrimination? Racism and environmental policy" *U.S. News & World Report* v112, n17 (May 4, 1992): 34 (2 pages).

This article asks whether environmental racism real or imagined. It attempts to reduce environmental inequities to class and poverty, while ignoring voluminous studies that clearly demonstrate that racism still operates in contemporary American life.

Siler, Julia Flynn. "Environmental racism? It could be a messy fight." *Business Week* (May 20, 1991): 116.

This article examines the battle waged by People for Clean Air and Water in Kettleman City, California (a mostly Latino farm worker community) against the Chemical Waste Management. The company proposed a hazardous waste incinerator in the community.

Steinhart, Peter. "What can we do about environmental racism?: Coping with tendency to build freeways, prisons and waste facilities in poor and minority communities." *Audubon* v93, n3 (May 1991): 18 (4 pages).

This article explores the disparate burden and regressive impact of the construction of freeways, prisons, and waste facilities on the poor and people of color.

Taliman, Valerie. "Stuck holding the nation's nuclear waste," *Race, Poverty & the Environment* (Fall 1992): 6 (4 pages).

Thigpen, David. "The playground that became a battleground. (Kingsley Park Playground of Buffalo, New York's arsenic contaminated soil)" *National Wildlife* v31, n2 (February-March 1993): 14 (4 pages).

African American residents in Buffalo are engaged in a battle to get government officials to remove arsenic from the Kingsley Park Playground. Arsenic was detected in the park as early as 1983. However, government action has been slow.

Ward, Bud. "Environmental racism becomes key Clinton EPA focus." *Safety & Health* v149, n3 (March 1994): 183 (4 pages).

Many environmental justice experts challenge racial discrimination and disparate siting of potentially environmentally harmful waste facilities such as incinerators. EPA Administrator Carol Browner has begun to infuse environmental-justice issues into the agency's decision-making process.

WOMEN AND ENVIRONMENTAL JUSTICE

Chiro, Giovanna Di. "Defining environmental justice: women's voices and grassroots politics." *Socialist Review* v22, n4 (October-December 1992): 93 (38 pages).

The grassroots environmental movement is led largely by women who have challenged gender and racial inequality. These activists are on the forefront of change.

Easton, Billy. "WHEACT for justice." (West Harlem Environmental Action, New York) *Environmental Action Magazine* v24, n4 (Winter 1993): 33 (3 pages).

This article profiles two African American women, Peggy Shepard and Vernice Miller, who founded West Harlem Environmental Action (WHEACT) to fight the North River Sewage Treatment Plant. The group targets such examples of affluent development dumping on poor minority neighborhoods, which they term environmental racism.

Pardo, Mary. "Creating community: Mexican American women in Eastside Los Angeles." *AZTLAN - A Journal of Chicano Studies* v20, n1-2 (Spring-Fall 1991): 39 (33 pages).

This articles chronicles grassroots organizing in an East Los Angeles community. Many lessons can be learned from Mothers of East Los Angeles, a Latina group organized around environmental justice.

Taliman, Valerie. "Saving native lands: One woman's crusade against environmental racism." *Ms. Magazine* v4, n4 (January-February 1994): 28 (2 pages).

JoAnn Tall, an Oglala Lakota Indian, has devoted her life to the protection and sustenance of Native lives and land. Her commitment to environmental is grounded on her people's deep respect for the natural world.

"The Green Movement for environmental justice and a sustainable economy." *WIN News* v18, n4 (Autumn 1992): 20.

The Green Movement came out with its 10-plank action program that seeks to establish an environmentally conscious society based on environmental justice and sustainable development through individual responsibility, political activism, and social transformation. Among the 10 planks of its action program are economic conversion, ecologically sensitive industrial, agriculture and food policies, energy and pollution management, community and occupational health care services, education, preservation of wildlife biodiversity, and encouragement of greater political participation by the people.

"Women's Environment & Development Organization - WEDO." (Women and Environment) *WIN News* v18, n4 (Autumn 1992):

15.

The Women's Environment and Development Organization (WEDO) launched its Community Report Card Project as its contribution to the global environment campaign. The WEDO is an international network of women activists concerned about women's status, environment, sustainable development, and social justice from the community to the global level. WEDO participated in the 1992 U.N. Conference on Environment and Development in Rio de Janeiro through caucuses that led to the incorporation of the objectives of the Women's Action Agenda into the Rio Declaration.

