Memphis, Tenn., of certificate No. MC-129653 sub-No. 1, issued October 15, 1969, to Sam B. Paine, doing business as Paine Bros. Trucking Co., Memphis, Tenn., authorizing the transportation of aggregate from Lehi, Ark., to points in Shelby County, Tenn. John Paul Jones, 189 Jefferson Avenue, Memphis, Tenn. 38103, applicants' attorney

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-10168 Filed 5-21-73;8:45 am]

[Ex Parte No. 241; Exemption No. 39; Amdt. No. 2]

LOUISIANA & ARKANSAS RAILWAY CO.

Exemption Under Mandatory Car Service Rules

Upon further consideration of exemption No. 39 (Louisiana & Arkansas Railway Co.) issued April 13, 1973.

It is ordered, That, under authority vested in me by car service rule 19, exemption No. 39 to the mandatory car service rules ordered in *Ex parte No. 241* be, and it is hereby, amended to expire May 31, 1973.

This amendment shall become effective May 15, 1973.

Issued at Washington, D.C., May 15, 1973.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.73-10169 Filed 5-21-73;8:45 am]

CUMULATIVE LISTS OF PARTS AFFECTED—MAY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during May.

FEDERAL REGISTER PAGES AND DATES—MAY

Pages	*Date*	*Pages*	*Date*
10699–10788	May 1	12307–12594	May 11
10789–10908	2	12595–12721	14
10909–11052	3	12723–12789	15
11053–11329	4	12791–12884	16
11331–11426	7	12885–13002	17
11427–12084	8	13003–13307	18
12085–12194	9	13309–13467	21
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TUESDAY, MAY 22, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 98

PART II

ENVIRONMENTAL PROTECTION AGENCY

User Charges and Industrial Cost Recovery

■

GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 35]

USER CHARGES AND INDUSTRIAL COST RECOVERY

Grants for Construction of Treatment Works

Notice is hereby given that the Environmental Protection Agency proposes to amend part 35 of title 40 to include regulations for user charge systems and industrial cost recovery, pursuant to section 204(b) of the Federal Water Pollution Control Act Amendments of 1972.

The proposed regulations would require that a system of user charges be adopted by all applicants for treatment works construction grants. User charges are payments to a grant applicant by recipients of waste treatment services to offset the cost of operation and maintenance of treatment works provided by the applicant. User charge systems are intended to enable the grantee to be financially self-sufficient with respect to operation and maintenance of treatment works.

The proposed regulations would also require that all grantees recover from industrial users that portion of the grant amount allocable to the treatment of wastes from such users An industrial user's share is to be based on all factors which significantly influence the cost of the treatment works, including strength, volume, and flow characteristics. As a minimum, an industry's share shall be based on its flow versus treatment works capacity except in unusual cases.

The act provides that a grantee may retain an amount of the revenues recovered from industry equal to (1) the amount of the non-Federal cost of the project paid by the grantee, plus (2) the amount necessary for future reconstruction and expansion of the project. The total amount retained, however, cannot exceed 50 percent of the amount recovered.

In the development of the proposed regulations, it was determined that the 50 percent limitation would be applicable except at an amount for reconstruction and expansion which would not be sufficient to expand and reconstruct the treatment works. Therefore, in the interest of minimizing paperwork pursuant to section 101(f) of the act, the proposed regulations would permit a grantee to retain 50 percent of the amounts recovered in all cases. The remainder, together with any interest earned thereon, would be returned to the U.S. Treasury.

The act requires that the amount retained by the grantee, which is attributable to future reconstruction and expansion, be used solely for that purpose. It is implied that the amount retained, which is attributable to the non-Federal cost of the project paid by the grantee, may be used by the grantee for any purpose.

