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maritime facilities in the area, the Coast Guard believes there will be no impact to small entities. Therefore, the Coast Guard certifies under 5 U.S.C. § 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because it establishes a safety zone.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Temporary Final Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. From 12:01 a.m. on June 12, 2000, until 11:59 p.m. on June 16, 2000, § 165.T17–002 is temporarily added to read as follows:

§ 165.T17–002 Safety Zone; Port Graham, Cook Inlet, Alaska.

(a) *Description.* The following area is a Safety Zone: All navigable waters within a 600-yard radius of the Heavy-lift vessel SWAN, located in Port Graham, Cook Inlet, Alaska.

(b) *Effective dates.* This section is effective from 12:01 a.m. on June 12, 2000, until 11:59 p.m. on June 16, 2000.

(c) *Regulations.* (1) The Captain of the Port means the Captain of the Port, Western Alaska. The Captain of the Port may authorize or designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf as his representative.

(2) The general regulations governing safety zones contained in Title 33 Code of Federal Regulations § 165.23 apply. No person or vessel may enter, transit through, anchor or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port, Western Alaska, or his representative. The Captain of the Port or his representative may be contacted in the vicinity of the SWAN via marine VHF channel 16. The Captain of the Port's representative can also be contacted by telephone at (907) 271–6700.

Dated: April 14, 2000.

W.J. Hutmacher,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 00–12151 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22, 117, 122, 123, 124, 125, 144, 270, and 271

[FRL–6561–5]

RIN 2040–AC70

Amendments to Streamline the National Pollutant Discharge Elimination System Program Regulations: Round Two

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today revising the National Pollutant Discharge Elimination System (NPDES) regulations. This revision is part of an Agency-wide effort to respond to a directive issued by the President on February 21, 1995, which directed Federal agencies to review their regulatory programs to eliminate any obsolete, ineffective, or unduly burdensome regulations. In response to that directive, EPA initiated a detailed review of its regulations to determine which provisions were obsolete, duplicative, or unduly burdensome. On June 29, 1995, EPA issued a rule (60 FR 33926) which removed some regulatory provisions in the Office of Water program regulations (including certain NPDES provisions) that were clearly obsolete. Today's revision is intended to further streamline NPDES, Resource Conservation and Recovery Act (RCRA), Prevention of Significant Deterioration (PSD), and Underground Injection Control (UIC) permitting procedures, and CWA 301(h) variance request procedures, by revising requirements to eliminate redundant regulatory language, provide clarification, and remove or streamline unnecessary procedures which do not provide any environmental benefits. Conforming changes to other requirements are also made in today's rule. These revisions are identified and discussed in the Supplementary Information section below.

DATES: This rule becomes effective June 14, 2000. For judicial review purposes, this final rule is promulgated as of 1:00 P.M. (eastern standard time) on May 30, 2000 as provided in.

ADDRESSES: The complete administrative record for the final rule have been established and includes supporting documentation as well as printed, paper versions of electronic comments. Copies of information in the record are available upon request. A reasonable fee may be charged for copying. The record is available for inspection and copying from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, EPA, East Tower Basement, 401 M Street, SW, Washington, DC. For access to docket materials, please call (202) 260–3027.

FOR FURTHER INFORMATION CONTACT: Howard Rubin, Water Permits Division(4203), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202) 260–2051 or Thomas Charlton, Water Permits Division(4203), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–6960.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are facilities that discharge pollutants to waters of the United States that are required to have National Pollutant Discharge Elimination System (NPDES) permits.

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Category	Examples of regulated entities
Federal, State, Local, and Tribal Governments.	Facilities which discharge pollutants to waters of the U.S. under the NPDES program. Facilities which discharge pollutants under the RCRA, PSD, and UIC program. Facilities requesting a CWA 301(h) variance request.
Private Industry	Facilities which discharge pollutants to waters of the U.S. under the NPDES program. Facilities which discharge pollutants under the RCRA, PSD, and UIC program. Facilities requesting a CWA 301(h) variance request.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is likely to be regulated by this action, you should carefully read the applicability criteria of 122.1 and 124.1 of Title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Organization

Information in this preamble is organized as follows:

I. Background
II. Revisions
A. Revisions to Part 122
1. Purpose and Scope (40 CFR 122.1)
2. NPDES Program Definitions (40 CFR 122.2, 124.2)
3. New Sources/New Dischargers (40 CFR 122.4, 124.56)
4. EPA Application Forms (40 CFR 122.1(d)(1), 122.21(a), 122.21(d), 122.26(c)(1))
5. Effluent Characteristics (40 CFR 122.21(g)(7))
6. Signatories (40 CFR 122.22)
7. Group Permit Applications (40 CFR 122.26(c)(2))
8. General Permits (40 CFR 122.28)
9. Monitoring (40 CFR 122.41(j), 122.41(l)(4), 122.44(i)(1)(iv), 122.48)
10. Effluent Guideline Limits in Permits (40 CFR 122.44(a))
11. Reopener Clauses (40 CFR 122.44(c))
12. Best Management Practices (40 CFR 122.44(k))
13. Termination of Permits (40 CFR 122.64)
B. Revisions to Part 123
1. Requirements for Permitting (40 CFR 123.25)
2. Transmission of Information to EPA (40 CFR 123.44)
C. Revisions to Public Hearing Requirements for NPDES Permit Actions and RCRA Permit Terminations
1. Summary of Proposed Rule
2. Comment and EPA Responses
3. Final Rule
D. Removal and Reservation of Part 125, Subpart K—Criteria and Standards for Best Management Practices Authorized under Section 304(e) of the Act
E. Provisions Without Comments
F. Miscellaneous Corrections
III. Administrative Requirements
A. Executive Order 12866
B. Executive Order 13132
C. Executive Order 13045
D. Executive Order 13084
E. The Unfunded Mandates Reform Act
F. Regulatory Flexibility Act
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Congressional Review Act

I. Background

On February 21, 1995, the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer and by June 1, 1995, identify those rules that are obsolete or unduly burdensome. EPA conducted a review of its rules, including those issued under the Federal Water Pollution Control Act, as amended (FWPCA) (33 U.S.C. 1251 *et seq.*) (also cited below, as the Clean Water Act or CWA), the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f *et seq.*), and the Marine Protection, Research, and Sanctuaries Act (also known as the Ocean Dumping Act) (33 U.S.C. 1401 *et seq.*). In March and April of 1995, EPA solicited informal comments from the public, regulated entities, States, and municipalities on ways to identify rules that are obsolete, redundant, or unduly burdensome. Toward that end, a number of meetings were held with the public by the EPA Regional Offices. On April 3, 1995, EPA issued a preliminary report which identified those regulatory provisions that were amenable to streamlining. On December 11, 1996, EPA proposed the Amendments to Streamline the National Pollutant Discharge Elimination System Program Regulations: Round Two in the **Federal Register** (61 FR 65268).

Today EPA is issuing the final version of the Round II NPDES Streamlining Rule. This final rule revises the NPDES program regulations in parts 122, 123, 124 and 125 to eliminate redundant requirements, remove superfluous language, provide clarification, and remove or streamline unnecessary procedures which do not provide any environmental benefits. Included in today's final rule are revisions which revise the permit appeals process for EPA-issued NPDES permits by replacing the evidentiary hearing procedures found at part 124, subpart E with a direct appeal to the Environmental Appeals Board. This is not intended to affect the permit appeal procedures for State-authorized NPDES programs.

Today's notice does not represent the end of EPA's efforts to reinvent and streamline its regulations. Further reinvention efforts are under way with respect to the pretreatment program and the core NPDES regulations. There is also a continuing dialogue between EPA and the public on permit reinvention in the context of the National Advisory Council for Environmental Policy and Technology (NACEPT).

II. Revisions

A. Revisions to Part 122

1. Purpose and Scope (40 CFR 122.1)

a. Summary of Proposed Rule. Section 122.1 provides a general description of the purpose and scope of the NPDES program regulations. In the December 1996 proposal, EPA proposed several non-substantive changes to remove superfluous language and to provide for more clarity. EPA did not intend to change any existing substantive requirements. To provide better service to its customers, EPA also proposed providing a note in this provision to assist readers in contacting EPA if they have questions regarding the NPDES program or its rules. EPA also explored the possibility of providing for the electronic submission of queries to the NPDES program.

b. Significant Comments and EPA Response. Some comments were made on the issue of providing a note or responding to electronic queries. Some commenters requested assurance that any contacts listed in the note and responses made to electronic queries be from people who are authorized to speak on the Agency's behalf. Another commenter requested that EPA develop a location on the Office of Water's Internet web site that lists most frequent queries and EPA's responses. All other comments regarding this section were to express general support for the proposed revision.

Today's final rule provides the address and phone number for the

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Water Permits Division (formerly known as the Permits Division) which provides national oversight for the NPDES, Sewage Sludge, and Pretreatment programs, and the website address of that office's homepage on the Internet. EPA believes that EPA's phone receptionists are able to route callers to the appropriate EPA staff who are knowledgeable about a particular issue or program area. At this time, EPA declines to provide a system for handling electronic queries that is specific to the Water Permits Division since agency-wide procedures are being examined as part of the Agency's effort to respond to such queries. The Office of Water already maintains a web site containing frequently asked questions regarding the NPDES program. This is located at http://www.epa.gov/owm/.

c. Final Rule. EPA is adopting the proposed rule and adding the appropriate home page reference.

2. NPDES Program Definitions (40 CFR 122.2, 124.2)

a. Summary of Proposed Rule. In the December 1996 notice, EPA proposed to streamline the NPDES program definitions found at parts 122 and 124 by removing redundant or superfluous language. EPA also proposed amending § 122.2 to add references to definitions that are found elsewhere in parts 122, 123, and 403. The inclusion of such references in a single location was intended to assist readers in finding specific provisions in the NPDES regulations and was not intended to expand the application of those definitions if they are restricted to a particular section.

b. Significant Comments and EPA Response. One commenter requested that EPA define the term ''nonprocess wastewater''. Currently there is no such definition. Another commenter suggested that EPA change the definition of point source to exclude ''domestic users'' in a future rulemaking as a way to focus resources away from *de minimis* discharges. A commenter noted that the definitions for ''publicly owned treatment works'' (POTWs) differ between § 122.2 and § 403.3 and recommended that these definitions be standardized.

EPA declines at this time to add a definition for ''nonprocess wastewater'' since such definition was not in the proposed rule. EPA will consider recommendation in the next rulemaking to streamline the NPDES regulations. At that time, EPA will also solicit comment on modifying the definition of point source to exclude ''domestic users''. EPA will adopt the POTW definition that is found in § 403.3 for § 122.2 to achieve better consistency.

c. Final Rule. EPA is adopting the proposed rule and adopting the POTW definition found in § 403.3 for § 122.2.

3. New Sources/New Dischargers (40 CFR 122.4, 124.56)

a. Summary of Proposed Rule. Section 122.4(i) prohibits the issuance of a permit to a new source or new discharger if the discharge would cause or contribute to a violation of water quality standards. A new source or new discharger may, however, obtain a permit for discharge into a water segment which does not meet applicable water quality standards by submitting information demonstrating that there is sufficient loading capacity remaining in waste load allocations (WLAs) for the stream segment to accommodate the new discharge and that existing dischargers to that segment are subject to compliance schedules designed to bring the segment into compliance with the applicable water quality standards.

EPA proposed revising these information submission requirements to allow the Director to waive the present submittal of information requirements under § 122.4(i) where the permitting authority determines that it already has the required information. In many instances the information required to be submitted by the applicant (such as waste load allocations available or compliance schedules for existing discharges) may already be in the Director's files. Where the information is not available or current, the Director may not waive the requirement for the applicant to generate all supporting documentation. EPA notes that this information (as with any information which details how permit limits are derived) should be included in the fact sheet or statement of basis for the permit. See 40 CFR 124.7, 124.8, and 124.56. To underscore the importance of such information and to clarify an existing requirement, EPA has also included an express requirement in §§ 122.4(i) and 122.56(b)(1) that information which demonstrates how the criteria for permit issuance in § 122.4(i) are met is included in the fact sheet for the permit. EPA notes that this revision merely clarifies existing requirements found at §§ 124.7, 124.8, and 124.56 and does not result in an increased burden to the regulated community or permit issuing authorities.

All of the comments received supported this effort. In addition to comments providing generalized support, there were two specific comments. A commenter asked if new sources/dischargers should be obligated to provide all of the information where the Director already has some. The EPA feels that applicants must provide only that information which the Director does not have. Additionally, a commenter asked that EPA provide additional clarification as to what constitutes ''adequate information?'' The EPA feels that what constitutes ''adequate information'' is the information that is normally and properly submitted during the permit application process for the imposition of water quality based effluent limitations (WQBELs), the development of WLAs, and § 122.4(i) permit situations.

b. Final Rule. EPA is adopting the rule as proposed

4. EPA Application Forms (40 CFR 122.1(d)(1), 122.21(a), 122.21(d), 122.26(c)(1))

In the December 1996 notice, EPA proposed to consolidate §§ 122.1(d)(1) and 122.22(d) and move them to a new location, § 122.21(a), because most of the requirements in these two paragraphs are duplicative. EPA also proposed to add language in proposed § 122.21(a)(2) to clarify which EPA forms may be required for a particular discharger. The proposal also included new language to allow for the possibility of electronic submittal of application information in the event that the Agency approves the electronic application submittal process. At that time, authorized States would have the option of using electronic submission of application information. Finally, the December 1996 notice stated there were other ongoing efforts to update EPA's forms which may result in nonsubstantive revisions to paragraph (a)(2).

In December 1995, EPA proposed revisions to streamline and update the municipal (Form 2A) and sewage sludge permit (Form 2S) application regulations. See 60 FR 62546 (Dec. 6, 1995). Because the Form 2A/Form 2S and Round II Streamlining rules would have affected the same portions of the NPDES regulations, EPA has decided in the interest of better efficiency to merge the Round II application revisions into the Form 2A/Form 2S rulemaking. All comments concerning that proposed revision have been addressed in the Form 2A/Form 2S final rulemaking. *See* 64 FR 42434 (Aug. 4, 1999).

5. Effluent Characteristics (40 CFR 122.21(g)(7))

a. Summary of Proposed Rule. Section 122.21(g)(7) requires that applicants for permits for existing manufacturing, commercial, mining, and silvicultural

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discharges must submit information on effluent characteristics. On November 16, 1990 (55 FR 48062), EPA revised § 122.21(g)(7) to add language which specifically addresses storm water application requirements. However, the addition of this language has made paragraph (g)(7) more difficult to read because there is a large amount of uninterrupted text and it is difficult to separate out requirements that are specific to storm water discharges. The December 1996 proposal proposed to provide greater clarity to paragraph (g)(7) through the insertion of additional paragraph headings. No substantive changes to 40 CFR 122.21(g)(7) were proposed by this revision. EPA also proposed to revise references to provisions in paragraph (g)(7) that are found elsewhere in the NPDES regulations (40 CFR 122.21(g)(8); 122.21, notes 1, 2, and 3; 122.26(c)(1)(i); and 122.26(d)(2)(iv)(C)(2)) to ensure those references reflect § 122.21(g)(7)'s new structure.

b. Significant Comments and Response. In response to the proposed insertion of additional paragraph headings, the EPA received a comment recommending that the last two sentences in 40 CFR 122.21(g)(7)(ii) be moved to 40 CFR 122.21(g)(7)(i). EPA declines to follow that suggestion since it believes those two sentences provide needed clarification to the storm water sampling procedures in paragraph (ii). Additionally, paragraph (i) already addresses sampling.