"World Women's Congress for a Healthy Planet: The North American Women's Regional Caucus Report." (Directory) *Women & Environments* v13, n1 (Fall-Winter 1991): 6.

The World Women's Congress met on November 12, 1991, in Miami to reaffirm goals and philosophy concerning women and the environment. The congress is against the present world economic order, which distributes the wealth among the rich while the poor are deprived and which supports a militaristic outlook. Their goals include stopping genocide of indigenous peoples, environmentally hazardous free trade agreements, environmental racism, and nuclear power and weapons development.

LAND USE, FACILITY SITING, AND "NIMBY"

Brion, Denis J. "An essay on LULU, NIMBY, and the problem of distributive justice." *Boston College Environmental Affairs Law Review*, v15, n3-4 (Spring 1988): 437-503.

This study examines the problems associated with the distribution of locally unwanted land uses, the not-in-my-backyard phenomenon, and unequal power in society.

Bullard, Robert D. "Environmental racism and land use." *Land Use Forum: A Journal of Law, Policy, & Practice* v2 (Spring 1993): 6-11.

This articles explore discriminatory land use practices as an extension racial bias in environmental decisionmaking.

_____. "In our backyards: Minority communities get most of the dumps." EPA Journal v18 (March/April 1992): 11-12.

Waste facilities are not randomly distributed across the landscape. Communities of color bear a disproportionate burden as a result of nearby waste facilities.

Freudenburg, William R. & Pastor, Susan K. "NIMBYs and LULUs: Stalking the syndrome." *Journal of Social Issues* v48, n4 (Winter 1992): 39.

Communities confronted with LULUs respond in many ways from irrational hysteria to enlightened self-interest.

Greenberg, Michael R. "Proving environmental inequity in siting locally unwanted land uses." *Risk Issues in Health & Safety* v4 (Summer 1993): 235-252.

This paper explores land-use decision-making and the problems associated with "proving" environmental inequity associated with LULUs.

Inhaber, Herbert. "Of LULUs, NIMBYs, and NIMTOOs." *Public Interest* n107 (Spring 1992): 52.

The public response to locally unwanted land uses gave rise to not-in-my-backyard. Public officials have reacted with "not-in-my-term-of-office."

Jaffe, Susan. "Bhopal in the backyard? When the folks next door are industrial polluters, it's time for a chat." *Sierra* (September/October 1993): 52-53.

Industrial pollution and the threat to nearby communities are real and need to be addressed before a disaster occurs.

Lampe, David. "The politics of environmental equity." *National Civic Review* v81, n1 (Winter-Spring 1992): 27.

Some communities because of their race, class, and political powerlessness are forced to accept risky jobs and polluting industries that others can escape.

"Not in my backyard: IR&R joins in quest for environmental justice; ABA House Passes Resolution," *Human Rights* v20, n4 (Fall 1993): 26.

In an historic move, the Individual Rights and Responsibilities Section of the ABA together with the House of Delegates pass a resolution to end environmental racism. They also call for Congress to pass the Environmental Justice Act of 1993.

O'Looney, John. "Framing a social market for community responsibility: Governing in an age of NIMBYs and LULUs." *National Civic Review* v82, n1 (Winter 1993): 44.

Policy makers are attempting to develop a mechanism for the equitable distribution of locally unwanted land uses. Suggestions of "organized markets" and "market framework" approaches to land use decisions are made.

Walsh, Edward; Warland, Rex & Smith, D. Clayton. "Backyards, NIMBYs, and incinerator sitings: Implications for social movement theory." Special Issue, *Social Problems* v40, n1 (February 1993): 25 (14 pages).

This article examines two siting disputes involving modern incinerators and asks why one was eventually built and the other defeated.

LAW REVIEW ARTICLES

Austin, Regina & Schill, Michael. "Black, brown, poor & poisoned: Minority grassroots environmentalism and the quest for eco-justice." *Kansas Journal of Law and Public Policy* v1, n1 (1991): 69-82.

People of color and the poor are endangered by industrial pollution and environmental degradation. They are organizing themselves around environmental justice, and many view their equal protection struggles as an extension of the civil rights movement.

Been, Vicki. "What's fairness got to do with it? Environmental

justice and the siting of locally undesirable land uses." *Cornell University Law Review* v78 (1993): 1001-1085.