The proposed regulations state that 80 percent of the retained amounts, together with any interest earned thereon, shall be used solely for allowable costs of reconstruction and expansion of treatment works associated with the project and necessary to meet the intent of the act. The remainder of the retained amounts may be used by the grantee for any purpose

The justification for this distribution of the amounts retained is as follows: The total amount necessary for reconstruction and expansion of the project would be, at a minimum, 100 percent of the eligible costs of the project. The non-Federal share would be 25 percent of the eligible project costs. Thus the ratio between the minimum amount necessary for reconstruction and expansion and the total amount for both reconstruction and expansion and the non-Federal share of the project would be $(100)(100)/(100+25)=80$ percent. Since the amount retained will be less than the full amounts necessary for future reconstruction and expansion and the non-Federal share, it is proposed that the amount retained for future reconstruction and expansion be in the same ratio to the amount attributable to the non-Federal share as if the full amount for both purposes were available. This appears to be the most equitable manner of distributing the retained funds.

Interested parties are encouraged to submit written comments, views, or data concerning these proposed regulations to the Director, Municipal Waste Water Systems Division, Environmental Protection Agency, Washington D.C. 20460. All such submissions received on or before June 21, 1973, will be considered prior to promulgation of final regulations on user charges and industrial cost recovery.

Any grants awarded after March 1, 1973, but prior to promulgation of final regulations will be subject to a special grant condition incorporating these proposed regulations by reference.

ROBERT W. FRI,
Acting Administrator.

MAY 15, 1973.

Subpart E—Grants for Construction of Treatment Works—Federal Water Pollution Control Act Amendments of 1972

1. Section 35.901 is amended to read as follows:

§ 35.901 Authority.

This subpart is promulgated pursuant to sections 201 through 205, 207, 210 through 212, 501(a), and 502(18) of the act.

2. Sections 35.905–16 through 35.905–21 are added to read as follows:

§ 35.905–16 Service life.

The estimated period during which a treatment works will be operated.

§ 35.905–17 Industrial cost recovery.

Recovery by the grantee from the industrial users of a treatment works of the grant amount allocable to the treatment of wastes from such users.

§ 35.905–18 Industrial user.

Any nongovernmental user of publicly owned treatment works identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented, under the following divisions:

(a) Division A—Agriculture, Forestry, and Fishing.

(b) Division B—Mining.

(c) Division D—Manufacturing.

(d) Division E—Transportation, Communications, Electric, Gas, and Sanitary Services.

(e) Division I—Services.

A user in the Divisions listed may be excluded if it is determined that it will introduce primarily domestic wastes or wastes from sanitary conveniences.

§ 35.905–19 Recovery period.

A period, beginning at the commencement of operation of a treatment works, during which the grant amount allocable to the treatment of wastes from industrial users is recovered from the industrial users of such works.

§ 35.905–20 Replacement.

Expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the service life of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term "operation and maintenance" includes replacement.

§ 35.905–21 User charge.

A charge levied on users of treatment works for the cost of operation and maintenance of such works. User charges do not include construction costs.

3. Section 35.925–11 is revised to read as follows:

§ 35.925–11 User charges and industrial cost recovery.

(a) In the case of any grant awarded after March 1, 1973, for a project which includes the preparation of construction plans and specifications (step 2); that the applicant has developed an approvable plan and schedule of implementation for a system of user charges to assure that each recipient of waste treatment services will pay its proportionate share of the costs of operation and maintenance (including replacement) of treatment works provided by the applicant.

(b) In the case of any grant awarded after March 1, 1973; for a project which includes the preparation of construction plans and specifications (step 2); that the applicant has received signed letters of intent from each significant industrial user to pay that portion of the grant amount allocable to the treatment of its wastes. Each such letter shall also include a statement of the industrial user's intended period of use of the treatment works. A significant industrial user is one that will contribute greater than 10 percent of the design flow or design pollutant loading of the treatment works. In addition, the applicant must agree to require all industrial users to pay that portion of the grant amount allocable to the treatment of wastes from such users.

(c) That the applicant has legal, institutional, managerial, and financial capability to insure adequate construction, operation, and maintenance of treatment works throughout the applicant's jurisdiction.