EPA also received a comment that the proposed paragraph headings were insufficient and additional clarification was needed. In response to this comment, the EPA has added paragraph titles to the new paragraphs to make them easier to read.

c. Final Rule. EPA has adopted these revisions as proposed but with the addition of paragraph headings. These paragraph headings are intended to aid in the reading of this section and do not, in any way, modify the substantive content of the section.

6. Signatories (40 CFR 122.22)

a. Summary of Proposed Rule. The December 1996 proposed revision to 40 CFR 122.22 called for the elimination of the numeric criteria for designating responsible corporate officers who manage one or more manufacturing, production, or operating facilities. The numeric criteria, which specified that the signer '' * * * may be the manager of * * * facilities employing more than 250 persons or having gross sales or expenditures exceeding $25 million (in second quarter 1980 dollars) * * *'', were developed to ensure that facility managers who sign permit applications had high-level corporate knowledge of a corporation's pollution control operations and are authorized to make management decisions which govern the operation of the regulated facility. However, those criteria have become less valuable in the face of the changing management organization of many facilities. The December 1996 proposal proposed replacing the numeric criteria with more flexible narrative criteria, which specified the authority and responsibilities of the appropriate signer without specifying the resource levels that the signer manages. Under the proposed criteria, signatories include a manager of one or more manufacturing, production, or operating facilities, provided: (1) The manager was authorized to make management decisions which govern the operation of the regulated facility including the ability to allocate resources, make major capital investments, or initiate and direct other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; (2) the manager could ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and (3) where authority to sign documents had been assigned or delegated to the manager in accordance with corporate procedures.

b. Significant Comments and EPA Response. In response to this revision, commenters requested that EPA allow those who are eligible under the current criteria to remain eligible signatories. EPA notes that an ability to meet the old, numeric criteria would constitute sufficient evidence that an individual understands the need to comply with permits and has the authority to allocate resources toward permit compliance sufficient to meet the requirements of today's rule. Today's rule should not be interpreted as excluding signatories who were eligible under the previous criteria.

Some commenters responded that the wording of the proposed revision, which called for signers to have the ability to allocate resources and make major capital investments, excluded many facility managers, who they believe are the appropriate signers, and who do not have unilateral authority over allocation of resources. In response to these concerns, EPA will change the proposed language '' * * * allocate resources, make major capital investments'' into '' * * * having, as an explicit or implicit, position-related duty of capital investment recommendations * * *''. This will increase the flexibility in designating a signer, without eliminating the requirement that the signer have a role in allocating resources for environmental compliance.

A commenter asked EPA to expand requirements to address partnerships managed like corporations. EPA declines to take this action because it is beyond the scope of the proposal and because partnerships face different liability issues than do corporations. In a partnership, liability is not limited as it is in a corporation and general partners are held directly accountable for the organization's actions. It is therefore, important that a general partner be the signer of the permit as required in the NPDES regulations at 40 CFR 122.22(a)(2).

Additionally, a commenter asked that EPA broaden and clarify signatory eligibility by changing language in § 122.22(a)(1) to allow for a signature by any employee who (1) has the authority to gather and verify accurately and complete information necessary to the filings and (2) is duly authorized by management. EPA declines to incorporate that suggested revision because those two criteria by themselves are not sufficient to ensure that signatories have high level corporate knowledge of a corporation's pollution control operations and are authorized to make management decisions which govern the operation of the regulated facility. The commenter also asked that EPA better define ''major'' and use the term ''funding'' in lieu of ''capital investment''. EPA declines to adopt those changes because it believes that developing a stringent definition of the term ''major'' would only generate problems similar to those of the existing, numeric criteria. Lastly, EPA believes the term ''capital investment'' has a stronger association with infrastructure development, such as that needed for compliance, than the term ''funding''.

c. Final Rule. As stated above, EPA is adopting the rule as proposed with the exception of changing the language ''* * * allocate resources, make major capital investments * * *.'' to ''having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations * * *''.

7. Group Permit Applications (40 CFR 122.26(c)(2))

a. Summary of Proposed Rule. In the proposal for today's rule, EPA proposed to remove the storm water group permit

application provisions which are no longer necessary in light of the wide availability of general permits. The group application process was designed to accommodate the initial influx of first-time permit applications from Phase I industrial activities and was based, in part, on the limited availability of storm water general permits in States. However, the deadlines for submitting group applications for storm water Phase I facilities expired on October 1, 1992, and coverage under storm water general permits is now widely available. At present, forty three States are authorized to issue general permits (with EPA issuing storm water general permits for those States and jurisdictions that are without EPA authorization).

General permits provide a more flexible approach to storm water coverage and can accomplish the goals of the group permit application process (i.e., more efficient monitoring, reduced application burdens) without requiring that applicants form into groups prior to applying for permit coverage. EPA also believes that storm water pollution prevention plans (a principal requirement of most storm water general permits) will ensure that general permit conditions are appropriate and applicable for the industrial activities covered. Consequently, EPA believes the group application option is no longer needed. Today's rule eliminates the group application option at § 122.26(c)(2), and makes conforming changes to paragraph (c)(1). EPA notes that the removal of the group application provisions will not impact EPA's ability to reissue the Multi-Sector General Permit, which was developed based on group applications, because it is a general permit and any revisions to it will be based on information collected during the life of the permit.

b. Significant Comments and EPA Response. In response to the proposed revisions, some commenters thought EPA should retain the group application language until such time as it can be confirmed that there are no programs at the State level which are relying on the provisions of § 122.26(c)(2) in developing and administering storm water programs. Commenters are concerned that this will reduce flexibility for States who rely on the group application process for information development. At present, all State programs except the Virgin Islands have general permit authority and no State has elected to issue a group permit rather than a general permit. Therefore, EPA believes that removing the group permit provisions will not reduce the States' flexibility to regulate storm water discharges.

Commenters also believe this removal represents a significant policy decision, not appropriately made in regulations designed to eliminate ''obsolete, ineffective, or unduly burdensome regulations''. EPA disagrees and believes that eliminating the group application provisions is appropriate for this rulemaking since those provisions are clearly obsolete and redundant in light of general permits. Furthermore, EPA believes that retaining group applications may confuse permit applicants as to whether EPA or States will issue group permits. Since both EPA and States are using general permits and not group permits, EPA believes it is important to eliminate this potential confusion.

Some commenters noted that EPA's decision to remove the group permit application provisions would foreclose the possibility of groups not included in the 29 sectors identified in the multi-sector permit seeking and obtaining coverage under a group storm water permit. EPA disagrees with the commenters and notes that groups not included in the 29 sectors can obtain coverage under a general permit for their storm water discharges. EPA also notes that the multi-sector permit is a general permit which will not be affected by the removal of the group permit application provisions.

Commenters also feel that the group permit application provisions may be of value in future Phase II storm water permitting implementation. EPA believes, based on discussions during the phase II FACA meetings, that the scope and nature of the Phase II storm water rule is more compatible with the use of general permits and that the group application rules would require that applicants submit more information than needed. Given the widespread availability of general permits, EPA believes that general permits are a better permitting mechanism.

c. Final Rule. EPA has adopted the final rule as proposed.

8. General Permits (40 CFR 122.28)

a. Summary of Proposed Rule. In the proposal to today's rule, EPA proposed to revise the NPDES regulations to allow non-storm water general permits to cover more than one point source category or subcategory.[1] This revision was expected to increase the effectiveness of general permits that are issued on a geographic basis since it would be easier to use a single general permit to provide comprehensive controls on number of different discharges (as separate categories) within a geographic area such as a watershed. This revision was also expected to result in cost savings to permitting authorities since a single multi-category general permit could take the place of multiple single category general permits.

EPA noted, however, that the types of operations conducted or wastes discharged within each category or subcategory authorized by the general permit (except for general permits for storm water discharges) would still have to be substantially the same. Within each identified category or subcategory, limitations would have to be identical for all covered dischargers or treatment works treating domestic sewage.

EPA also proposed to revise the general permit regulations to clarify that where dischargers are subject to water quality-based limitations (WQBELs), discharges within a specific category or subcategory shall be subject to the same WQBELs.

b. Significant Comments and EPA response. In response to the proposal, several commenters expressed concern regarding WQBELs in general permits, stating that they are more appropriate for site-specific permits. They recommended that only technology-based limits and best management practices be used. EPA notes these concerns but declines to limit general permits to imposing only technology based limits. EPA believes there are situations where general permits can effectively impose WQBELS such as where a general permit is developed in close coordination with a total maximum daily load (TMDL) and/or a wasteload allocation. There are already cases in which general permits are being used to impose WQBELs on facilities with the same water quality requirements. One example of this is in the Commonwealth of Puerto Rico. Puerto Rico does not allow for mixing zones and thus discharges must meet water quality standards at the point of discharge making it possible to establish WQBEL in general permits which apply to all discharges without variation.

[1] Before this amendment, EPA's general permits regulations at 40 CFR 122.28(a)(2) provided that the ''general permit may be written to regulate * * * either: (i) Storm water point sources, or *a category* of point sources other than storm water that * * * (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.'' (Italics added.)

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Therefore, EPA believes that there are enough situations in which WQBELs are appropriate in general permits for this modification to be useful.

A commenter has requested an explanation of how general permits can be used to impose WQBELs. As mentioned above, general permits could impose WQBELS in areas where there are no mixing zones. A general permit containing WQBELs, for example, could also be developed in close coordination with a total maximum daily load (TMDL) and/or a wasteload allocation, or to cover a category of dischargers at a certain discharge level for an entire watershed.

A commenter expressed concerns over allowing general permits to cover multiple categories of dischargers. The commenter is concerned that development of overly broad general permits covering similar, but distinct, practices would result in unnecessary limits and conditions for some covered facilities. The commenter requested language in the preamble stating that coverage of general permits must not be so expansive that unnecessary requirements are placed on any of the categories that are regulated. Although EPA believes that such a scenario is possible, it is more likely that general permits will be developed to minimize imposing undue requirements on facilities. Also, applicants can always request coverage under an individual permit if they believe a general permit's requirements to be unnecessarily onerous. Thus, EPA declines to include such language.

Additionally, a commenter has suggested that general permits covering multiple categories are inappropriate for sludge disposal because of differing methods of disposal. EPA disagrees because general permits can be developed with categories that are based on differing methods of disposal.

A further comment has been made to request that general permits be expanded to cover cooling water discharges and discharges from remedial technologies for removing Volatile Organic Compounds. EPA believes that the creation of those categories is best left to the permitting authority who is familiar with the circumstances surrounding each general permit (subject to the requirements of 40 CFR 122.28(a)(2)), and declines to create a specified general permit category in this regulation. However, EPA does not by this decision mean to imply that general permits for such categories are prohibited if the permitting authority believes them to be appropriate.

Lastly, a commenter has stressed the importance of proposed paragraph 40 CFR 122.28(a)(4) and requested that it be retained in the final rule. EPA agrees with the commenter and has retained this provision in the final rule.

c. Final Rule. EPA has adopted the final rule as proposed.

9. Monitoring (40 CFR 122.41(j), 122.41(l)(4), 122.44(i)(1)(iv), 122.48)

a. Summary of the proposed rule. In the proposal to today's rule, EPA proposed to consolidate the monitoring provisions found at §§ 122.41 (j), (l)(4), and 122.44(i) and place them in § 122.48. In addition, EPA proposed to add a cross reference to the new consolidated monitoring requirements at § 122.41(j) to ensure that monitoring remains a standard condition for all NPDES permits. This revision was not intended to result in any substantive changes to the NPDES monitoring requirements. On the basis of comments received which raise the possibility that the proposed revisions might result in a substantive change to the monitoring requirements, EPA has decided to not finalize this portion of the proposed rule at this time. EPA expects to finalize this consolidation in a future rulemaking

10. Effluent Guideline Limits in Permits (40 CFR 122.44(a))

a. Summary of Proposed Rule. EPA proposed to revise § 122.44(a) by providing minor clarification changes in existing paragraph (a) and redesignating it as paragraph (a)(1), and by adding a new paragraph, (a)(2), to allow Directors on a case-by-case basis to not require effluent limits and monitoring for certain guideline-listed pollutants if a discharger could certify that those pollutants would not be in the discharge.

To receive this waiver from monitoring requirements, permittees would have to submit a certification (along with supporting information) with each permit application or application for permit renewal. The waiver would have to be included as an express condition in the permit. This revision was not intended to waive monitoring for any pollutants that should be limited on the basis of water quality standards. For those pollutants whose monitoring requirements had been waived (known hereafter as ''waived pollutants''), the proposal would not have allowed for discharge of those pollutants in any amount. Thus, applicants were cautioned to not pursue this approach if there was any possibility that waived pollutants might be discharged.

b. Significant Comments and EPA Response—(1) *Proposed § 122.44(a)(1).* One commenter stated that the phrase ''as appropriate'' in proposed § 122.44(a)(1) is misplaced, because it modifies ''effluent limitations and standards promulgated under section 301(b)(1) or 301(b)(2)'', but not ''new source performance standards promulgated under section 306 of the CWA''. The commenter suggested that the phrase be deleted because an existing phrase ''when applicable'' in the introductory text of § 122.44 already ensures that all of the requirements in § 122.44 will be applied when appropriate. EPA agrees and is removing the term ''as appropriate'' from the final rule. EPA is also replacing the citations to sections 301(b)(1) and 301(b)(2) with a single citation to section 301 of the CWA.

(2) *Proposed § 122.44(a)(2)—Generalized Support for the Waiver Concept.* A large number of commenters expressed support for the concept of providing a waiver from monitoring requirements for guideline-listed pollutants as a way to reduce unnecessary burdens on the regulated community. Some commenters indicated that the current requirements caused significant burdens. One commenter noted that facilities in the organic chemicals, plastics, and synthetic fiber (OCPSF) point source category must have limits and monitoring requirements for 63 organic chemicals even though some facilities only have the potential to discharge one or two chemicals. Another commenter noted the current regulatory requirements have led to endless questioning of departmental staff by permittees which resulted in an unwarranted diversion of staff time and resources.

EPA agrees with the above comments and is providing for a waiver from monitoring requirements, but not a waiver from the limit, in today's rule as described below.

(3) *Applicability of the Waiver to First Term Permits.* Some of the commenters expressed concerns with the availability of this waiver for new sources. They believed that the Agency would not have enough data or enough familiarity with a ''new source'' to be able to safely apply this waiver. The commenters recommended that the waiver be made available to a discharger only after the first permit term.