The author discusses who benefits and who loses with the siting of locally unwanted land uses (LULUs), the politics involved with their siting, and legal strategies for combatting the siting of LULUs.

Brown, Alice L. "Environmental justice: New civil rights frontier." *Trial* v29, n7 (July 1993): 48 (6 pages).

Traditional environmental laws do not cover racial discrimination but can still challenge the location of polluting industries and lack of enforcement of cleanup provisions. Suits alleging this type of discrimination can be brought under several laws, including CERCLA, the Federal Water Pollution Control Act, Title VI of the 1964 Civil Rights Act, and the Medicaid Act.

Bullard, Robert D. "Race and environmental justice in the United States." *The Yale Journal of International Law* v18, n1 (Winter 1993): 319-335.

This article was written as part of the "Earth Rights and Responsibilities" Conference held at Yale Law School. The paper examines environmental racism and environmental inequity in the United States. It also gives a historical background of the environmental justice movement.

Chase, Anthony. "Assessing and addressing problems posed by environmental racism." *Rutgers University Law Review* v45, n2 (Winter 1993): 385-369.

Environmental racism is easy to practice but difficult to prove. The author draws some parallels with other forms of racial discrimination and the remedies used to combat them.

Coleman, Leslie Ann. "It's the thought that counts: The intent requirement in environmental racism claims." *St. Mary's Law Journal* v25, n1, 1993: 447-492.

The author gives a brief history of racial segregation and environmental racism. Court cases are discussed where the intent standard has been the insurmountable hurdle. Also discusses Title VI of the Civil Rights Act.

Cole, Luke W. "Empowerment as the key to environmental protection: The need for environmental poverty law." *Ecology Law Quarterly* v19, n4 (1992): 619-683.

The article discusses the need for poverty law and environmental justice law to merge when dealing with environmental racism issues. However, the law is only one tool. Community empowerment is the key in disenfranchised communities.

_____. "Remedies for environmental racism: A view from the field." (response to Rachel D. Godsil, *Michigan Law Review*, v90, p. 394) *Michigan Law Review* v90, n7 (June 1992): 1991-1997.

The author critiques Rachel D. Godsil's paper on environmental racism. Cole believes that the law has done a lousy job protecting people of color and disenfranchised populations. For him, grassroots activism is the approach most likely to bear fruit.

Collin, Robert, W. "Environmental equity: A law and planning approach to environmental racism." *Virginia Environmental Law Journal* v11, n4 (Summer 1992): 495-546.

Poor communities of color have been dealing with the adverse externalities of industrial capitalism for decades. The article delineates some of the institutional changes that could be implemented to combat this trend.

Colopy, James, H. "The road less traveled: Pursuing environmental justice through Title VI of the Civil Rights Act of 1964." *Stanford Environmental Law Journal* v13, n1 (January 1994).

A comprehensive discussion of legal strategies for combating environmental racism using Title VI of the Civil Rights Act.

Colquette, K.C. & Robertson, Elizabeth A. Henry. "Environmental racism: The causes, consequences and commendations." *Tulane Environmental Law Journal* 5 (1991): 153-207.

Environmental racism is alive and well in Louisiana. African American communities in the state's petro-chemical corridor suffer the most from discriminatory industry practices and parish policies.

Denno, Deborah, W. "Considering lead poisoning as a criminal defense." *Fordham Urban Law Journal* v20, n3 (1993): 377-400.

This article bases a criminal defense strategy on a recent biosociological study stating that lead poisoning in young black males is one of the strongest predictors for crime and violence. This possibly establishes an environmental link to the plight of America's young black males.

Dubin, Jon C. "From junkyards to gentrification: Explicating a right to protective zoning in low-income communities of color." *Minnesota Law Review* v77, v4 (April 1993): 739-801.

This article discusses the history of discriminatory zoning in the United States and the effect that it had on land-use patterns. It also examines other aspects of zoning laws, from environmental to gentrification, and calls for the use of protective zoning in disenfranchised communities.

Godsil, Rachel D. "Remedying environmental racism." *Michigan Law Review* v90, n2 (November 1991): 394-497.

This is one of the first law review articles to address environmental racism. People of color have not been well-served by government and industry.