(d) Grants awarded prior to March 2, 1973, are subject to 40 CFR 35.835–5 requirements in lieu of paragraphs (a), (b), and (c) of this section.

4. Sections 35.925–14 through 35.925–16 are added to read as follows:

§ 35.925–14 Treatment of industrial wastes.

That the project costs do not include costs allocable to the treatment for control or removal of pollutants in wastes introduced into the treatment works by industrial users if the applicant is not required to control and/or remove such pollutants from wastes introduced by other sources.

§ 35.925–15 Federal activities.

That the project costs do not include costs allocable to the treatment of wastes from activities of the Federal Government.

§ 35.925–16 Retained amounts for reconstruction and expansion.

That the project cost have been reduced by an amount equal to the unexpended balance of the amounts retained by the applicant pursuant to § 35.928–2, together with interest earned thereon.

5. Section 35.928 through 35.928–2 are added to read as follows:

§ 35.928 Industrial cost recovery.

The system for industrial cost recovery shall be approved by the Regional Administrator and shall be implemented and maintained by the grantee in accordance with the following requirements.

§ 35.928–1 Recovered amounts.

(a) Each year during the recovery period, each industrial user of the treatment works shall pay its share of the total grant amount divided by the recovery period.

(b) The recovery period shall be equal to 30 years or the service life of the treatment works, whichever is less.

(c) Payments shall be made by industrial users no less often than annually. The first payment by an industrial user shall be made not later than 1 year after such user begins use of the treatment works.

(d) An industrial user's share shall be based on all factors which significantly influence the cost of the treatment works. Factors such as strength, volume, and delivery flow rate characteristics shall be considered and included to insure a proportional distribution of the grant amount allocable to industrial use to all industrial users of the treatment works.

(e) If there is a substantial change in the strength, volume, or delivery flow rate characteristics introduced into the treatment works by an industrial user, such user's share shall be adjusted accordingly.

(f) If there is an expansion of the treatment works capacity each existing industrial user's share shall be reduced accordingly.

(g) An industrial user's share shall not include any portion of the grant amount allocable to unused or unreserved capacity.

(h) An industrial user's share shall include any firm commitment to the grantee of increased use by such user.

(i) All unallocated treatment works capacity must conform with the requirements of section 204(a)(5) of the act and such cost-effectiveness guidelines as may be promulgated by the Administrator pursuant to section 212(2)(C) of the act.

(j) An industrial user's share shall not include an interest component.

§ 35.928–2 Retained amounts.

(a) The grantee shall retain 50 percent of the amounts recovered from industrial users. The remainder, together with any interest earned thereon, shall be returned to the U.S. Treasury on an annual basis.

(b) A minimum of 80 percent of the retained amounts, together with interest earned thereon, shall be used solely for the allowable costs (in accordance with § 35.940 of this subpart) of the expansion or reconstruction of treatment works associated with the project and necessary to meet the requirements of the act. The grantee shall obtain the written approval of the Regional Administrator prior to commitment of the retained amounts for any expansion and reconstruction. The remainder of the retained amounts may be used as the grantee sees fit.

(c) Pending use, the grantee shall invest the retained amounts for reconstruction and expansion in: (1) Obligations of the U.S. Government; or (2) obligations guaranteed as to principal and interest by the U.S. Government or any agency thereof; or (3) shall deposit such amounts in accounts fully collateralized by obligations of the U.S. Government or by obligations fully guaranteed as to principal and interest by the U.S. Government or any agency thereof.

6. Section 35.935–13 is added to read as follows:

§ 35.935–13 User charges and industrial cost recovery.

(a) The grantee will maintain such records as necessary to document compliance by the grantee with the Federal guidelines on user charges for operation and maintenance of publicly owned treatment works (see appendix hereto) and § 35.928 of this subpart.

(b) The grantee will obtain the approval of the Regional Administrator of

the system of user charges and the system of industrial cost recovery based on the Federal guidelines on user charges for operation and maintenance of publicly owned treatment works (see appendix hereto) and § 35.928 of this subpart.