EPA agrees with these concerns and believes that they apply to all new permittees (not just ''new sources''). Consequently, EPA is making this waiver available only after the first term of the permit. The Agency believes that this restriction will greatly simplify the waiver process since the information generated during the first permit term

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will: (1) Assist permittees in determining whether to seek a waiver, (2) assist Directors in determining whether to grant such waivers, and (3) reduce the risk of a permittee discharging a waived pollutant.

(4) *No Discharge Limit in the Waiver.* A number of comments were received relating to the proposed no-discharge limit on pollutants subject to the waiver (''waived pollutants''). Those comments generally opined that the no-discharge requirement would be impossible to meet and so onerous as to discourage use of the waiver. Some commenters believed that it would not be possible for a discharger to certify that a pollutant is not present in any amount because it might be present in amounts below detectable levels. Some commenters also noted that guideline-listed pollutants may be present in trace amounts from sources other than manufacturing processes such as intake water; the use of cleaners, corrosion of equipment, pipes and fittings; or from research operations. One commenter noted that the no-discharge requirement might require facilities to pretreat intake water.

Some commenters also suggested alternatives to the no discharge requirement. One commenter recommended that the waiver be allowed for pollutants that are present in trace amounts from sources that are unrelated to the manufacturing process. A commenter recommended that the waiver be allowed where a facility is not further adding pollutants to those already in its intake water. Another commenter recommended that the waiver be allowed if the pollutant is not regulated in the manufacturing process as a raw material, is not present in raw materials, is not generated as a product or by-product, and is not present in wastes from the manufacturing processes in analytical quantifiable concentrations. Some commenters recommended that the final rule be changed to allow permittees to certify that the pollutant is not detectable. Other commenters also recommended that EPA apply the waiver in situations where a pollutant is repeatedly found in amounts well below the guideline-based limit or below what are believed to be ''levels of concern''. Some commenters suggested that EPA consider just allowing guideline-listed pollutants to be monitored without limits. One commenter requested that EPA consider retaining permit limits for guideline-listed pollutants while removing the minimum yearly monitoring requirements for pollutants with permit limits.

In response to these comments and other considerations, EPA is issuing the final rule to allow for the waiver from monitoring requirements if the facility can certify that the pollutant is not present in its discharge or is present only at background levels from intake water with no increase in the pollutant due to activities of the discharger.

EPA declines to allow monitoring waivers for pollutants that are added by dischargers in minute amounts (*e.g.,* use of common cleaners or from research operations) because human activity might lead to substantial increases in those pollutant discharges which may threaten the aquatic environment. Consequently, there is a continuing need to monitor those pollutants. EPA also notes that at least one national effluent guideline addresses the introduction of incidental amounts of pollutants from cleaning, maintenance, or research operations and EPA does not believe it is appropriate to apply the waiver to a pollutant that is added to the waste stream and subject to an effluent guideline. *See* 40 CFR 414.11(b) (applying the Organic Chemicals, Plastics, and Synthetic Fibers Effluent Guidelines to wastewater discharges from research and development operations). Metals or other pollutants which can leach from pipes may also pose a threat to the environment and EPA believes monitoring should be retained for such discharges. With respect to pollutants which occur in amounts below ''levels of concern'', the discharge of such pollutants can also increase from human activity and EPA believes that monitoring is necessary to ensure that an appropriate level of treatment continues to be provided. EPA does share the belief that excellent treatment performance should be encouraged. Therefore, EPA has provided via guidance, a method to reduce, but not eliminate, monitoring in recognition of excellent performance. See ''Interim Guidance for Performance—Based Reductions of NPDES Permit Monitoring Frequencies' dated April 19, 1996.

With respect to determining whether a pollutant is not present or is present at only background levels from intake water without any increase of the pollutant due to activities of the discharger, EPA believes that this determination can be accomplished in a number of ways depending on the situation. In some cases, knowledge about a facility's process and infrastructure is enough to determine that an addition will occur. For example, a pollutant may be a known by-product of certain processes used in a facility and it would be reasonable for a permitting authority to find that the pollutant is added even if the addition is difficult to detect in the effluent. Similarly, knowledge that certain industrial processes do not use or generate a particular pollutant and that the pollutant would not be added in other ways may also be a sufficient basis for concluding that a pollutant is not added. To provide flexibility to deal with a variety of situations, today's rule does not establish the minimum data needed to make this determination. Rather, the Director should determine the most appropriate approach using his or her best professional judgment. This issue is discussed in more detail below under the heading (5).

Today's rule retains limits for waived pollutants since removing those limits may be interpreted under the Federal permit shield provisions to allow the discharge of those pollutants in unlimited quantities. *See* 40 CFR 122.5.

(5) *Process of Granting the Waiver.* A number of commenters asked what information is required for a waiver to be granted while noting that the proposed rule did not state what specific information was necessary. One commenter asked whether a one time analysis of the outfall would be sufficient. Another commenter expressed the belief that the permit application provides sufficient information to determine if the waiver is appropriate. Another commenter requested that the certification language be revised to recognize the availability of source information (*e.g.,* SARA Toxics Release Inventory or pollutant analyses submitted with permit application) when determining whether to grant a waiver.

EPA believes that the amount of information needed to grant the waiver will vary with each permit applicant. However, in many cases, information sufficient to grant or deny a waiver will be found in the permit application and from information generated from any prior permits issued to the facility. Inspection reports, sampling data submitted by the applicant, and the SARA Toxics Release Inventory all contain information which may be considered when a permit is being developed and may also assist Directors in determining whether to grant the waiver. Directors are also free to request any additional information they believe they need under section 308 of the Clean Water Act in order to make a waiver determination. EPA wishes to reiterate that the monitoring waiver is good only for the term of the permit and that permittees must reapply for it when applying for a reissued permit.

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(6) *Enforcement Issues Associated with the Waiver.* Some commenters expressed concerns that the proposed revision to § 122.44(a) could be interpreted to mean that a Director would only have enforcement authority for waived pollutants and not for pollutants not listed in the permit or that the revision would abrogate the protection provided by EPA's permit shield provisions.

One commenter asked how the program will take into consideration cases where the detection limit of a trace pollutant may decrease as a result of improved analytical methodologies. Another commenter asked how EPA would respond to the detection of an unauthorized pollutant in a discharge, even if the permittee had a system in place to prevent its introduction.

EPA notes that today's revision to § 122.44(a) retains limits for all guideline-listed pollutants and is not intended to alter EPA's enforcement authority. Any exceedance of the effluent limit found in the permit would be a permit violation regardless of whether a waiver is in place. Today's rule is also not intended to change EPA's requirements and policies regarding the permit shield provisions at 40 CFR 122.5. Permittees are also liable for any discharge of a pollutant beyond that which serves as the basis of the waiver. Two pertinent examples of this include: (1) Where a waiver is based on a discharger's certification that the waived pollutant is not present in the discharge and the pollutant is subsequently found to be present, or (2) where a waiver is based on a certification that the pollutant is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger and the pollutant is subsequently found to be added to the discharge by the discharger. Permittees are liable for any violation of a permit requirement and are subject to the full range of enforcement responses. Factors such as the nature, severity, and frequency of violation, human health and environmental impacts, and compliance history of the permittee are considered by the Director when determining an appropriate enforcement response. For example, in situations where a waived pollutant thought to be absent is discovered through improved detection techniques or as the unintended consequence of a change in the facility's operation, the Director may issue an administrative compliance order to require monitoring for that pollutant, or the permit could be modified (as a minor modification under 40 CFR 122.63(b)(2)) to require such monitoring. These responses may be particularly appropriate in situations where a pollutant is discharged in an amount which exceeds that which serves as the basis of the waiver but below the guideline-listed limit.

Permittees should be aware that if they change their facility's operations in a way that may result in pollutant discharges beyond what serves as the basis for the waiver, they are obligated under 40 CFR 122.41(l)(2) to report that change to the Director. If permittees discover in their discharge, pollutant levels which exceed what is authorized by the waiver, they must also report that presence to the Director in accordance with § 122.41(l).

(7) *Suspending the Waiver if Facility Operations Change.* Some commenters requested that permittees be required to resume monitoring for all guideline-listed pollutants for at least one year after a process change or change in materials use, regardless of waiver.

EPA declines to make these suggested changes because there are already provisions in the NPDES regulations to alert permit issuing authorities to situations where it may be necessary to reinstate monitoring. Sections 122.41(l)(1) and 122.42(a)(1) impose reporting requirements for planned physical alterations or additions to a permitted facility. Section 122.44(l)(2) requires that permittees provide advance notice to the Director of any planned changes to the permitted facility or activity which may result in non-compliance with permit requirements, including those contained in a monitoring waiver. Additionally, § 122.62(a)(1) provides for permit modification if ''[t]here are material and substantial alterations or additions to the permitted facility . . . which occurred after permit issuance which would justify the application of permit conditions that are different or absent in the existing permit.'' These provisions can inform Directors about the potential need to reinstate sampling and grant them sufficient authority to reinstate it. Thus, there is no need to add a new provision to 40 CFR 122.44.

(8) *Indicator Pollutants.* A commenter noted that certain guideline-listed pollutants are indicator pollutants and that by waiving monitoring for an indicator pollutant it would make sense to waive the secondary pollutant as well. EPA believes it is rare to encounter a permitting situation where monitoring is required for both indicator and secondary pollutants. However, EPA agrees as a general matter that if a pollutant is regulated under an effluent guideline as an indicator for other pollutants, then monitoring can be waived to the same extent of other pollutants at the permit-issuing authority's discretion, if that indicator pollutant and the secondary pollutant are not present.

(9) *Antibacksliding.* A commenter raised a concern that the proposed revision constitutes ''backsliding''. (Backsliding is a term of art used to describe an impermissible relaxation of permit limits or conditions upon permit reissuance, see CWA § 402(o) and 40 CFR 122.44(l)). EPA notes that a reduction in monitoring might in some cases, constitute backsliding of a permit ''condition'' as countenanced under 40 CFR 122.44(l)(1). However, § 122.44(l)(1) would operate to allow such backsliding on the basis that the circumstances upon which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute a cause for permit modification under § 122.62(a)(2) (new information) or § 122.62(a)(3) (new regulations).

Another commenter noted that the antibacksliding provisions could apply if a discharger wished to modify or renew their permit to allow for the discharge of a guideline-listed pollutant which had been subject to a no-discharge limit under a waiver. As noted above, EPA is retaining the requirement that limits be placed in permits for all guideline-listed pollutants and the backsliding situation envisioned by the commenter should not occur as a result of this rulemaking.

(10) *Section 122.4(a)(2) Does not Supersede any Monitoring Waivers in the Effluent Guidelines.* EPA notes that there are at least two guidelines with certification processes relating the waiving or reducing monitoring.[2] This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards because such processes may be better tailored to situations that are specific to the guideline and pollutant.

c. *Final Rule.* In response to comments on the proposed rule, EPA has adopted a modified version of the proposed regulation which retains the requirement that permits have limits for all applicable guideline-listed pollutants but allows for the waiver of sampling requirements for guideline-listed pollutants on a case-by-case basis if the discharger can certify that the pollutant is not present in the discharge or

[2] *See* 40 CFR 413.03 (Monitoring Requirements for Total Toxic Organics under the Electroplating Point Source Category) and 40 CFR 421.3(b) (Periodic Monitoring for Cyanide under the Primary Beryllium Subcategory of the Nonferrous Metals Manufacturing Point Source Category).

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present only at background levels from intake water with no increase due the activities of the discharger. The waiver must be applied for each permit reissuance and is not available for the first permit issued to the discharger.

(11) Reopener Clauses (40 CFR 122.44(c))

a. *Summary of the Proposed Rule.* Section 122.44(c) provided for reopener clauses in permits. For reasons described in more detail in the proposal (see 61 FR 65273–74), EPA proposed removing paragraphs (c)(1), (c)(2), and (c)(3) of § 122.44. Paragraphs (c)(1) and (c)(3) apply only to permits issued on or before June 30, 1981, and are obsolete. EPA also proposed removing paragraph (c)(2) which is redundant with the requirements of § 122.44(a). EPA proposed consolidating the §§ 122.44(a) and 122.44(c)(2) requirements in a new paragraph at § 122.44(a)(1). EPA proposed retaining the provision for reopeners of sludge conditions in NPDES permits (originally found in 40 CFR 122.44(c)(4)) and redesignating it, § 122.44(c). By proposing to remove these provisions, EPA did not intend to limit the ability of permitting authorities to place reopener clauses in permits on a case-by-case basis, particularly where reopeners may result in more environmentally protective permit limits, standards, or conditions.

b. *Significant Comments and EPA Response.* In response to EPA's proposal, a commenter noted that, with paragraphs (c)(1), (c)(2) and (c)(3) gone, the only reopener left, (c)(4), would apply to treatment works treating domestic sewage. The commenter thought that this was too narrow an application of reopeners. EPA disagrees and notes that § 122.62 provides EPA with broad authority to modify permits regardless of the presence of a reopener clause and the removal of paragraphs (c)(1), (c)(2), and (c)(3) will not impinge on EPA's or a permittee's ability to revise permits.

Another commenter disagreed with the preamble language which implied that permit writers could insert reopeners other than those enumerated at § 122.44(c). They noted that section 122.62 establishes appropriate scope of permit modifications. As noted in its response to the preceding comment, EPA agrees that the authority provided to it under § 122.62 is adequate to allow for any necessary revisions of permits.

c. *Final Rule.* EPA has adopted the final rule as proposed.

(12) Best Management Practices (40 CFR 122.44(k))

a. *Summary of Proposed Rule.* Section 40 CFR 122.44(k), authorizes EPA to require BMPs in NPDES permits to control or abate the discharge of pollutants where: (1) authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances, (2) authorized under section 402(p) of the CWA for the control of storm water discharges; (3) numeric effluent limitations are infeasible, or (4) the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

To assist the regulated community in developing and implementing BMPs, EPA proposed to provide a note to § 122.44(k) which would provide references to available agency guidance on developing and implementing BMPs. The inclusion of these references was not intended to change the substantive requirements of § 122.44(k). BMPs are often best tailored for specific industries and the EPA guidance furthers that goal. Therefore, EPA believes it is important that regulated community know about the existence of these documents.

b. *Significant Comments and EPA Response.* One commenter objected to EPA's assertion that there is any authority under the CWA for the imposition of BMPs that have not been promulgated under section 304(e). Since EPA did not propose any revisions to the regulatory requirements of § 122.44(k), this comment is beyond the scope of the proposal, and EPA therefore declines to respond.

One commenter suggested EPA clarify whether or not the proposed note in 40 CFR 122.44(k) is a regulation published under section 304(e) of the Clean Water Act, insofar as information in that note pertains to control of toxic or hazardous pollutants from activities within the scope of section 304(e). EPA intends for the note to be informational and does not intend for it to impose regulatory requirements. The Office of the Federal Register does not allow notes to impose regulatory requirements.