Keeva, Steven. "A breath of justice: Along with equal employment opportunity and voting, living free from pollution is emerging as a new civil right." *ABA Journal* v80 (February 1994): 88-92

The environmental justice movement is a bridge between the environmental and civil rights movements. The actions of grassroots groups have placed environmental justice issues on local, state, and national agenda

Lavelle, Marianne & Coyle, Marcia. "Unequal protection The racial divide in environmental law." Special Supplement. *National Law Journal* v15, n3 (September 21, 1992).

This issue reports on the unequal protection provided to communities of color under the federal Superfund

program. The authors' conclude that white communities see faster cleanup action and more stringent cleanup than communities of color. Penalties are stiffer on companies with violations in white communities as compared to communities of color.

Lazarus, Richard J. "Pursuing 'environmental justice': The distributional effects of environmental protection." *Northwestern Law Review* n87 (March 1993).

This article explores the effect of unequal protection on vulnerable populations and the role of environmental justice in correcting these inequities.

Lyskowski, Kevin. "Environmental justice: A research guide." *Our Earth Matters*, NAACP Legal Defense and Educational Fund, (Spring 1994). 16 pp.

This guide is full of tips and sources on environmental justice including cases, legislation, and bibliographic materials. It also has a fairly comprehensive list of print and "on-line" (computer) resources with key words for searches.

Mitchell, Carolyn M. "Environmental racism: Race as a primary factor in the selection of hazardous waste sites." *National Black Law Journal* v12, n3 (Winter 1993): 176-188.

The location of waste facilities because of the racial and ethnic makeup of the communities violates the 1866 Civil Rights Act and the equal protection guarantees of the 14th Amendment. Several state environmental and personal injury laws also mitigate against such racially discriminatory location of hazardous sites and operations.

Reich, Peter, L. "Greening the ghetto: A theory of environmental race discrimination." *The University of Kansas Law Review* v41, n2 (Winter 1992): 271-314.

This article discusses the inadequacies of federal doctrines in protecting communities of color and suggests that state doctrines could be used to combat environmental racism.

Tsao, Naikang. "Ameliorating environmental racism: A citizens' guide to combatting the discriminatory siting of toxic waste dumps." *New York University Law Review* v67, n2 (May 1992): 366-418.

The author discusses legal remedies communities may pursue to prevent the development of new toxic waste sites in their communities. Racial discrimination is analogous to any municipal service, and remedies exist in common law, state law or constitutional law. Federal cases based upon equal protection of the 14th Amendment would probably not succeed in the present federal courts, so state laws are the better approach.

BOOKS, REPORTS, AND SPECIAL ISSUES (PERIODICALS)

Alston, Dana. *We Speak for Ourselves: Social Justice, Race & Environment.* The Panos Institute. (December 1990). 40 pp.

This booklet documents the marriage of the movement for social justice with environmentalism. Contributors include journalists, writers, illustrators, researchers, and artists. Issues covered include environment and people of color, land, sovereignty and the environment, organizing, and the media and the environment.

Angel, Bradley. *The Toxic Threat to Indian Lands: A Greenpeace Report.* San Francisco: Greenpeace, 1992. 17 pp.

This report details the targeting of Native lands for landfills, incinerators, and other waste facilities.

Barry, Tom & Sims, Beth. *The Challenge of Cross Border Environmentalism: The U.S.-Mexico Case.* No.1 in the U.S.-Mexico Series. The Inter-Hemispheric Education Resource Center, Resource Center Press and border ecology project, 1994. 121 pp.

A review of the political agenda and recommendations for NAFTA's side agreements is presented. The authors argue that small-scale models forming at the grassroots level, combined with progressive binational politics, could provide a basis for sustainable development in the border region.

Bryant, Bunyan & Mohai, Paul. *Race and the Incidence of Environmental Hazards.* Boulder, Colo.: Westview Press, 1992. 251 pp.

This book includes the papers that were delivered at a 1990 University of Michigan conference by the same name. The core presenters, people of color scholars, civil rights leaders, and environmental justice activists, became the ad hoc group known as the "Michigan Coalition."

Burke, Lauretta M. *Environmental Equity in Los Angeles.* National Center for Geographic Information & Analysis, Technical Report 93-6. (July 1993). 82 pp.

In a case study, the relationship between industrial facilities and emitting toxic chemicals and demographic variables are examined at the census tract-level of aggregation. Because race and income are highly correlated, the purpose of the analysis is to determine the significance of race in relationship to environmental pollution when the effects of other important variables, such as income, have been removed.