APPENDIX

FEDERAL GUIDELINES

User Charges for Operation and Maintenance of Publicly Owned Treatment Works

(a) *Purpose.*—To set forth user charge guidelines pursuant to section 204 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, hereinafter referred to as the act.

(b) *Authority.*—The authority for establishment of the user charge guidelines is contained in section 204(b)(2) of the act.

(c) *Background.*—Section 204(b)(1) of the act provides that after March 1, 1973, Federal grant applicants shall be awarded grants only after the Regional Administrator has determined that the applicant has adopted or will adopt a system of charges to assure that each recipient of waste treatment services will pay its proportionate share of the costs of operation and maintenance, including replacement. The intent of the act with respect to user charges is to distribute the cost of operation and maintenance of publicly owned treatment works to the pollutant source and to promote self-sufficiency of treatment works with respect to operation and maintenance costs.

(d) *Definitions.*—(1) *Replacement.*—Expenditures for obtaining and installing equipment, accessories, or appurtenances which are necessary during the service life of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term "operation and maintenance" includes replacement.

(2) *User charge.*—A charge levied on users of treatment works for the cost of operation and maintenance of such works. User charges do not include construction costs.

(e) *Classes of users.*—At least two basic types of user charge systems are common. The first is to charge each user a share of the treatment works operation and maintenance costs based on his estimated or measured proportional contribution to the total treatment works loading. The second system establishes classes for users having similar flows and wastewater characteristics, i.e., levels of biochemical oxygen demand, suspended solids, etc. Each class is then assigned its share of the waste treatment works operation and maintenance costs based on the proportional contribution of the class to the total treatment works loading. Either system is in compliance with these guidelines.

(f) *Criteria against which to determine the adequacy of user charges.*—The user charge system shall be approved by the Regional Administrator and shall be implemented and maintained by the grantee in accordance with the following requirements:

(1) The user charge system shall result in the distribution of the cost of operation and maintenance of treatment works, within the grantee's jurisdiction, to each user (or user class) in proportion to such user's contribution to the total wastewater loading of the treatment works. Factors such as strength, volume, and delivery flow rate characteristics shall be considered and included as the basis for the user's contribution to insure a proportional distribution of operation and maintenance costs to each user (or user class).

(2) For the first year of operation, operation and maintenance costs shall be based upon past experience for existing treatment works, or some other rational method that can be demonstrated to be applicable.

(3) The grantee shall review user charges annually and revise them periodically to reflect actual treatment works operation and maintenance costs.

(4) The user charge system shall generate sufficient revenue to offset the cost of all treatment works operation and maintenance provided by the grantee.

(5) The user charge system shall be incorporated in one or more municipal legislative enactments or other appropriate authority. If the project is a regional treatment works accepting wastewaters from treatment works owned by others, then the subscribers receiving waste treatment services from the grantee shall have adopted user charge systems in accordance with this guideline. Such user charge systems shall also be incorporated in the appropriate municipal legislative enactments or other appropriate authority.

(g) *Model user charge systems.*—The user charge system adopted by the applicant must result in the distribution of treatment works operation and maintenance costs to each user (or user class) in approximate proportion to his contribution to the total wastewater loading of the treatment works. The following user charge models can be used for this purpose; however, the applicant is not limited to their use. The symbols used in the models are as defined below:

C_T = Total operation and maintenance (O. & M.) costs per unit of time.
C_u = A user's charge for O. & M. per unit of time.
C_s = A surcharge for wastewaters of excessive strength.
V_e = O. & M. cost for transportation and treatment of a unit of wastewater volume.
V_u = Volume contribution from a user per unit of time.
V_T = Total volume contribution from all users per unit of time.
B_e = O. & M. cost for treatment of a unit of biochemical oxygen demand (BOD).
B_u = Total BOD contribution from a user per unit of time.
B_T = Total BOD contribution from all users per unit of time.
ΔB = Concentration of BOD from a user above a base level.
S_e = O. & M. cost for treatment of a unit of suspended solids.
S_u = Total suspended solids contribution from a user per unit of time.
S_T = Total suspended solids contribution from all users per unit of time.
ΔS = Concentration of SS from a user above a base level.
P_e = O. & M. cost for treatment of a unit of any pollutant.
P_u = Total contribution of any pollutant from a user per unit of time.
P_T = Total contribution of any pollutant from all users per unit of time.
Δp = Concentration of any pollutant from a user above a base level.