One commenter stated that it is inappropriate to include references to specific guidance documents in a regulation, because such guidance is frequently updated and has no regulatory force. The commenter recommends that the regulation discuss that EPA BMP guidance documents are available and identify the EPA office or offices, including addresses and phone numbers, from which current lists of BMP guidance documents can be obtained. EPA could also put the current BMP guidance reference list on its Internet web site and identify the web site as a source of the BMP guidance reference list. The regulations should state that the BMP documents identified in the rule are for guidance only, and have no regulatory force. EPA declines to remove references to specific guidances in the ''note'' to § 122.44(k) since such references will assist readers in complying with regulatory requirements. However, EPA will also include a list of BMP guidance on the Office of Wastewater Management (OWM) Internet web site and include a reference to the web site in the ''note''. EPA has also added language to the note to clarify that the EPA guidance documents are listed only for informational purposes, and they are not bindiing.

One commenter recommended that the note to § 122.44(k) should state that additional BMP documents may also be available from the States. EPA will include this statement.

c. *Final Rule.* EPA has adopted the regulation as proposed except that the Agency will also provide a statement in the note to § 122.44(k) to indicate that additional BMP documents may also be available from the States and to provide a reference to the Office of Wastewater Management's Internet home page.

(13) Termination of NPDES Permits (40 CFR 122.64) and RCRA Permits

a. *Summary of Proposed Rule.* In the proposal to today's rule, EPA proposed to revise § 122.64 to allow the Director to terminate a NPDES permit by giving notice to the permittee, without following part 22 or 124 procedures where the permittee has permanently terminated its entire discharge by elimination of its process flow or other discharge components or by redirecting its discharge into a POTW. Currently, the NPDES regulations require that part 124 public participation procedures be followed for terminating permits.

These expedited permit termination procedures would not be available when a permittee is subject to pending State and/or Federal enforcement actions, including citizen suits brought under State or Federal law. In such situations, the public has a strong interest in participating in any permit termination proceeding and permittees should not use expedited permit termination procedures as a way to avoid enforcement liability. EPA would also require that permittees who request expedited permit termination procedures must certify that they are not subject to any pending State and/or Federal enforcement actions. This exclusion includes citizen suits brought under State or Federal law.

EPA did not propose to eliminate the requirement to follow part 124 termination procedures if the pollutants were to be disposed in wells or by land

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application of effluent, even if the permittee requests termination. In such cases, it is important that the public be notified and able to pursue any concerns about such disposal methods under other appropriate Federal, State or local regulatory programs. EPA noted that there were situations where permits are appropriate for no discharge facilities, particularly where there is the possibility of an inadvertent discharge into waters of the United States. Additionally, EPA noted that a permittee terminating its discharge due to connection to a POTW would be subject to applicable pretreatment requirements, including those in parts 403 and 405–471, along with any local requirements. An existing categorical industrial user initiating a discharge to a POTW must notify the POTW in accord with § 403.12.

Finally, EPA noted that permittees should be very sure that they have, in fact, eliminated their discharge when requesting expedited permit termination procedures. This is because any pollutants discharged by the facility subsequent to permit termination could violate section 301 of the CWA (prohibition against unpermitted discharges). EPA also proposed conforming changes to § 124.5 procedures to reflect these proposed expedited permit termination procedures.

To effectuate these changes and do away with administrative hearings, EPA proposed to eliminate Subpart E of 40 CFR Part 124, as described above. The Subpart E procedures also applied to certain RCRA permit terminations, but EPA found it was appropriate to eliminate Subpart E as to RCRA permit terminations as well, for the reasons described in the proposal.

b. Response to Comments. Some commenters were concerned about loss of standing to sue where a violator's permit is terminated before the 60 day notice of intent to sue period has ended. Because they may commence an action only after the 60 day notice period has ended, they requested that this procedure be prohibited at the point where a permittee, State or the Administrator has received a notice of intent to sue. However, EPA notes that in most cases, citizens lose the authority under CWA § 505 to file suit for past violations when a permittee has permanently terminated its discharge, not at the point when the permit is terminated. (*See, Gwaltney of Smithfield Ltd.* v. *Chesapeake Bay Foundation, Inc.,* 484 U.S. 49 (1987)) Under *Gwaltney,* citizens may not file suit under the CWA solely to enforce against alleged violations which occurred in the past. They may, however, file suit to enforce against violations which are alleged to be continuous or intermittent. In other words, if the violation is not on-going, there must at least be the potential for a violation to occur in the future. At the point the permittee permanently ceases to discharge or has redirected its flow, there is no longer a potential for a violation to occur and suits filed after that time would be barred under *Gwaltney*, but not suits filed before the discharge terminates. In addition, *Gwaltney* states that ''the purpose of notice to the alleged violator is to give it an opportunity to bring itself into complete compliance with the Act and thus likewise render unnecessary a citizen suit.'' *Id.* Hence, if the permittee receives notice and then terminates its discharge, the permittee is now essentially in complete compliance with the Act.

Furthermore, under non-expedited permit termination procedures, it is possible that the notice and comment period could be completed and the permit thereafter terminated within the 60 day notice-of-intent-to-sue period. As a result, citizens would be barred from bringing a suit under *Gwaltney* under the existing regulations. Thus, the availability of expedited permit terminations is likely to make little difference with respect to the ability of citizens to enforce against permit violations under section 505. It is also important to note that under the expedited system, citizens could still appeal EPA's decision to terminate a permit, which if the challenge were successful, would result in the permit remaining in place.

Considering the foregoing, it is also necessary to discuss the cost involved in the non-expedited termination procedure. The transaction cost for the government to undergo notice and comment is high. This high cost seems unjustified where a permittee has terminated its discharge and, thereafter, its permit thus eliminating any future threat to the environment. Given that there would be no direct discharge and the given rarity of a situation that would meaningfully affect citizens' ability to bring suit under section 505, EPA believes it can use its resources better elsewhere. EPA also notes that under section 505 of the Act, an enforcement action is not pending during a 60 day notice-of intent-to-sue period. It is also important to note that the revised rule would still allow the Director to deny expedited permit terminations in cases where a notice of intent to bring a citizen suit has been filed.

Some commenters questioned why the expedited permit termination procedures would not be available for permittees subject to a pending enforcement proceeding. EPA notes that the public has a strong interest in participating in permit termination proceedings where there is a pending enforcement action and, therefore, expedited procedures should not be used in those situations. This is particularly true in situations where third parties may want to intervene in enforcement actions. Moreover, EPA regulations require that the public be allowed to participate in State or Federal Enforcement actions (see, 40 CFR 123.27(d)), and expedited permit termination procedures could hamper such intervention.

There were two comments questioning why this procedure would not be available if pollutants will be disposed of either in wells or by land application of effluent. Both comments raised the issue that public notice and comment under Federal law is not necessary in this situation because there are State and Federal laws which regulate land application of effluent and discharges into wells which will provide for public notice and comment and there is no need for repetition. In EPA's view, however, these notice and comment provisions may not be wholly redundant because every existing applicable State law and all other Federal laws which would regulate these actions may not have a public notice and comment requirement. This, together with the fact that it is extremely important for the public to be notified that pollutants will be disposed of either in wells or by land application of effluent, created a need to prohibit this expedited permit termination procedure in such situations. Preventing the use of this procedure in such situations and therefore, requiring public notice and comment at this level, will best protect the public's interest in this area.

c. Final Rule. The final rule adopts the same approach that EPA proposed, although the language of 124.5(d) has been modified from the proposal in order to more accurately reflect this approach as it affects RCRA permit terminations.

The preamble to the proposal stated that RCRA permit terminations are first subject to an informal process (notice and opportunity for comment and an informal hearing), after which a party may request an evidentiary hearing under Subpart E and subsequently may appeal a permit to the Environmental Appeals Board. The proposal failed to distinguish, however, between permit terminations that EPA initiates for cause under 40 CFR 270.43 and permit termination proceedings that occur in

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conjunction with RCRA § 3008 enforcement orders. Only the latter types of permit terminations were subject to the formal hearing procedures in Subpart E. EPA's intent in the proposal was to make only those types of RCRA permit terminations subject to Part 22 instead of Subpart E. EPA did not intend to affect the procedures for initiating a permit termination for cause under 270.43. Those types of permit terminations have always been subject to the same process that applies to issuing RCRA permits, i.e, notice and opportunity for comment and an informal hearing before a final decision. An evidentiary hearing to review the final decision is not available. Instead, these types of RCRA permit terminations, like permit issuances, are appealed directly to the EAB.

Accordingly, EPA has revised the final rule to reflect that, for RCRA permits, the elimination of Subpart E in favor of Part 22 procedures applies only to permit termination proceedings that occur in conjunction with section 3008 enforcement orders.

Similarly, EPA did not intend to change, and the final rule does not affect, the procedures for RCRA permit terminations that are at the request of the permittee. (For example, the permittee may have ceased operations and have no remaining closure or corrective action concerns.) EPA processes this type of RCRA permit termination under 40 CFR 270.42 as a ''Class 1'' modification (allowing a change in the expiration date to cause early permit termination, with prior approval of the Director—see Appendix 1 to § 270.42, item A.6).

B. Revisions to Part 123

1. Requirements for Permitting (40 CFR 123.25)

a. Summary of Proposed Rule. EPA had proposed revisions to 40 CFR 123.25(a) to clarify that certain provisions which detail penalty amounts in 40 CFR 122.41(a)(2), (a)(3), and (j)(5) are not required of State NPDES programs. Instead, the applicable penalty provisions for State NPDES programs are found at 40 CFR 123.27. This is consistent with EPA's long standing interpretation of the Clean Water Act and its regulations. See EPA's Office of General Counsel Opinion, dated May 31, 1973.

b. Significant Comments and EPA Response. EPA received no comments regarding this section.

c. Final Rule. EPA is adopting this section as proposed.

2. Transmission of Information to EPA (40 CFR 123.44)

a. Summary of Proposed Rule. In an effort to streamline Federal oversight of State NPDES permit programs, EPA proposed to revise 40 CFR 123.44 to remove references to the Office of Water Enforcement and Permits (OWEP) and its role in commenting on and objecting to State-issued general permits. At one time, OWEP (now known as the Office of Wastewater Management) was expected to play an active role in reviewing, commenting, and objecting to State-issued general permits. Section 123.44(i) made the role of the Director of OWEP coextensive with that of the Regional Administrator for the purposes of objecting to proposed State-issued general permits (other than those for separate storm sewers).

Specifically, EPA proposed to revise § 123.44 (a)(2) and (b)(2) to remove those references to OWEP and its role in reviewing State-issued general permits. EPA would also remove and reserve 40 CFR 123.44(i).

b. Significant Comments and EPA Response. In response to this revision, a commenter replied that § 123.44 provides 90 days of comments on general permits, which eliminates the potential flexibility of negotiating such time frames in State/EPA Region Memoranda of Agreement (MOAs). EPA believes that the comment is beyond the scope of this rule since it does not change, or hamper the flexibility of, the review period of § 123.44(a)(2), which can be up to 90 days.

c. Final Rule. EPA has decided to promulgate the proposal without change

C. Revisions to Public Hearing Requirements for NPDES Permit Actions and RCRA Permit Terminations

1. Summary of Proposed Rule

EPA proposed to eliminate as unnecessary the existing procedures for conducting formal evidentiary hearing on NPDES permit conditions contained in 40 CFR part 124, subpart E, and further proposed to eliminate the alternative ''Non-Adversary Panel Procedures'' in part 124, subpart F. EPA has also proposed to eliminate appendix A to part 124 (Guide to Decision making under Part 124) because its role in explaining subpart E and subpart F procedures would no longer be meaningful in the absence of those subparts. EPA also proposed to modify the procedures for terminating NPDES and RCRA permits. These revisions do not apply to authorized State NPDES programs.

2. Comments and EPA Responses

EPA received comments on the proposal to eliminate evidentiary hearings from ten commenters. All of these comments came from members of industry and none of them supported the proposal to eliminate evidentiary hearings. One commenter supported the elimination of the subpart F procedures. No comments were received on the elimination of appendix A.

(i). Legal Basis. In the proposal, EPA explained its tentative conclusion that, due to the progress of the law in the Courts of Appeals, the *Seacoast* v. *Anti-Pollution League* v. *Costle,* 572 F.2d 872 (1st Cir. 1978)(''Seacoast''), and *Marathon Oil Co.* v. *EPA,* 564 F.2d 1253 (9th Cir. 1977) (''Marathon'') decisions are no longer good law. To briefly restate its position, EPA has revisited the hearing requirements of section 402(a), employing the two-step analysis of *Chevron, U.S.A.* v. *NRDC,* 467 U.S. 837 (1984), which provides that, where Congress has failed to express a clear intent to the contrary, an agency charged with administering the statute may adopt an interpretation which is reasonable in light of the goals and purposes of the statute. In the first step of its Chevron analysis, the Agency has examined the text, legislative history, and judicial interpretations of the Act, finding no evidence that Congress intended to require formal evidentiary hearings or that the text precludes informal adjudication of permit review petitions. Using modern due process analysis, the Agency, in the second step of its Chevron analysis, carefully weighed the risks and benefits of informal hearing procedures for NPDES permit review, determining that these procedures would not violate the Due Process Clause of the Constitution. Accordingly, the Agency has concluded that informal hearing procedures satisfy the hearing requirement of section 402(a).

(ii) Chevron Step One. (a) Text and Legislative History. As EPA noted in the proposal, section 402(a) does not explicitly state that public hearings on NPDES permits must be conducted ''on the record,'' the phrase normally associated with a requirement that hearings be conducted under section 554 of the APA. 61 FR 65268, 65276 (Dec. 11, 1996). One commenter asserted that EPA placed undue emphasis in its due process analysis on the fact that section 402 of the Clean Water Act does not expressly require that the public hearings for the review of NPDES permits be ''on the record''. EPA acknowledges that the absence of a record requirement in section 402 does

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not necessarily mean that Congress intended to supply only informal adjudication of NPDES permit review petitions. Still, as explained in the proposal, the absence of an explicit requirement in section 402(a) that formal APA procedures be used is significant in light of certain judicial decisions that followed the promulgation of the part 124 regulations and which have abandoned the presumption that trial-type hearings are required by the APA where a statute calls for an adjudicatory hearing without explicitly requiring formal procedures. The Agency argues nothing more than that the absence of the phrase ''on the record'' requires a more involved analysis of due process requirements.

Furthermore, while EPA agrees that the absence of a record requirement does not automatically permit the Agency to conclude that Congress intended informal hearing procedures for NPDES permit review, had Congress intended to foreclose Agency discretion on the matter, it would likely have included the ''on the record'' language that unmistakably triggers section 554 of the Administrative Procedure Act. Though it is possible that failure to include a record requirement in section 402 resulted from drafting oversight, it is clear from *Buttrey* v. *United States,* 690 F.2d 1170 (5th Cir. 1982)(''Buttrey''), that, at least with respect to section 404, the absence of a record requirement was deliberate. In Buttrey, the court, analyzing identical hearing language in section 404 of the Act, concluded that Congress had not intended to preclude informal hearing procedures for permit review proceedings. In the Agency's opinion, it is not reasonable to believe that the same words that permit informal hearings in section 404 preclude informal hearings when used in section 402. Instead, the Agency believes that Congress wrote these provisions without specifying the type of hearing required in order to allow the Agency as much discretion in defining the required hearing procedures as the Due Process Clause allows.