Bullard, Robert D., ed. *Unequal Protection: Environmental Justic and Communities of Color.* San Francisco: Sierra Club Books, 1994 392 pp.

This offers documentation of environmental injustice and unequal protection. Case studies come from "impacted" citizens, grassroots activists, civil rights leaders, journalists, lawyers, and academicians who have worked in communities of color.

_____. *Dumping in Dixie: Race, Class and Environmental Qualit* 2nd ed. Boulder: Westview Press, 1994. 195 pp.

African American communities in the South have become the dumping ground for polluting industries, waste facilities, and garbage dumps. The author examines five African American communities that challenged unjust, unfair, and illegal industry and government practices.

_____, ed. *Confronting Environmental Racism: Voices from the Grassroots.* Boston: South End Press, 1993. 259 pp.

This book grew out of grassroots activists and environmental justice leaders who participated in the 1991 First National Environmental Leadership Summit. The contributors conclude that environmental racism endangers public health, lowers property values, and creates nonsustainable communities.

Canadian Environmental Network. *The Green List: A Guide to Canadian Environmental Organizations and Agencies.* Ottawa, Ont.: The Canadian Environmental Network, 1994. 425 pp.

This directory includes listings of Canadian environmental groups, development groups, industry associations, government contacts, and Southern networks.

Center for Investigating Reporting and Bill Moyers. *Global Dumping Grounds: The International Trade in Hazardous Waste.* Washington, D.C.: Seven Locks Press, 1990. 152 pp.

This book examines problems associated with transboundary shipment of hazardous wastes from the United States to the Third World. A companion video narrated by Bill Moyers can be ordered with the book.

Environmental Health Coalition. *Toxic-Free Neighborhoods Community Planning Guide.* San Diego: Environmental Health Coalition, 1993. 97 pp.

This guide offers solutions to toxics problems faced by neighborhoods across the United States. The report discusses environmental racism, creating a toxic-free neighborhood ordinance, pollution prevention, legal tools, and organizing strategies.

Geddicks, Al. *The New Resource Wars: Native and Environmental Struggles Against Multinational Corporations.* Boston: South End Press, 1994. 250 pp.

The author, a University of Wisconsin (La Crosse) sociologist, provides an historical analysis of the assaults upon native peoples and the environment from James Bay, Quebec, to the Ecuadorian rain forest.

Goldman, Benjamin & Fitton, Laura J. *Toxic Waste and Race Revisited.* Washington, D.C.: Center for Policy Alternatives, NAACP, United Church of Christ Commission for Racial Justice, 1994. 10 pp.

This follow-up study to the 1987 *Toxic Waste and Race* reveals that people of color are more likely to live near waste sites than they were in 1987.

Goldman, Benjamin. *The Truth About Where You Live: An Atlas for Action on Toxins and Mortality.* New York: Random House, 1992. 416 pp.

This book contains some maps, graphs, and statistical tables that point to clear links between quality of life and geographic location; where you live can affect your health.

Gottlieb, Robert. *Forcing the Spring: The Transformation of the American Environmental Movement.* Washington, D.C.: Island Press, 1993.

The author examines the history of the environmental movement and its redefinition that has emerged from environmental justice battles of low-income communities and communities of color.

Hernandez, Richard & Sanchez, Edith. *Cross-Border Links: A Directory of Organizations in Canada, Mexico, and the United States.* Albuquerque: Inter-Hemispheric Education Resource Center, 1992. 263 pp.

This directory includes groups that are working on such areas as fair trade, labor, and the environment. It also has listings of advocacy organizations, academic institutions, government agencies, business groups, and electronic networking.

Hofrichter, Richard, ed., *Toxic Struggles: The Theory and Practice of Environmental Justice.* Philadelphia: New Society Publishers, 1993. 260 pp.

This book examines how people of color, women, migrant farm workers, and industrial workers are joining forces with environmental activists to challenge corporate polluters. It examines the multi-issue and multicultural coalitions that have revitalized the political landscape around environmental justice. Essays reflect the diversity of the environmental justice alliance by addressing environmental racism, ecofeminism, occupational health and safety, and the exploitation of Third World peoples.

Institute for Southern Studies. "People of color forge a movement for environmental justice." Special Issue, *Southern Exposure* v21, n4 (Winter 1993). 64 pp.