(1) *Model No. 1.*—If the treatment works is primarily flow dependent or if the BOD, suspended solids, and other pollutant concentrations discharged by all users are approximately equal, then user charges can be developed on a volume basis in accordance with the model below:

$$C_u = \frac{C_T}{V_T}(V_u)$$

(2) *Model No. 2.*—When BOD, suspended solids, or other pollutant concentrations from a user exceed the range of concentration of these pollutants in normal domestic sewage, a surcharge added to a base charge, calculated by means of model No. 1, can be levied. The surcharge can be computed by the model below:

$$C_s = [B_e(\Delta B) + S_e(\Delta S) + P_e(\Delta P)]V_u$$

(3) *Model No. 3.*—This model is commonly called the "quantity/quality formula":

$$C_u = V_eV_u + B_eB_u + S_eS_u + P_eP_u$$

(h) *Other considerations.*—(1) Quantity discounts to large volume users will not be acceptable. Savings resulting from economies of scale should be apportioned to all users or user classes.

(2) User charges may be established based on a percentage of the charge for water usage only in cases where the water charge is based on a constant cost per unit of consumption.

[FR Doc.73-10012 Filed 5-21-73;8:45 am]

federal register

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Volume 38 ■ Number 98

PART III

ENVIRONMENTAL PROTECTION AGENCY

■

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER D—WATER PROGRAMS

PART 125—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

On January 11, 1973, notice was published in the FEDERAL REGISTER (38 FR 1362) that the Environmental Protection Agency was proposing policies and procedures for the National Pollutant Discharge Elimination System (NPDES) pursuant to sections 402 and 405 of the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816; 33 U.S.C. 1251nt, 1972) (hereinafter referred to as the Act). See the preamble of the proposed rulemaking for a description of the purposes of the regulations.

Written comments on the proposed rulemaking were invited and received from interested parties. A number of verbal comments also were received. The Environmental Protection Agency has carefully considered all submitted comments. All written comments are on file with the Agency. Certain of these comments have been adopted or substantially satisfied by editorial changes, deletions from, or additions to the regulations. These and other principal changes are discussed below.

a. Many commenters pointed out that the permit program conducted on the Federal level should not be inconsistent with the guidelines for State permit programs, as promulgated by the Agency on December 18, 1972. Some of the major changes made to meet this requirement are:

(1) The signatory requirements have been modified to allow authorized representatives and other responsible parties to sign NPDES forms. (See § 125.12.)

(2) Draft permits are now prepared and are made available to the public before the final permit is prepared. (See § 125.31.)

(3) Mailing lists will now be maintained for people to receive copies of fact sheets and public notices without the necessity of requesting each fact sheet following public notice. (See §§ 125.32 and 125.33.)

(4) Fact sheets are only required for discharges exceeding 500,000 gallons on any day of the year. (See § 125.33.)

(5) Procedures for handling confidential information have been changed to conform to EPA regulations for the handling of such data pursuant to 40 CFR 2. (See § 125.35.)

(6) Schedules of compliance must now be set so that, to the maximum extent practicable, the final and interim dates fall on the last day of the months of March, June, September, and December. Also, Regional Administrators must prepare a list of all instances of noncompliance and this list shall be available to the public. (See § 125.23.)

(7) Schedules of compliance may now be extended, after public notice, by the Regional Administrator where good and valid cause (such as act of God, strike, flood, etc.) exists for the failure to comply with the schedule. (See § 125.23.)

(8) Permits may now be transferred without the prior written approval of the Regional Administrator. (See § 125.22.)