EPA also believes that section 509 of the Act further demonstrates that Congress intended to reserve for the Agency the discretion to determine what type of hearing to hold, and also to ensure that the statute satisfied due process. Subsection 509(b) provides for judicial review of determinations that are made under the sections of the Act listed in subsection (b)(1). Subsection (c) provides that the court may order that additional evidence be taken before the Administrator for judicial proceedings brought under subsection (b) ''in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing * * *.'' Thus, taken together, subsections 509(b) and (c) suggest that some of the proceedings under 509(b) must be ''on the record'', without specifying which ones. Of those sections of the Act listed in subsection (b), only section 307 contains an express record requirement. As noted by a few of the commenters, however, the absence of an express record requirement does not end our analysis.

Congress apparently preferred, for purposes of mandating judicial procedures under section 509(c), that EPA would determine in most cases whether formal hearings would be required. Section 509(c) also demonstrates that, as if there was any doubt, Congress knew how to draft a provision that expressly referred to formal adjudicatory procedure by using the exact language of section 554 of the APA. More importantly, however, this drafting leaves the statute flexible enough to accommodate the exercise of Agency discretion and judicial review thereof. The very structure of the provision strongly suggests that Congress intended the language of sections 402, 404, and others to permit the Agency as much discretion as Constitutionally permissible in deciding whether or not informal hearing procedures would meet the requirements of the Due Process Clause for each of the listed sections in section 509(b).

Despite the absence of legislative history to suggest that Congress intended to require formal hearing procedures, one commenter suggests that Congress ratified Seacoast and Marathon when it later amended section 402 without changing the language of the hearing requirement in subsection (a). The theory of ''reenactment'' upon which the commenter relies has long been a matter of controversy and confusion in the courts. Indeed, the Supreme Court has observed that the reenactment rule ''has been stated in various and not entirely consistent terms.'' *Helvering* v.*Griffiths,* 318 U.S. 371, 396 (1943). Despite this inconsistency, it is clear that mere reenactment does not necessarily constitute ratification ''because the committees or subcommittees of Congress may or may not know of outstanding interpretations when they are considering reenactment; they do not in fact approve what they know nothing about.'' K. Davis, Administrative Law, § 7.14, at 67 (2d ed.). Even where the Congress has knowledge of an existing interpretation at the time of reenactment, its silence on the interpretation ''is as likely an indication of lack of interest or preoccupation with more pressing matters, or a belief that the matter would be better left to the courts or agencies for resolution.'' John C. Grabow, Congressional Silence and the Search for Legislative Intent: A Venture Into ''Speculative Unrealities'', 64 B.U.L. Rev. 737, 759.

EPA believes that, although Congress might have been aware that EPA had construed section 402(a) of the Clean Water Act to require formal adjudication of petitions for NPDES permit review, the Agency has no direct evidence that Congress was aware, and certainly no evidence to suggest that Congress recognized that Seacoast compelled this construction. Moreover, even had Congress been aware of Seacoast when section 402 of the Act was subsequently amended, its silence only reinforces our contention that Congress intended to leave the form of NPDES hearing procedures to the discretion of the Agency.

As already noted, the legislative history of the Clean Water Act is devoid of language that would explain whether or not to employ formal hearing procedures in the review of NPDES permits. The failure of Congress to expressly require formal hearing procedures, combined with the structure of section 509 of the Act, suggests that Congress intended EPA to exercise its judgment in deciding whether or not to require formal administrative hearings for NPDES permit review.

(b) Judicial Interpretations. EPA understands the decisions in *Chemical Waste Management* v. *EPA,* 873 F.2d 1477 (D.C. Cir. 1989) (''CWM''), and Buttrey, to have seriously questioned the continuing validity of Seacoast, Marathon, and *United States Steel Corp.* v. *Train,* 556 F.2d 822 (7th Cir. 1977) (''United States Steel''). Both CWM and Buttrey, interpreting language similar or identical to that in section 402(a), have concluded that Congress had not intended to require formal hearing procedures. In addition, CWM expressly rejected the presumption that trial-type hearings are required by the APA where a statute calls for an adjudicatory hearing. Instead, the court employs Chevron's two-step analysis, concluding that it must properly defer to the Agency's permissible interpretation of the statute.

One commenter suggested that the advent of Chevron does not undermine the decisions of Seacoast, Marathon,

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and United States Steel because these early decisions were based on an interpretation of the Administrative Procedure Act, not the Clean Water Act. This argument is flawed in two respects. First, the decisions in Seacoast, Marathon, and United States Steel were all based almost exclusively upon interpretations of the Clean Water Act, not the Administrative Procedure Act. Second, to the extent that Seacoast interpreted the Administrative Procedure Act, its interpretation has now been expressly rejected by CWM. CWM, 873 F.2d at 1481.

In determining whether or not EPA had to provide formal adjudicatory procedures for review of NPDES permits, the Seacoast court expressly stated that ''the resolution of this issue turns on the substantive nature of the hearing Congress intended to provide.'' Seacoast, 572 F.2d at 876. See also Marathon, 564 F.2d at 1264 (''The focus of our inquiry should be on the nature of the administrative determination before us.'') In attempting to discern Congressional intent, the Court looked first to the text and legislative history of the Federal Water Pollution Control Act, not the Administrative Procedure Act. Id., at 876, n.6. Finding no guiding text or legislative history in the Federal Water Pollution Control Act, the court had no choice but to rely on a presumption of formality that the court inferred from legislative history of the Administrative Procedure Act and its treatment in the courts. It is precisely this presumption of formality that CWM expressly rejects. CWM, 873 F.2d at 1481. With the advent of Chevron and CWM EPA believes that it has not only an opportunity, but an obligation, to update its regulations to reflect the jurisprudence of modern courts and the needs of the environment.

Still, a commenter has suggested that, in distinguishing section 404 from 402, the Buttrey court endorsed the conclusion reached by the Seacoast, Marathon, and United States Steel courts. Buttrey predates both Chevron and CWM, so there is some reason to doubt that, if Buttrey were decided today, the court would have found need to distinguish it from the earlier cases. Moreover, Buttrey does not endorse the decision reached in these cases; instead, Buttrey merely notes that there exists legislative history regarding section 404 to overcome the, now-defunct, presumption of formality that led the Seacoast, Marathon, and United States Steel courts to require formal hearings. Buttrey, 690 F.2d at 1175. As a matter of logic, now that the presumption of formality has been dissolved, the mere absence of legislative history similar to that of section 404 does not require or support a finding that section 402(a) requires formal hearings.

The same commenter also suggested that *Consolidated Coal* v. *EPA,* 537 F.2d 1236 (4th Cir. 1976), compels the same result as reached in Seacoast. In Consolidated Coal, the court concluded that, before final agency action on an NPDES permit, the Administrator must provide the permittee with an opportunity for a hearing. The Administrator had denied petitioner's request for a hearing on the faulty assumption that the petitioner was entitled to a hearing before the State agency that had issued the permit or a State court. The court concluded that, ''[s]ince a hearing at the state level is presently foreclosed, due process requires that the Administrator grant a hearing in this case.'' Id., at 1239.

In reaching this conclusion, the court never squarely addressed the issue of what type of hearing due process requires for review of NPDES permits. Although the court quotes language from *Appalachian Power Co.* v. *EPA,* 477 F.2d 495, 501 (4th Cir. 1973), that would require that a hearing be granted where the issues cannot be resolved ''on the basis of pleadings and argument,'' it is not clear whether the court quotes this language for the proposition that the Administrator must hold a hearing before taking final agency action on an NPDES permit, or that hearings on NPDES permits must allow the submission of evidence, or both. Consolidated Coal, 537 F.2d at 1239. Even if one were to assume that the court quotes this language for both propositions, the proposed procedures meet both requirements. Moreover, it is doubtful that this case purports to resolve the question of what type of hearing due process requires for NPDES permits while addressing the matter, if at all, only in passing.

Furthermore, Consolidated Coal, predates both Chevron and CWM, and, more importantly, *Mathews* v. *Eldridge,* 424 U.S. 319 (1976) (''Mathews''), which sets forth the rubric for modern due process analysis. The case has been cited only twice, only once favorably, and on neither occasion for the proposition for which the commenter claims that the decisions stands. See *Shoreline Associates* v. *Marsh,* 555 F.Supp. 169, 177 (D. Md. 1983), United States Steel, 556 F.2d 822, 836 (7th Cir. 1977). Accordingly, EPA concludes that, for whatever proposition Consolidated Coal may stand, there is much more recent and reliable due process jurisprudence upon which to base the Agency's analysis.

(iii) Chevron Step Two. Reasonableness of Interpretation. EPA believes that providing for informal hearings prior to issuance of NPDES permits is a reasonable interpretation of section 402(a) because formal hearings are not necessary to protect the due process rights of permittees or other interested parties. The leading Supreme Court case discussing due process requirements is Mathews. Mathews establishes a three-element balancing test by which the decision-maker must consider: (1) The private interests at stake, (2) the risk of erroneous decision-making, and (3) the nature of the government interest, before deciding what procedures are required by the Due Process Clause.

(a) Private Interest. In an NPDES permit proceeding, the private interests at stake are generally those of a potential discharger in obtaining a permit to conduct its economic activities in a lawful manner. One commenter contended, however, that EPA's due process analysis fails to adequately assess the private interests at stake because EPA has refused to recognize a private property interest in NPDES permits. EPA disagrees. Although the NPDES regulations expressly disavow any property interest that might accrue in an NPDES permit, the due process analysis discussed herein proceeds as if a sufficient economic interest exists to warrant a due process analysis under the Mathews rubric. See 40 CFR 122.5(b).

Three commenters asserted that EPA has failed to adequately assess the magnitude of the potential impact of erroneous permit provisions. These commenters argued that an erroneous permit provision could have a catastrophic effect on the affordability of sewer service or financial well-being of a municipality (for issuance of NPDES permits to POTWs). None of these commenters has offered any evidence to suggest that, in the typical case, erroneous permit provisions have had or would have such catastrophic effects. Moreover, even if the magnitude of error were as great as these commenters suggest, it would be the same under both the existing and proposed hearing procedures. As discussed below, EPA's analysis suggests that the risk of error is actually less under the proposed hearing procedures; accordingly, the overall risk to the private interests at stake would be less under the procedures proposed.

(b) Risk of Error. EPA believes that transition to informal adjudicatory procedures will not significantly affect the risk of error in NPDES permit review determinations. As explained in the proposal, NPDES permit review

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determinations, unlike penalty hearings, are less apt to raise the kind of factual issues regarding the conduct of the discharger, which case law identifies as being uniquely susceptible to resolution in a formal evidentiary hearing. 61 FR 65268, 65277 (Dec. 11, 1996). Nonetheless, one commenter asserts that the risk of an erroneous decision on a petition for review of an NPDES permit would be greatly increased in the absence of a right to oral testimony and cross-examination. EPA believes these concerns to be unwarranted. Even under the existing subpart E regulations, parties have no right to oral presentation of direct or rebuttal evidence except as allowed by the Presiding Officer upon motion and good cause shown. 40 CFR 124.85(c). Any incremental risk of error associated with the use of informal hearing procedures would, thus, be attributable only to the absence of a right to oral cross-examination.

EPA does not believe that the absence of a right to oral cross-examination under the proposed hearing procedures will significantly increase the risk of an erroneous decision on a petition for review. The issues that typically arise in the review of a draft NPDES permit do not call for the type of credibility determinations for which cross-examination is justified. Instead, the typical issues that arise are: (1) Has EPA set effluent limits appropriately (e.g., will a discharge cause, have the reasonable potential to cause, or contribute to an excursion above applicable water quality criteria such that EPA may set a water quality-based effluent limitation?), and (2) has EPA correctly calculated the effluent limitations that it has set? These questions of fact hinge on technical considerations for which cross-examination is not particularly useful. Under the hearing procedures that EPA proposes to adopt, should a party wish to challenge the testimony of an opposing expert witness, it may present written evidence to contradict the assumptions, data, and analysis of the opposing expert. This sort of challenge would more efficiently and reliably reveal any error or bias in the expert's analysis or conclusion than would an analysis of the expert's courtroom demeanor. Accordingly, EPA perceives little or no increase in the risk of error under the hearing procedures that EPA is adopting.

EPA also received two comments arguing that the hearing procedures EPA proposed to adopt would substantially increase the risk of error by affording the parties inadequate opportunity to develop the evidence necessary to support a petition for review to be filed with the Environmental Appeals Board. Because EPA today employs the same hearing procedures for NPDES permit review as those currently used for RCRA and UIC permits, the Agency believes that the success of the existing RCRA/UIC hearing procedures demonstrates that these concerns lack foundation. RCRA and UIC permits raise questions of fact no less complicated than those that arise in the review of NPDES permits, yet the Agency has no suggestion from its experience or from the courts that the time allowed to develop supporting evidence under RCRA/UIC procedures is so short as to violate the Due Process Clause or adversely affect the accuracy of review.

(c) Public Interest. There is significant public interest in an expedited process for issuing NPDES permits. EPA's experience since 1979 has been that the opportunity to request a formal evidentiary hearing has led to significant delays in permit issuance. EPA's statistics suggest that the procedures proposed to resolve administrative petitions are at least twice as fast as the formal hearing procedures now in place. The procedures will, thus, allow needed permit improvements to take effect sooner, make public participation more affordable, and reduce the burden on government resources.

One commenter suggests, however, that EPA incorrectly estimates the public interest in adopting informal hearing procedures as the reduction of time during which unpermitted discharges continue while a permit is reviewed. EPA acknowledges that new dischargers may not begin to discharge until the process of review is complete. 40 CFR 124.16(a)(1). EPA also acknowledges that the expired permit of an existing discharger will be administratively continued during the process of review if the discharger makes a timely application for renewal. 40 CFR 124.16(a)(2). The public interest in expediting the process of permit review, thus, lies, in part, in minimizing the time during which inadequate expired permits remain in effect. This interest is especially significant because, under current procedures, permit renewal often takes in excess of five years.