Articles include such issues as lead poisoning in West Dallas, Du Pont fungicide killing crops in Florida, private resorts eroding the coast in South Carolina, and pollution along the U.S.-Mexico and the North American Free Trade Agreement (NAFTA).

Johnson, Barry L.; Williams, Robert C. & Harris, Cynthia M. *Proceedings of the 1990 National Minority Health Conference: Focus on Environmental Contamination.* Princeton, NJ: Scientific Publishing Co., Inc., 1992.

The First National Minority Health Conference was held in Atlanta in 1990. Papers explore the nature, extent, and impact of environmental hazards on persons of color and other vulnerable populations.

Land Use Forum. "Environmental equity: Confronting racial injustice in land use patterns." Special Issue. *Land Use Forum* Continuing Education of the Bar of California v2, n1 (Winter 1993). 91 pp.

These articles examine the relationship between unpopular land use and communities of color, and look at emerging efforts to correct the disparity. There is also a list of resources and organizations active in environmental justice issues.

Lewis, Sanford; Keating, Brian & Russell, Dick. *Incinerators by Design: Waste, Freud and Abuse in Federal Environmental Health Research.* Boston: National Toxics Campaign, 1992. 55 pp.

This report takes the Agency for Toxic Substances and Disease Registry to task for inconclusive findings and wasteful health assessments of residents who live around Superfund sites.

Louisiana Advisory Committee to the U.S. Commission of Civil Rights. *The Battle for Environmental justice in Louisiana ... Government, Industry, and the People.* Kansas City: U.S. Commission on Civil Rights Regional Office. (September 1993). 144 pp.

This report offers, for the first time, information for the U.S. Commission on Civil Rights linking environmental practices and policies with racial discrimination. The study shows that black communities in the corridor between Baton Rouge and New Orleans, known as "Cancer Alley," are disproportionately impacted by state and local government systems for permitting and expansion of hazardous waste and chemical facilities.

Mann, Eric. *L.A.'s Lethal Air: New Strategies for Policy, Organizing, & Action.* A Labor/Community Strategy Book. Los Angeles, 1991. 80 pp.

This report discusses air pollution in Los Angeles and its effect upon poor communities of color. It also documents the corporate sources of the problem and discusses the Labor/Community Watchdog strategy for fighting environmental racism.

Natural Resources & Environment. "Facility siting." Section of Natural Resources, Energy and Environmental Law. American Bar Association. v7, n3 (Winter 1993). 64 pp.

It is almost a law of physics that for every proposal for an industrial facility, whether it is a landfill, hazardous waste incinerator, or a new electric transmission line, there is an equal (or greater) and opposing reaction, especially from those in the local community who will be closest to the new facility's impacts. There is a diverse collection of articles to assist anyone interested in facility siting.

Race, Poverty & the Environment. Special Issue. "Latinos and the environment" v4, n3 (Fall 1994). 48 pp.

This issue is devoted to Latinos and contains articles that address issues ranging from Puerto Ricans in New York to Chicanos in East Los Angeles. The volume contains a good mix of articles from environmental justice activists and academicians.

Sevrens, Gail. *Environmental, Health, and Housing Needs and Nonprofit Groups in the U.S.-Mexico Border Area.* Arlington, Va.: World Environment Center. (June 1992). 187 pp.

This directory contains mostly health and housing nonprofit groups located along the U.S.-Mexican border.

Sexton, Ken & Anderson, Yolanda Banks. "Equity in Environmental Health: Research Issues and Needs," Special Issue, *Toxicology and Industrial Health* v9, n5 (September-October 1993). 967 pp.

This issue grew out papers presented at a workshop on environmental health issues. The workshop was sponsored by the U.S. WPA, National Institute for Environmental Health Sciences, and the Agency for Toxic Substances and Disease Registry. Ten articles are presented on topics ranging from research and decision making, health status by race and class, data collection, susceptibility, community perspectives and health research needs, health risks from air and water pollution, and hazardous wastes.

Social Problems. Special Issue on environmental justice v40, n1 (February 1993).

This issue contains research and case studies from the field.

Southwest Organizing Project. *Intel Inside ... New Mexico.* Albuquerque: SWOP, 1983.

This is a case study of the micro-electronics industry in New Mexico. It clearly shows that environmental justice and economic justice are one and the same. SWOP's position is that economic development models also must address sustainability and justice concerns of local communities.