(9) A new condition of every permit now requires that any discharge must be consistent with toxic effluent standards or prohibitions when they are promulgated under section 307(a) of the Act. (See § 125.22.)

b. Revisions other than those concerning consistency with the State guidelines for the permit program.

(1) The regulations, in several places, make clear that permit issuing authority for Federal facilities cannot be delegated to the States. (See § 125.2 (a) and (b).)

(2) The filing date requirements were clarified to provide that the Regional Administrators could allow later filing dates upon request of an applicant. (See § 125.12(d).)

(3) The provision that site visits be accomplished and requested information be received within 60 days was changed to allow the receipt of the information or the accomplishment of the site visit to be arranged within 60 days. (See § 125.13.)

(4) Major changes were made concerning the procedures to be followed with respect to fish and wildlife interests. The procedures now require Regional Administrators to meet with appropriate officials of the Departments of Interior and Commerce to determine what applications the fish and wildlife interests will receive automatically, and those agencies may then comment within 30 days on appropriate conditions for inclusion in the permit. (See § 125.14.)

(5) The requirement that Regional Administrators must first check with certifying agencies at the end of the allotted period of time for certification before determining that a waiver has occurred, has been deleted to avoid delay. (See § 125.15.)

(6) A new § 125.42(b) has been added to show the relationship of the Refuse Act, 33 U.S.C. 407, to the NPDES.

(7) The hearings and appeals section has been substantially modified to provide for adjudicatory hearings. Consistent with the purposes of section 101(e) of the Act, public hearings are also provided for. (See § 125.32.)

(8) It is now clearly pointed out that inspections of monitoring equipment, sampling methods, etc., must be accomplished at reasonable times. (See § 125.22.)

(9) The requirement that permittees agree to comply with all the terms and conditions of the permit in writing has been deleted since it was believed that it was unnecessary and only confused the issue during the period before signature. (See § 125.22.)

(10) Public notices will now require a statement of whether the application pertains to a new or existing discharge. This will better describe the discharge. (See § 125.32.)

(11) Public notices will now require, where appropriate, a statement that confidential information has been received that may be used to determine appropriate conditions of a permit when such confidential information has been received. This change will make proposed terms and conditions of permits more understandable.

(12) The delegation of authority in § 125.5 has been modified to substantially increase the delegation of authority to Regional Administrators. This change will enable the program to operate closer to the discharges while still retaining necessary authorities in the Administrator.

(13) The exclusions from the requirement to apply for an NPDES permit have been changed to accomplish the following (see § 125.4):

(i) The exclusion of deposits into publicly owned treatment works is clarified and now included within the "Exclusions section." This was implied in the proposed rulemaking but is explicit now;

(ii) Most discharges from vessels to inland waters are now clearly excluded from the permit requirements. This type of discharge generally causes little pollution and exclusion of vessel wastes from the permit requirements will reduce administrative costs drastically;

(iii) Discharges of sewage sludge and all other pollutants from vessels to the territorial sea, the contiguous zone, and the ocean will be covered by the permit program established by the Marine Protection Research and Sanctuaries Act of 1972 (Public Law 92-532).

(iv) Uncontrolled discharges composed entirely of stormwater are excluded from the permit requirements unless they are determined to be significant contributors of pollution.

(14) The definition of "trade secrets" has been deleted.

(15) The definition of "navigable waters" has been clarified by incorporating additional language.

(16) The requirement that joint Federal-State public notice agreements be published in the FEDERAL REGISTER has been deleted. Now, any agreement consistent with the regulations is valid without publication.

Because of the importance of promptly making known to other Federal Agencies, States, dischargers, environmentalists, and other interested persons the content of these regulations and because of the need to issue permits promptly, the Administrator finds good cause to declare the regulations effective immediately upon publication.

Dated May 16, 1973.

ROBERT W. FRI,
Acting Administrator.

Subpart A—General

Subpart B—Processing of Permits

AUTHORITY.—Secs. 402 and 405 of the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816 et seq.; Public Law 92-500, 33 U.S.C. 1251nt).