Other commenters suggest that EPA overestimates the public interest in adopting the proposed hearing procedures by failing to account for the delay that the backlog of NPDES permit review petitions would cause at the EAB. Again, the Agency disagrees. The Agency has polled the Regions for an approximate number of review petitions pending before the Regional Administrators. These cases, plus the petitions for which an evidentiary hearing has been granted but not yet held, constitute the backlog of cases that the EAB would assume under the proposed hearing procedures. 61 FR 65268, 65281 (Dec. 11, 1996). Although the number of cases backlogged is not insignificant in terms of the EAB's total annual caseload, the comment fails to consider that the total time it will take to process an individual NPDES case will no longer be encumbered by the decisional process associated with the evidentiary hearing procedures. Those procedures included the right to appeal a denial of an evidentiary hearing request to the EAB, the possibility of a reversal of the denial, a remand by the EAB to hold an evidentiary hearing, and at the conclusion of the hearing, an opportunity to again file an appeal on the merits with the EAB. Accordingly, although the number of cases under the new procedures that will make their way to the EAB will initially result in a backlog at the EAB, there is no basis for concluding that delays in processing cases will result compared to the old procedures. In addition, we expect that, once the EAB has cleared the backlog of cases, the long-term benefits of the informal adjudicatory procedures will become more apparent.

One commenter suggested that the success with which public citizen groups have challenged NPDES permits demonstrates that the existing hearing procedures provide adequate opportunity for public participation. Of course, the fact that citizens groups successfully challenge NPDES permits on occasion does not somehow diminish their interest in more affordable participation. Instead, their success highlights the importance of public participation in the permit review process. Indeed, the Senate observed, in reporting the Water Pollution Control Act Amendments of 1972, that the implementation of water pollution control measures would depend considerably ''upon the pressures and persistence which an interested public can exert upon the governmental process.'' S. Rep. 414, 92d Cong., 2d Sess. 12 (1972), reprinted in A Legislative History of the Water Pollution Control Act Amendments of 1972, Cong. Research Service, Comm. Print No.1, 93d Cong., 1st Sess. (1973) at 1430 (emphasis added). EPA believes that a transition to informal adjudicatory procedures for review of NPDES permits will promote sustainable public participation by, amongst other things, minimizing the activities for which legal counsel is

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required and expediting the permit review process such that citizens groups need commit fewer resources for shorter duration.

Another commenter challenged the assertion that the proposed hearing procedures would reduce the need for legal representation. EPA stands by its conclusion. Even if it were true that parties would avail themselves of counsel under the proposed hearing procedures with frequency equal to that with which they avail themselves of counsel under the existing procedures, EPA believes that the shorter period of review and the higher rate of settlement expected under the proposed procedures will minimize the quantity of legal services required.

Three commenters contend that, however they might otherwise reduce the burden on citizens group participation, the proposed hearing procedures would more than offset those reductions by compelling public citizens groups to maintain a presence in Washington, DC or bear the expense of frequent travel. EPA disagrees. Unlike the existing NPDES permit review procedures, the proposed procedures do not provide for oral presentation of direct testimony, rebuttal, or cross-examination, and oral argument before the Environmental Appeals Board occurs very infrequently; thus, parties need not maintain a Washington, DC presence and would gain no advantage by doing so.

The government also has an interest in minimizing Agency resources consumed in NPDES permit review. Several commenters argued that, for various reasons, EPA will not realize the resource savings that EPA expects under the proposed permit review procedures. These commenters contend that the number of petitions for administrative review will increase while the rate of settlement and the EAB's rate of review will decline. EPA believes these concerns generally unfounded.

One of these commenters argued that switching to informal hearing procedures will result in an increased number of requests for permit review because the permit review process would no longer prove sufficiently onerous to discourage frivolous objections to NPDES permits. Although EPA anticipates that informal hearing procedures will reduce the resource burden upon all parties to the administrative review, the commenter has provided no factual basis to conclude that less onerous process will correlate to more ''frivolous'' petitions for review. While one might speculate that such a correlation exists, there is no basis to believe that this dynamic would have any discernible impact on the number of review petitions at the levels of resource commitment required under either the existing NPDES permit review procedures or those proposed. To the extent that any such dynamic might be observable, one would expect a significantly higher rate of petitions denied by the EAB under the RCRA/UIC procedures than under the existing procedures for NPDES review. No such effect is observable, however. Moreover, even if the Agency observes such an effect under the proposed hearing procedures, the Agency would properly respond by initiating rulemaking to sanction frivolous permit review petitions, not by maintaining unnecessarily burdensome hearing procedures.

This same commenter argued that EPA overestimates the need for informal hearing procedures by failing to account for a projected reduction in the rate of petitions as the number of unpermitted facilities declines. Even if it were true that petitions for review of new permits would decline appreciably in the reasonably near future, EPA would expect a countervailing increase in the rate of petition for review of permit renewals. EPA has no basis to believe that the net effect of these hypothesized trends will yield a significantly lower overall rate of petition; accordingly, EPA cannot at this time discount the need for informal hearing procedures.

Other commenters asserted, by contrast, that the number of petitions for review requiring resolution by the Agency will increase because the number of settlements will decrease under the proposed hearing procedures which will overburden the Environmental Appeals Board. Again, were it true that the proposed hearing procedures would somehow remove the incentive for parties to reach settlement, EPA would expect a much lower settlement rate for cases currently reviewed under the RCRA/UIC procedures than for cases reviewed under the existing NPDES procedures. No such difference appears in EPA's post-petition statistics. While EPA does not track pre-petition resolution of permit disputes, EPA has no basis to believe that fewer disputes are resolved before petition for review of Regional permit decisions are filed in the RCRA/UIC program than in the NPDES program.

Finally, one commenter warns that a switch to informal hearing procedures will result in more frequent requests for public hearings on draft NPDES permits. Even if it were true that EPA should expect more frequent public hearing requests, EPA believes that the net conservation of resources under informal hearing procedures would still justify the transition. Public hearings on NPDES permits are more in the nature of a legislative hearing because they do not require representation by counsel or formal written submissions (unless required by the Presiding Officer) and the Presiding Officer may set reasonable limits on the time allowed for oral statements. 40 CFR 124.12. These hearings must be requested in a timely fashion, are required only where there is a significant degree of public interest in the draft permit, and occur within the comment period. *Id.* All of these limiting factors render the public hearing process substantially less burdensome to all parties involved than the evidentiary hearings that they would replace.

3. Final Rule

None of the comments received suggest that retaining formal adjudicatory proceedings is required under section 402(a) or due process or consistent with the public interest. Therefore, EPA is today adopting the proposed rule, eliminating evidentiary hearing procedures, subpart F procedures, and appendix A to part 124.

D. Removal and Reservation of Part 125, Subpart K—Criteria and Standards for Best Management Authorized Under Section 304(e) of the Act

a. *Summary of Proposed Rule.* EPA proposed to remove and reserve part 125, subpart K (40 CFR 125.100–125.104) titled ''Criteria and Standards for Best Management Practices Authorized Under Section 304(e) of the Act'' along with its reference at 40 CFR 123.25(a)(36). This provision was originally promulgated on June 7, 1979 (44 FR 32954) and would have established criteria and standards for imposing best management practices (BMPs) in NPDES permits under the authority provided in sections 304(e) and 402(a)(1) of the CWA. However, for reasons set forth in more detail in the proposed rule (see 61 FR 65282–65283), Subpart K was never activated and its original purpose is now better served by EPA's existing BMP provisions at 40 CFR 122.44(k) and accompanying guidance for developing and implementing BMPs.

b. *Significant Comment and EPA Response.* Two commenters believed the subpart K regulation should not be removed, stating that the regulatory framework provided by subpart K was needed to guide the imposition of BMPs and that § 122.44(k) was overly broad. The commenter believed there should be some basis in the regulations for

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guiding permit writers and applicants as to when BMPs are appropriate and how they are to be implemented. EPA does not believe that § 122.44(k) is overly broad. BMPs and BMP plans are intended to be flexible so that they can be tailored to particular industries and sites. EPA believes this flexibility is better served by § 122.44(k) and guidance documents which can be tailored to specific industries or activities.

A commenter stated that the proposal represents a significant policy decision that is not appropriate for inclusion in a rulemaking designed simply to streamline permit issuance, and that if Subpart K is removed, there are absolutely no limits on EPA's discretion in imposing the BMPs based on 40 CFR 122.44. EPA disagrees and notes that removing subpart K is not a significant policy decision because subpart K has never been activated. Because subpart K has no regulatory effect, its removal does not affect EPA's ability to impose BMPs in permits. Finally, EPA notes that the Clean Water Act and § 122.44(k) place limits on EPA's discretion to include BMPs and other conditions in NPDES permits.

c. *Final Rule.* Today's final rule adopts this revision as proposed.

E. Provisions Without Comments

Provisions in parts 22, 122, 124, and 125 in the proposed rule which were not commented upon and not discussed above are adopted for the reasons set forth in the proposal.

F. Miscellaneous Corrections

a. Summary of Proposed Rule

EPA proposed a number of minor non-substantive revisions to its regulations that would correct typographical or drafting errors, and misplaced or obsolete references. EPA wishes to be clear that these are corrections and are not intended in anyway to result in substantive changes to its programs. In proposing these corrections, EPA did not solicit, and has not responded to, comments on the existing regulatory provisions which underlie those corrections. Furthermore, by including these corrections in the proposed and final rule, EPA is not conceding that any or all such changes required notice and comment. However, these errors were discovered while developing this proposed rule and EPA believes it is more cost effective to correct them in this rulemaking than in a separate **Federal Register** notice. In today's final rulemaking, EPA is incorporating those corrections as proposed.

b. Significant Comments and EPA Response

EPA received a number of comments recommending other typographical or drafting errors, and misplaced or obsolete references. EPA has made these suggested changes and some of its own where the EPA believes it made additional unintended errors. These changes are:

(1) A commenter has recommended that 40 CFR 122.26(b)(7)(iii) should refer to (b)(7)(i) or (b)(7)(ii). EPA agrees and has made this change.

(2) A commenter has pointed out that 40 CFR 122.26(d)(2)(iii) make an incorrect reference to (d)(a)(iii)(A)(3) and should read (d)(2)(iii)(A)(3). EPA agrees and has made this change.

(3) A commenter has pointed out that 40 CFR 123.44(d) makes an incorrect reference to § 123.44(b) and should read as § 123.44(c). EPA agrees and has made this change.

(4) A commenter has pointed out that 40 CFR 124.10(d)(1)(vii) has a repeated sentence that should be removed. EPA agrees and has made this change.

(5) A commenter has pointed out the proposed 40 CFR 122.21(a)(2)(i)(G)has a misplaced ''that'' in the second line which should be deleted. EPA agrees and has made this change.

(6) A commenter has pointed out that proposed 40 CFR 122.21(g)(7)(i) should have reference to (g)(7)(iii) and (iv) changed to (g)(7)(vi) and (vii). EPA agrees and has made this change.

(7) A commenter has pointed out that 40 CFR 122.2's definition of sludge only facility should refer to section 122.2(b)(2) and (3) instead of section 122.1(b)(3) as it currently does. EPA disagrees with this correction and has not made this change.

(8) A commenter has pointed out that 40 CFR 122.21(g)(7)(v)(B) and (vi)(B) use the term ''is discharged'', when ''are discharged is'' more appropriate. EPA agrees with the commenter for (vi)(B) in the proposed rule but does not find this applicable in (v)(B) of the proposed rule.

(9) In eliminating Subparts E and F, EPA did not propose and does not intend to create a right to seek administrative review before the EAB for NPDES general permits. Accordingly, EPA has revised proposed section 124.19(a) to include language from the removed section 124.71(a) that clarifies that there exists no right to seek review of NPDES general permits before the EAB. The addition of this NPDES-specific language should not be interpreted to create or limit a right to seek review of general permits under any other program for which appeal to the EAB is provided in section 124.19. Conforming changes have also been made to the proposed sections 124.19(b) and 124.6(e). Finally, a reference to the petition process in section 122.28(b)(3) has been added to section 124.19(a) for completeness and clarity.

III. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. 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 a 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.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct

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compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule is basically deregulatory in nature and is expected to reduce administrative and resource burdens on affected State, local, and tribal governments and the private sector. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of State and local government in developing this rule. The concerns of these entities have been addressed in the final rule.

C. Executive Order 13045

Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks,'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not an economically significant rule as defined under Executive Order 12866 and, therefore, is not subject to Executive Order 13045.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on these communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on them. This rule will eliminate redundant requirements, remove superfluous language, provide clarification, and remove or streamline unnecessary procedures which do not provide any environmental benefits, and thus reduce the administrative burden of the NPDES program on permit issuing authorities, and the regulated community. Accordingly, the requirements of section 3 (b) of Executive Order 13084 do not apply to this rule.

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final 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. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule is basically ''deregulatory'' in nature and is expected to reduce administrative and resource burdens on affected State, local, and tribal governments and the private sector. It does not contain any 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. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local, and tribal governments in the aggregate or by the private sector in any one year. As previously discussed, this rule reduces the administrative burden of the NPDES program on issuing authorities and the regulated community. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, this rule is not subject to the requirements of section 203 of UMRA.

F. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that meets RFA default definitions

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based on SBA size standards found in 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's final adds no increased burden to permittees.

Most of the changes in today's rule are purely technical and will have no effect on compliance costs for NPDES permittees. Also, to the extent these technical changes clarify and simplify the regulations, they will make them easier to understand and comply with, reducing the burden on small entities. The other changes will reduce the costs of obtaining and complying with NPDES permits. For instances, the rule will make it easier for facilities to obtain coverage under general permits, rather than go through the more complicated and expensive individual permit procedure. It will also reduce monitoring and record keeping for permitees subject to effluent limitation guidelines, and streamline permit application requirements for storm water dischargers and new source/ new dischargers. Today's rule will also streamline the permit appeals and permit termination processes, which should further reduce the costs of obtaining (or modifying) or terminating an individual permit. None of these changes are expected to increase, and most of the changes will actually decrease, the costs of compliance for NPDES discharges, including small entities (if any). We have therefore concluded that today's final rule will relieve regulatory burden for all entities.

G. Paperwork Reduction Act

This rule will streamline the regulatory process and will not impose any additional information collection, reporting, or record keeping requirements on either the regulated community or permit issuing authorities. Therefore, EPA did not prepare an Information Request document for approval by the Office of Management and Budget. There were no comments on the proposal to this rule regarding information collection requests or other aspects of the Paperwork Reduction Act. This rule streamlines existing information collection requirements previously approved by OMB under ICR #2040–0004, by reducing the burden hours associated with that ICR by 9000 hours. An Information Correction Worksheet will be submitted to OMB to reduce the burden hours associated with ICR 2040–0004.

H. National Technology Transfer and Advancement Act—Voluntary Standards

Section 12(d) of the National Technology Transfer and Advancement Act (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. This rule does not involve any technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective June 14, 2000.

List of Subjects

40 CFR Part 22

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Water pollution control.

40 CFR Part 117

Environmental Protection Agency, Hazardous substances, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 122

Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 123

Administrative practice and procedure, Confidential business information, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 124

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous waste, Indians—lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 125

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 144

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Indians—lands, Reporting and recordkeeping requirements, Surety bonds, Water supply.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

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40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 10, 2000.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, EPA amends 40 CFR parts 22, 117, 122, 123, 124, and 125, 144, 270, and 271 as follows:

PART 22—[AMENDED]

1. The title of part 22 is revised to read as follows:

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

2. The authority citation for part 22 is revised to read as follows:

Authority: 7 U.S.C. 136(l); 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g–3(g), 6912, 6925, 6928, 6991e and 6992d; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

3. Section 22.1 is amended by revising paragraphs (a)(4) and (a)(6) to read as follows:

§ 22.1 Scope of this part.