Szasz, Andrew. *EcoPopulism: Toxic Waste and the Movement for Environmental Justice.* Minneapolis: University of Minnesota Press, 1994.

The author discusses how, in less than a decade, a rich infrastructure of increasingly more permanent social organizations has emerged around environmental justice issues, including municipal waste, military toxics, and pesticides. He follows the development of the movement in the world of "official" policy-making in Washington as well as through the formation of local, grassroots groups in America's polluted neighborhoods. He suggests that the movement may prove to be the vehicle for reinvigorating progressive politics.

Texas Environmental Equity and Justice Task Force Report. *Recommendations of to the Texas Natural Resource Conservation Commission.* Austin, Texas. (August 1993).

The purpose of this task force was to ensure that the public benefits from the newly created state agency. This was one of the first statewide task forces to examine the impact of environmental policies, regulations, and laws on low-income communities and communities of color.

Texas Network for Environmental and Economic Justice. *Toxics in Texas & Their Impact on Communities of Color.* Austin, Texas: Texas Center for Policy Studies. (March 1993) 41 pp.

This preliminary report is intended to serve as an organizing and educational tool for community leaders and policy makers who are addressing environmental justice and economic development issues across the state of Texas. According to the data, gathered from demographics of hazardous facilities and industries, communities of color in Texas are disproportionately impacted

United Church of Christ Commission for Racial Justice. *Proceedings: The First National People of Color Environmental Leadership Summit.* New York: Commission for Racial Justice. 1992. 234 pp.

The papers compiled from the summit give an excel-

lent overview of the presentations, workshops, and open dialogue. This document can be supplemented with a summit video.

U.S. Environmental Protection Agency. Special Issue, *EPA Journal.* "Environmental Protection: Has It Been Fair?" v18, n1 (March/April 1992). 64 pp.

This issue contains a wide range of articles (some written by environmental activists and leaders) that explore the issues of environmental and economic justice, differential exposure, facility siting disparities, and initiatives begun at EPA to address some of these concerns.

_____. *OSWER Environmental Justice Task Force Draft Final Report.* Washington, D.C.: U.S. EPA Office of Solid Waste and Emergency Response, 1994. 68 pp.

This report was produced by EPA's Office of Solid Waste and Emergency Response (OSWER) to guide its environmental justice efforts on the reauthorization of Superfund. Some of the core recommendations from grassroots groups are incorporated in OSWER's action plan.

_____. *Toxic Release Inventory & Emission Reductions 1987-1990 in the Lower Mississippi River Industrial Corridor.* Washington, D.C.: U.S. EPA, Office of Pollution Prevention and Toxics, 1993.

Using geographic information system and Toxic Release Inventory data, the EPA mapped the pollution levels along the Mississippi River from Baton Rouge to New Orleans. Not surprisingly, the EPA study finds that African American communities along the river bear the greatest risk burden from industrial pollution.

_____. *Environmental Equity: Reducing Risk for All Americans.* Washington, D.C.: U.S. EPA, 1992. v1. 43 pp. v2, 130 pp.

This report was issued after a yearlong study of environmental justice problems. While stopping short of recognition of environmental racism, the report does provide recommendations and action steps to begin addressing some of the nation's environmental inequities.

APPENDIX T -- GLOSSARY OF ACRONYMS

ANPR	Advance Notice of Proposed Rulemaking
CAG	Community Advisory Group
CAMU	Corrective Action Management Unit
CBEP	Community Based Environmental Protection
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CFR	Code of Federal Regulations
CMI	Corrective Measures Implementation
CMS	Corrective Measures Study
EPA	Environmental Protection Agency
EPCRA	Emergency Planning and Community Right-to-Know Act
FR	Federal Register
HQ	EPA Headquarters
HSWA	Hazardous and Solid Waste Amendments
LEPC	Local Emergency Planning Committee
NOD	Notice of Deficiency
OSW	EPA Office of Solid Waste
OSWER	EPA Office of Solid Waste and Emergency Response
RCRA	Resource Conservation and Recovery Act
RFA	RCRA Facility Assessment
RFI	RCRA Facility Investigation
SWDA	Solid Waste Disposal Act
SWMU	Solid Waste Management Unit
TAG	Technical Assistance Grant
TRI	Toxics Release Inventory
TSD	Treatment, Storage, and Disposal Facility