Subpart A—General

§ 125.1 Definitions.

Except as otherwise specifically provided:

(a) The term "Act" means the Federal Water Pollution Control Act, as amended, Public Law 92-500, 33 U.S.C. 1251nt.

(b) The term "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

(c) The term "applicable effluent standards and limitations" means all State and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, and pretreatment standards.

(d) The term "applicable water quality standards" means all water quality standards to which a discharge is subject under the Act and which have been (1) approved or permitted to remain in effect by the Administrator pursuant to section 303(a) or section 303(c) of the Act, or (2) promulgated by the Administrator pursuant to section 303(b) or section 303(c) of the Act.

(e) The term "applicant" means an applicant for an NPDES permit.

(f) The term "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention of the Territorial Sea and the Contiguous Zone.

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

(h) The term "discharge of pollutant" and the term "discharge of pollutants" each means (1) any addition of any pollutant to navigable waters other than the territorial sea, from any point source, (2) any addition of any pollutant to the waters of the territorial sea, the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

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

(j) The term "Environmental Protection Agency" means the U.S. Environmental Protection Agency.

(k) The term "interstate agency" means an agency of two or more States established by or pursuant to an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(l) The term "minor discharge" means any discharge which (1) has a total volume of less than 50,000 gallons on every day of the year, (2) does not affect the waters of more than one State and (3) is not identified by the State water pollution control agency, the Regional Administrator, or by the Administrator in regulations issued pursuant to section 307(a) of the Act, as a discharge which is not a minor discharge. If there is more than one discharge from a facility and the sum of the volumes of all discharges from the facility exceeds 50,000 gallons on any day of the year, then no discharge from the facility is a minor discharge as defined herein.

(m) The term "municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act.

(n) The term "National Pollutant Discharge Elimination System" (hereinafter referred to as "NPDES") for the purpose of these regulations means the system for issuing, conditioning, and denying permits for the discharge of pollutants from point sources into the navigable waters, the contiguous zone, and the oceans, by the Administrator of the Environmental Protection Agency pursuant to sections 402 and 405 of the Act.

(o) The term "navigable waters" includes:

(1) All navigable waters of the United States;

(2) Tributaries of navigable waters of the United States;

(3) Interstate waters;

(4) Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes;

(5) Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce; and

(6) Intrastate lakes, rivers, and streams which are utilized for industrial purposes by industries in interstate commerce.

(p) The term "new source" means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under section 306 of the Act, which will be applicable to such source, if such standard is thereafter promulgated in accordance with section 306.

(q) The term "NPDES application short form" or "short form" means one or more, as appropriate, of the following:

(1) Short form A—Municipal Wastewater Dischargers.

(2) Short form B—Agriculture.

(3) Short form C—Manufacturing Establishments and Mining.

(4) Short form D—Services, Wholesale, and Retail Trade, and All Other Commercial Establishments, Including Vessels, Not Engaged in Manufacturing or Agriculture.

(r) The term "NPDES application standard form" or "standard form" means one or more, as appropriate, of the following:

(1) Standard form A—Municipal.

(2) Standard form C—Manufacturing and Commercial.

(s) The term "NPDES application form" includes NPDES application short forms and NPDES application standard forms.

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

(u) The term "permit" means any permit or equivalent document or requirement issued to regulate the discharge of pollutants.

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

(w) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(x) The term "pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. It does not mean (1) "sewage from vessels" or (2) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or dis-

posal will not result in the degradation of ground or surface water resources.

COMMENT.—The legislative history of the Act reflects that the term "radioactive materials" as included within the definition of "pollutant" in section 502 of the Act covers only radioactive materials which are not encompassed in the definition of source, byproduct, or special nuclear materials as defined by the Atomic Energy Act of 1954, as amended, and regulated pursuant to the latter Act. Examples of radioactive materials not covered by the Atomic Energy Act and, therefore, included within the term "pollutant" are radium and accelerator produced isotopes. (H.R. Rep. 92-911, 92d Cong. 2d Sess., 131, March 11, 1972; 117 Cong. Rec. 17401, daily ed., November 2, 1971; 118 Cong. Rec. 9115, daily ed., October 4, 1972.)