(a) * * *

(4) The issuance of a compliance order or the issuance of a corrective action order, the termination of a permit pursuant to section 3008(a)(3), the suspension or revocation of authority to operate pursuant to section 3005(e), 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. 6925(d), 6925(e), 6928, 6991e, and 6992d)), except as provided in part 24 of this chapter;

* * * * *

(6) The assessment of any Class II penalty under sections 309(g) and 311(b)(6), or termination of any permit issued pursuant to section 402(a) of the Clean Water Act, as amended (33 U.S.C. 1319(g), 1321(b)(6), and 1342(a));

* * * * *

4. Section 22.3 is amended in paragraph (a) by revising the definition for ''Permit action'' in alphabetical order to read as follows:

§ 22.3 Definitions.

(a) * * *

Permit action means the revocation, suspension or termination of all or part of a permit issued under section 102 of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1412) or termination under section 402(a) of the Clean Water Act (33 U.S.C. 1342(a)) or section 3005(d) of the Solid Waste Disposal Act (42 U.S.C. 6925(d)).

* * * * *

5. Section 22.44 is added to read as follows:

§ 22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.

(a) *Scope of this subpart.* The supplemental rules of practice in this subpart shall also apply in conjunction with the Consolidated Rules of Practice in this part and with the administrative proceedings for the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act. Notwithstanding the Consolidated Rules of Practice, these supplemental rules shall govern with respect to the termination of such permits.

(b) In any proceeding to terminate a permit for cause under § 122.64 or § 270.43 of this chapter during the term of the permit:

(1) The complaint shall, in addition to the requirements of § 22.14(b), contain any additional information specified in § 124.8 of this chapter;

(2) The Director (as defined in § 124.2 of this chapter) shall provide public notice of the complaint in accordance with § 124.10 of this chapter, and allow for public comment in accordance with § 124.11 of this chapter; and

(3) The Presiding Officer shall admit into evidence the contents of the Administrative Record described in § 124.9 of this chapter, and any public comments received.

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

1. The authority citation for part 117 continues to read as follows:

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.

2. Section 117.1(d) is revised to read as follows:

§ 117.1 Definitions.

* * * * *

(d) *Public record* means the NPDES permit application or the NPDES permit itself and the materials comprising the administrative record for the permit decision specified in § 124.18 of this chapter.

* * * * *

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

1. The authority citation for part 122 continues to read as follows:

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

2. Section 122.1 is revised to read as follows:

§ 122.1 Purpose and scope.

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

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

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

(4) The NPDES permit program has separate additional provisions that are used by permit issuing authorities to determine what requirements must be placed in permits if issued. These provisions are located at parts 125, 129, 133, 136 of this chapter and 40 CFR subchapter N (parts 400 through 471), and part 503 of this chapter.

(5) Certain requirements set forth in parts 122 and 124 of this chapter are made applicable to approved State programs by reference in part 123 of this chapter. These references are set forth in

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

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

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

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

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

3. Section 122.2 is amended by adding new definitions in alphabetical order, and by revising the definitions of ''POTW,'' ''Publicly owned treatment works'' and ''Sludge-only facility'' to read as follows:

§ 122.2 Definitions.

* * * * *

Animal feeding operation is defined at § 122.23.

* * * * *

Aquaculture project is defined at § 122.25.

* * * * *

Bypass is defined at § 122.41(m).

* * * * *

Concentrated animal feeding operation is defined at § 122.23.

Concentrated aquatic animal feeding operation is defined at § 122.24.

* * * * *

Individual control strategy is defined at 40 CFR 123.46(c).

* * * * *

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

* * * * *

POTW is defined at § 403.3 of this chapter.

* * * * *

Publicly owned treatment works is defined at 40 CFR 403.3.

* * * * *

Silvicultural point source is defined at § 122.27.

* * * * *

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

* * * * *

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

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

* * * * *

Upset is defined at § 122.41(n).

* * * * *

4. Section 122.4 is amended by revising paragraph (i)(2) to read as follows:

§ 122.4 Prohibitions (applicable to State NPDES programs, see § 123.25).

* * * * *

(i) * * *

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

5. Section 122.21 is amended by revising paragraphs (g)(7), (g)(8), (l)(1), (l)(2)(ii), (l)(3), (l)(4), and revising Notes 1, 2 introductory text, and 3 introductory text to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(g) * * *

(7) *Effluent characteristics.* (i) Information on the discharge of pollutants specified in this paragraph (g)(7) (except information on storm water discharges which is to be provided as specified in § 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 part 136 of this chapter. 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 outfall. The requirements in paragraphs (g)(7) (vi) and (vii) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention

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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.

(ii) *Storm water discharges.* For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges under § 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 part 136 of this chapter, and additional time for submitting data on a case-by-case basis. An applicant is expected to ''know or have reason to believe'' that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

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

Biochemical Oxygen Demand (BOD5)
Chemical Oxygen Demand
Total Organic Carbon
Total Suspended Solids
Ammonia (as N)
Temperature (both winter and summer)
pH

(iv) The Director may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in paragraph (g)(7)(iii) of this section if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

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

(A) The organic toxic pollutants in the fractions designated in table I of appendix D of this part for the applicant's industrial category or categories unless the applicant qualifies as a small business under paragraph (g)(8) of this section. Table II of appendix D of this part lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes. See Notes 2, 3, and 4 of this section.

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

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

(B) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in table II or table III of appendix D of this part (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (g)(7)(v) of this section are 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 of this part (the organic toxic pollutants).

(vii) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in table V of appendix D 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.

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

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

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

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

* * * * *

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

(2) * * *

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

(3) The Regional Administrator shall issue a public notice in accordance with § 124.10 of this chapter of the new source determination under paragraph (l)(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 through 6.607.

(4) Any interested party may challenge the Regional Administrator's initial new source determination by requesting review of the determination under § 124.19 of this chapter within 30 days of the public notice of the initial determination. If all interested parties agree, the Environmental Appeals Board may defer review until after a final permit decision is made, and consolidate review of the determination with any review of the permit decision.

* * * * *

[**Note 1:** At 46 FR 2046, Jan. 8, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(v)(A) and the corresponding portions of Item V–C of the NPDES application Form 2C as they apply to coal mines. This suspension continues in effect.]

[**Note 2:** At 46 FR 22585, Apr. 20, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(v)(A) and the corresponding portions of Item V–C of the NPDES application Form 2C as they apply to:

* * * * *

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

* * * * *

6. Section 122.22 is amended by revising paragraph (a)(1)(ii) (the note remains unchanged) to read as follows:

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

(a) * * *

(1) * * *

(ii) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

* * * * *

§ 122.24 [Amended]

7. The paragraph heading for § 122.24(b), ''Defintion'' is revised to read ''Definition''.

8. Section 122.26 is amended by revising paragraphs (b)(7)(iii) introductory text, (b)(20), (c)(1) introductory text, (c)(1)(i)(E)(*4*), (c)(1)(i)(F), (d)(1)(iii)(D)(*1*), (d)(2)(iii) introductory text, and (d)(2)(iv)(C)(*2*), and by removing and reserving paragraph (c)(2), to read as follows:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

* * * * *

(b) * * *

(7) * * *

(iii) Owned or operated by a municipality other than those described in paragraph (b)(7)(i) or (ii) of this section and that are designated by the 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)(7)(i) or (ii) of this section. In making this determination the Director may consider the following factors:

* * * * *

(20) *Uncontrolled sanitary landfill* means a landfill 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) * * *

(1) *Individual application.* Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Director is evaluating for designation (see 124.52(c) of this chapter) under paragraph (a)(1)(v) of this section and is not a municipal storm sewer, shall submit an NPDES application in accordance with the requirements of § 122.21 as modified and supplemented by the provisions of this paragraph.

(i) * * *

(E) * * *

(*4*) Any information on the discharge required under § 122.21(g)(7) (vi) and (vii);

* * * * *

(F) Operators of a discharge which is composed entirely of storm water are exempt from the requirements of § 122.21 (g)(2), (g)(3), (g)(4), (g)(5), (g)(7)(iii), (g)(7)(iv), (g)(7)(v), and (g)(7)(viii); and * * *

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(D) * * *

(*1*) A grid system consisting of perpendicular north-south and east-west lines spaced ¼ mile apart shall be

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overlaid on a map of the municipal storm sewer system, creating a series of cells;

* * * * *

(2) * * *

(iii) *Characterization data.* When ''quantitative data'' for a pollutant are required under paragraph (d)(2)(iii)(A)(*3*) of this section, the applicant must collect a sample of effluent in accordance with § 122.21(g)(7) and analyze it for the pollutant in accordance with analytical methods approved under part 136 of this chapter. 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:

* * * * *

(iv) * * *

(C) * * *

(*2*) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph (d)(2)(iv)(C) of this section, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: Any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES permit for a facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under § 122.21(g)(7) (vi) and (vii).

* * * * *

9. Section 122.28 is amended by revising paragraphs (a)(1) introductory text and (a)(2), adding paragraphs (a)(3) and (a)(4), and revising paragraph (b)(1) to read as follows:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

(a) * * *

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

* * * * *

(2) *Sources.* The general permit may be written to regulate one or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in paragraph (a)(1) of this section, where the sources within a covered subcategory of discharges are either:

(i) Storm water point sources; or (ii) One or more categories or subcategories of point sources other than storm water point sources, or one or more categories or subcategories of ''treatment works treating domestic sewage'', if the sources or ''treatment works treating domestic sewage'' within each category or subcategory all:

(A) Involve the same or substantially similar types of operations;

(B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;

(C) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;

(D) Require the same or similar monitoring; and (E) In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

(3) *Water quality-based limits.* Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to § 122.44, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

(4) *Other requirements.* (i) The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

(ii) The general permit may exclude specified sources or areas from coverage.

(b) * * *(1) *In general.* General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of part 124 of this chapter or corresponding State regulations. Special procedures for issuance are found at § 123.44 of this chapter for States.

* * * * *

10. Section 122.29(c)(1)(i) is amended by revising the reference ''§ 122.21(k)'' to read ''§ 122.21(l)''.

11. Section 122.41 is amended by revising the second sentence in paragraph (l)(6)(i) to read as follows:

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).

* * * * *

(l) * * *

(6) * * * (i) * * * Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. * * *

* * * * *

12. Section 122.43(b)(1) is amended by removing from the second sentence the words ''(except as provided in § 124.86(c) for NPDES permits being processed under subpart E or F of part 124 of this chapter)'' and by revising the word ''additonal'' in the third sentence to read ''additional''.

13. Section 122.44 is amended by revising paragraphs (a), (c), (e)(1), (k) and (q) to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(a)(1) *Technology-based effluent limitations and standards* based on: effluent limitations and standards promulgated under section 301 of the CWA, or new source performance standards promulgated under section 306 of CWA, on case-by-case effluent limitations determined under section 402(a)(1) of CWA, or a combination of the three, in accordance with § 125.3 of this chapter. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of § 122.29(d) (protection period).

(2) *Monitoring waivers for certain guideline-listed pollutants.*

(i) The Director may authorize a discharger subject to technology-based effluent limitations guidelines and standards in an NPDES permit to forego sampling of a pollutant found at 40 CFR Subchapter N of this chapter if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(ii) This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger.

(iii) Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(iv) Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be

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documented in the permit's fact sheet or statement of basis.

(v) This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

* * * * *

(c) *Reopener clause:* 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.

* * * * *

(e) * * *

(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 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) of this chapter; or

* * * * *

(k) *Best management practices (BMPs)* to control or abate the discharge of pollutants when:

(1) Authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

(2) Authorized under section 402(p) of the CWA for the control of storm water discharges;

(3) Numeric effluent limitations are infeasible; or

(4) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

Note to paragraph (k)(4): Additional technical information on BMPs and the elements of BMPs is contained in the following documents: Guidance Manual for Developing Best Management Practices (BMPs), October 1993, EPA No. 833/B–93–004, NTIS No. PB 94–178324, ERIC No. W498); Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices, September 1992, EPA No. 832/R–92–005, NTIS No. PB 92–235951, ERIC No. N482); Storm Water Management for Construction Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA No. 833/R–92–001, NTIS No. PB 93–223550; ERIC No. W139; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices, September 1992; EPA 832/R–92–006, NTIS No. PB 92–235969, ERIC No. N477; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA 833/R–92–002, NTIS No. PB 94–133782; ERIC No. W492. Copies of those documents (or directions on how to obtain them) can be obtained by contacting either the Office of Water Resource Center (using the EPA document number as a reference) at (202) 260–7786; or the Educational Resources Information Center (ERIC) (using the ERIC number as a reference) at (800) 276–0462. Updates of these documents or additional BMP documents may also be available. A list of EPA BMP guidance documents is available on the OWM Home Page at http://www.epa.gov/owm. In addition, States may have BMP guidance documents.

These EPA guidance documents are listed here only for informational purposes; they are not binding and EPA does not intend that these guidance documents have any mandatory, regulatory effect by virtue of their listing in this note.

* * * * *

(q) *Navigation.* Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with § 124.59 of this chapter.

* * * * *

14. Section 122.45 is amended by revising paragraph (h)(1) to read as follows:

§ 122.45 Calculating NPDES permit conditions (applicable to State NPDES programs, see § 123.25)

* * * * *

(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 § 122.48 shall also be applied to the internal waste streams.

* * * * *

§ 122.47 Schedules of Compliance

15. Section 122.47(b) introductory text is amended by revising the word ''requriements'' to read ''requirements''.

16. Section 122.62 is amended by revising paragraph (a)(8) to read as follows:

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

* * * * *

(a) * * *

(8)(i) *Net limits.* Upon request of a permittee who qualifies for effluent limitations on a net basis under § 122.45(g).

(ii) When a discharger is no longer eligible for net limitations, as provided in § 122.45(g)(1)(ii).

* * * * *

17. Section 122.64 is amended by revising paragraph (b) to read as follows:

§ 122.64 Termination of permits (applicable to State programs, see § 123.25).

* * * * *

(b) The Director shall follow the applicable procedures in part 124 or part 22 of this chapter, as appropriate (or State procedures equivalent to part 124) in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the Director may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the Director shall follow part 124 of this chapter or applicable State procedures for termination. Expedited permit termination procedures are not available to permittees that are subject to pending State and/or Federal enforcement actions including citizen suits brought under State or Federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending State or Federal enforcement actions including citizen suits brought under State or Federal law. State-authorized NPDES programs are not required to use part 22 of this chapter procedures for NPDES permit terminations.

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

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

2. Section 123.25 is amended by revising paragraphs (a)(12), (a)(36) and paragraph (b) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(12) Section 122.41 (a)(1) and (b) through (n)—(Applicable permit conditions) (Indian Tribes can satisfy

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enforcement authority requirements under § 123.34);

* * * * *

(36) Subparts A, B, D, and H of part 125 of this chapter;

* * * * *

(b) State NPDES programs shall have an approved continuing planning process under 40 CFR 130.5 and shall assure that the approved planning process is at all times consistent with the CWA.

* * * * *

3. Section 123.44 is amended by revising paragraph (a)(2), introductory text of paragraph (b)(2), the introductory text of paragraph (d), and by removing and reserving paragraph (i) to read as follows:

§ 123.44 EPA review of and objections to State permits.

(a) * * *

(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.

(b) * * *

(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 shall set forth in writing and transmit to the State Director:

* * * * *

(d) Prior to notifying the State Director of an objection based upon any of the grounds set forth in paragraph (c) of this section, the Regional Administrator:

* * * * *

PART 124—PROCEDURES FOR DECISION MAKING

1. The authority citation for part 124 is revised 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. 300f *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

2. Section 124.1 is amended by revising the first sentence of paragraph (a) and revising paragraphs (b) and (c), by removing the table entitled ''Hearings Available Under This Part'' following paragraph (c), and by revising the fourth sentence of paragraph (d) to read as follows:

§ 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)(2) of this chapter. * * *

(b) Part 124 is organized into four subparts. Subpart A contains general procedural requirements applicable to all permit programs covered by these provisions. Subparts B through D 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 notices, 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 final permit decisions. Subpart B contains specific procedural requirements for RCRA permits. Subpart C contains definitions and specific procedural requirements for PSD permits. Subpart D contains specific procedural requirements for NPDES permits.

(c) Part 124 offers an opportunity for public hearings (see § 124.12).

(d) * * * This part also allows consolidated permits to be subject to a single public hearing under § 124.12. * * *

* * * * *

§ 124.2 [Amended]

3. Section 124.2 is amended by:

a. Removing the following definitions in paragraph (a): ''Applicable standards and limitations'', ''Consultation with the Regional Administrator'', ''NPDES'', and ''Variance''; and

b. Removing paragraph (c).

§ 124.3 [Amended]

4. Section 124.3 is amended by adding the word ''and'' at the end of paragraph (g)(3), by removing ''; and'' and inserting in its place a period in paragraph (g)(4) and by removing paragraph (g)(5).

§ 124.4 [Amended]

5. Section 124.4 is amended by removing and reserving paragraph (d) and by removing the phrase ''or process a PSD permit under subpart F as provided in paragraph (d) of this section'' in paragraph (e).

6. Section 124.5 is amended by revising paragraph (d) to read as follows:

§ 124.5 Modification, revocation and reissuance, or termination of permits.

* * * * *

(d) *(Applicable to State programs, see §§ 123.25 (NPDES) of this chapter, 145.11 (UIC) of this chapter, and 271.14 (RCRA) of this chapter).* (1) If the Director tentatively decides to terminate: A permit under § 144.40 (UIC) of this chapter, a permit under §§ 122.64(a) (NPDES) of this chapter or 270.43 (RCRA) of this chapter (for EPA-issued NPDES permits, only at the request of the permittee), or a permit under § 122.64(b) (NPDES) of this chapter where the permittee objects, 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 of this chapter.

(2) For EPA-issued NPDES or RCRA permits, if the Director tentatively decides to terminate a permit under § 122.64(a) (NPDES) of this chapter, other than at the request of the permittee, or decides to conduct a hearing under section 3008 of RCRA in connection with the termination of a RCRA permit, he or she shall prepare a complaint under 40 CFR 22.13 and 22.44 of this chapter. Such termination of NPDES and RCRA permits shall be subject to the procedures of part 22 of this chapter.

(3) In the case of EPA-issued permits, a notice of intent to terminate or a complaint 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) of this chapter, 145.25(b)(1) (UIC) of this chapter, 271.8(b)(6) (RCRA) of this chapter, or 501.14(b)(1) (sludge) of this chapter. In addition, termination of an NPDES permit for cause pursuant to § 122.64 of this chapter may be accomplished by providing written notice to the permittee, unless the permittee objects.

* * * * *

7. Section 124.6 is amended by revising the third sentence of paragraph (e) to read as follows:

§ 124.6 Draft permits.

* * * * *

(e) * * * 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). * * *

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8. Section 124.10 is amended by removing the words ", subpart E or subpart F" in paragraphs (a)(1)(iii) and (d)(2) introductory text, and by removing the second sentence in paragraph (d)(1)(vii).

§ 124.12 [Amended]

9. Section 124.12(e) is removed.

§ 124.14 [Amended]

10. Section 124.14(d) is removed and reserved.

11. Section 124.15 is amended by revising the third sentence of paragraph (a) and by revising paragraph (b)(2) to read as follows:

§ 124.15 Issuance and effective date of permit.

(a) * * * This notice shall include reference to the procedures for appealing a decision on a RCRA, UIC, PSD, or NPDES permit under § 124.19 of this part. * * *

(b) * * *

(2) Review is requested on the permit under § 124.19

* * * * *

12. Section 124.16 is amended by revising paragraph (a) to read as follows:

§ 124.16 Stays of contested permit conditions.

(a) *Stays.* (1) If a request for review of a RCRA, UIC, or NPDES permit under § 124.19 of this part is filed, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final agency action. Uncontested permit conditions shall be stayed only until the date specified in paragraph (a)(2)(i) of this section. (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)(i) Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions. The Regional Administrator shall identify the stayed provisions of permits for existing facilities, injection wells, and sources. All other provisions of the permit for the existing facility, injection well, or source become fully effective and enforceable 30 days after the date of the notification required in paragraph (a)(2)(ii) of this section.

(ii) The Regional Administrator shall, as soon as possible after receiving notification from the EAB of the filing of a petition for review, notify the EAB, the applicant, and all other interested parties of the uncontested (and severable) conditions of the final permit that will become fully effective enforceable obligations of the permit as of the date specified in paragraph (a)(2)(i) of this section . For NPDES permits only, the notice shall comply with the requirements of § 124.60(b).

* * * * *

13. Section 124.19 is amended by revising the section heading, removing the first sentence of paragraph (a) introductory text and adding in its place 4 sentences, revising the first sentence of paragraph (b), revising paragraph (d), and revising the first sentence of paragraph (f)(1) introductory text to read as follows:

§ 124.19 Appeal of RCRA, UIC, NPDES, and PSD Permits.

(a) Within 30 days after a RCRA, UIC, NPDES, or PSD final permit decision (or a decision under 270.29 of this chapter to deny a permit for the active life of a RCRA hazardous waste management facility or unit) has been issued under § 124.15 of this part, 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. Persons affected by an NPDES general permit may not file a petition under this section or otherwise challenge the conditions of the general permit 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 petition the Board for review as provided by this section. As provided in § 122.28(b)(3), any interested person may also petition the Director to require an individual NPDES permit for any discharger eligible for authorization to discharge under an NPDES general permit. * * *

* * * * *

(b) The Environmental Appeals Board may also decide on its own initiative to review any condition of any RCRA, UIC, NPDES, or PSD permit decision issued under this part for which review is available under paragraph (a) of this section. * * *

* * * * *

(d) The Regional Administrator, at any time prior to the rendering of a decision under paragraph (c) of this section to grant or deny review of a permit decision, may, upon notification to the Board and any interested parties, 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 § 124.16(a) continue to apply.

* * * * *

(f)(1) For purposes of judicial review under the appropriate Act, final agency action occurs when a final RCRA, UIC, NPDES, or PSD permit decision is issued by EPA and agency review procedures under this section are exhausted. * * *

* * * * *

14. Section 124.21 is revised to read as follows:

§ 124.21 Effective date of part 124.

(a) Part 124 of this chapter became effective for all permits except for RCRA permits on July 18, 1980. Part 124 of this chapter became effective for RCRA permits on November 19, 1980.

(b) EPA eliminated the previous requirement for NPDES permits to undergo an evidentiary hearing after permit issuance, and modified the procedures for termination of NPDES and RCRA permits, on June 14, 2000.

(c)(1) For any NPDES permit decision for which a request for evidentiary hearing was granted on or prior to June 13, 2000, the hearing and any subsequent proceedings (including any appeal to the Environmental Appeals Board) shall proceed pursuant to the procedures of this part as in effect on June 13, 2000.

(2) For any NPDES permit decision for which a request for evidentiary hearing was denied on or prior to June 13, 2000, but for which the Board has not yet completed proceedings under § 124.91, the appeal, and any hearing or other proceedings on remand if the Board so orders, shall proceed pursuant to the procedures of this part as in effect on June 13, 2000.

(3) For any NPDES permit decision for which a request for evidentiary hearing was filed on or prior to June 13, 2000 but was neither granted nor denied prior to that date, the Regional Administrator shall, no later than July 14, 2000, notify the requester that the request for evidentiary hearing is being returned without prejudice. Notwithstanding the time limit in § 124.19(a), the requester may file an appeal with the Board, in accordance with the other requirements of § 124.19(a), no later than August 13, 2000.

(4) A party to a proceeding otherwise subject to paragraph (c) (1) or (2) of this

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section may, no later than June 14, 2000, request that the evidentiary hearing process be suspended. The Regional Administrator shall inquire of all other parties whether they desire the evidentiary hearing to continue. If no party desires the hearing to continue, the Regional Administrator shall return the request for evidentiary hearing in the manner specified in paragraph (c)(3) of this section.

(d) For any proceeding to terminate an NPDES or RCRA permit commenced on or prior to June 13, 2000, the Regional Administrator shall follow the procedures of § 124.5(d) as in effect on June 13, 2000, and any formal hearing shall follow the procedures of subpart E of this part as in effect on the same date.

§ 124.52 [Amended]

15. Section 124.52 is amended by removing the words ''or § 124.118'' in paragraphs (b) and (c).

§ 124.55 [Amended]

16. Section 124.55 is amended by revising the reference ''§ 124.53(d) (1) and (2)'' in paragraph (a)(2) to read ''§ 124.53(e)'' and by revising the reference ''§ 124.53(d)'' in paragraph (d) to read ''§ 124.53(e)''.

17. Section 124.56 is amended by revising (b)(1) to read as follows:

§ 124.56 Fact sheets (applicable to State programs, see § 123.25 (NPDES).).

* * * * *

(b)(1) When the draft permit contains any of the following conditions, an explanation of the reasons that such conditions are applicable:

(i) Limitations to control toxic pollutants under § 122.44(e) of this chapter;

(ii) Limitations on internal waste streams under § 122.45(i) of this chapter;

(iii) Limitations on indicator pollutants under § 125.3(g) of this chapter;

(iv) Limitations set on a case-by-case basis under § 125.3 (c)(2) or (c)(3) of this chapter, or pursuant to Section 405(d)(4) of the CWA;

(v) Limitations to meet the criteria for permit issuance under § 122.4(i) of this chapter, or

(vi) Waivers from monitoring requirements granted under § 122.44(a) of this chapter.

* * * * *

§ 124.57 [Amended]

18. Section 124.57 is amended by removing and reserving paragraph (b) and by removing paragraph (c).

19. Section 124.60 is revised to read as follows:

§ 124.60 Issuance and effective date and stays of NPDES permits.

In addition to the requirements of §§ 124.15, 124.16, and 124.19, the following provisions apply to NPDES permits:

(a) Notwithstanding the provisions of § 124.16(a)(1), if, for any offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig which has never received a final 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 or she 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.

(b)(1) As provided in § 124.16(a), if an appeal of an initial permit decision is filed under § 124.19, the force and effect of the contested conditions of the final permit shall be stayed until final agency action under § 124.19(f). The Regional Administrator shall notify, in accordance with § 124.16(a)(2)(ii), the discharger and all interested 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 (b)(1) of this section.

(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 the outcome of the appeal under § 124.19;

(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.

(c) In addition to the requirements of § 124.16(c)(2), when an appeal is filed under § 124.19 on an application for a renewal of an existing permit and 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.

20. Section 124.64 is amended by revising paragraph (b), paragraph (c) introductory text, and paragraph (d) to read as follows:

§ 124.64 Appeals of variances.

* * * * *

(b) Variance decisions made by EPA may be appealed under the provisions of § 124.19.

(c) *Stays for section 301(g) variances.* If an appeal is filed under § 124.19 of a variance requested under CWA section 301(g), any otherwise applicable standards and limitations under CWA section 301 shall not be stayed unless:

* * * * *

(d) Stays for variances other than section 301(g) variances are governed by §§ 124.16 and 124.60.

§ 124.66 [Amended]

21. Section 124.66(a) is amended by removing the words ''Except as provided in § 124.65,'' from the first sentence, and by revising the words ''evidentiary or panel hearing under subpart E or F.'' in the fourth sentence to read ''appeal under § 124.19.''

Subpart E to Part 124 [Removed]

22. Subpart E is removed.

Subpart F to Part 124 [Removed]

23. Subpart F is removed.

Appendix A to Part 124 [Removed]

24. Appendix A to Part 124 is removed.

US EPA ARCHIVE DOCUMENT

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PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 125 is revised to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*, unless otherwise noted.

2. Section 125.32(a) is revised to read as follows:

§ 125.32 Method of application.

(a) A written request for a variance under this subpart D shall be submitted in duplicate to the Director in accordance with §§ 122.21(m)(1) and 124.3 of this chapter.

* * * * *

§ 125.72 [Amended]

3. Section 125.72(c) is amended by removing the words ''and § 124.73(c)(1)''.

Subpart K to Part 125 [Removed and Reserved]

4. Subpart K is removed and reserved.

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for part 144 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

§ 144.52 [Amended]

2. Section 144.52(b)(2) is amended by removing from the second sentence the parenthetical phrase ''(except as provided in § 124.86(c) for UIC permits being processed under subpart E or F of part 124)''.

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.

§ 270.32 [Amended]

2. Section 270.32(c) is amended by removing from the second sentence the parenthetical phrase ''(except as provided in § 124.86(c) for RCRA permits being processed under subpart E or F of part 124)''.

§ 270.43 [Amended]

3. Section 270.43(b) is amended by revising the words ''part 124'' to read ''part 124 or part 22, as appropriate''.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, and 6926.

§ 271.19 [Amended]

2. Section 271.19(e) introductory text is amended by removing the words ''in accordance with the procedures of part 124, subpart E,''.

[FR Doc. 00–10764 Filed 5–12–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50637A; FRL–6555–8]

RIN 2070–AB27

Revocation of Significant New Use Rules for Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking significant new use rules (SNURs) for 2 substances promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) based on new data. Based on the new data the Agency no longer finds that activities not described in the corresponding TSCA section 5(e) consent order or premanufacture notice (PMN) for these chemical substances may result in significant changes in human or environmental exposure.

DATES: This rule is effective June 14, 2000.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: James Alwood, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1857; e-mail address: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Chemical manufacturers	325	Manufacturers, importers, processors, and users of chemicals
Petroleum and coal product industries	324	Manufacturers, importers, processors, and users of chemicals

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**-Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPPTS–50637A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information