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

(z) The term "Regional Administrator" means one of the Regional Administrators of the United States Environmental Protection Agency.

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

(bb) The term "sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes, that are discharged from vessels.

(cc) The term "sewage sludge" means the solids and precipitates separated from municipal sewage and industrial wastes of a liquid nature by the unit processes of a treatment works.

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

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

(ff) The term "territorial seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of 3 miles.

(gg) The term "treatment works" means any facility, method or system for the storage, treatment, recycling, or reclamation of municipal sewage or industrial wastes of a liquid nature, including waste in combined storm water and sanitary sewer systems.

§ 125.2 Scope and purpose.

(a)(1) The regulations in this part prescribe the policy and procedures to be followed in connection with applications for federally issued permits authorizing discharges into the navigable waters, the waters of the contiguous zone, and the oceans, during the periods that the Administrator of the Environmental Protection Agency is authorized to issue such permits pursuant to sections 402 and 405 of the Act.

(2) The regulations in this part also prescribe the policy and procedures to be followed in connection with permits authorizing discharges into the navigable waters, the waters of the contiguous zone, and the oceans from any agency or instrumentality of the Federal Government and from any Indian activity on Indian lands.

(b) The regulations in this part do not prescribe policy or procedures for the issuance of permits by States under programs approved by the Administrator pursuant to section 402(b) of the Act. Such State programs do not cover agencies and instrumentalities of the Federal Government and Indian activities on Indian lands under the jurisdiction of the United States.

§ 125.3 Law authorizing permits.

(a) Section 301(a) of the Act provides that "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful."

(b) Section 402 of the Act establishes the NPDES. This section provides, in part, that "the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, * * * upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of [the] Act, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of [the] Act."

(c) Section 405 of the Act prohibits the disposal of sewage sludge where any pollutant from such sludge would enter navigable waters except in accordance with a permit issued by the Administrator under section 405. This section provides in part that "in any case where the disposal of sewage sludge resulting from the operation of a treatment works * * * (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issue by the Administrator under this section."

(d) Unless specifically noted to the contrary, all provisions of these regulations concerning permits under section 402 of the Act are applicable to permits under section 405 of the Act.

§ 125.4 Exclusions.

The following do not require an NPDES permit:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel: *Provided*, That this exclusion shall not be construed to apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to discharges when the vessel is operating in a capacity other than a vessel such as when a vessel is being used as a storage facility or a cannery;

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

(c) Approved aquaculture projects;

(d) Dredged or fill material discharged into navigable waters;

(e) Additions of sewage, industrial wastes or other materials into publicly owned treatment works. (This exclusion applies only to the actual addition of materials into the publicly owned treatment works. Plans or agreements to make such additions in the future do not relieve dischargers of the obligation to apply for and receive permits until the discharges of pollutants to navigable waters are actually eliminated. It also should be noted that in all appropriate cases, pretreatment standards promulgated by the Administrator pursuant to section 307(b) of the Act must be complied with.);

(f) Uncontrolled discharges composed entirely of storm runoff when these discharges are uncontaminated by any industrial or commercial activity, unless the particular storm runoff discharge has been identified by the Regional Administrator, the State water pollution control agency or an interstate agency as a significant contributor of pollution. (It is anticipated that significant contributors of pollution will be identified in connection with the development of plans pursuant to section 303(e) of the Act. This exclusion applies only to separate storm sewers. Discharges from combined sewers and bypass sewers are not excluded.)

(g) Any discharge of any pollutant when such discharge conforms with the national contingency plan for removal of oil and hazardous substances, published pursuant to subsection 311(c)(2) of the act.

§ 125.5 Delegation of authority.

(a) Subject to the appeal provisions of § 125.34 of these regulations and the national security responsibility provision of § 125.35(c) of these regulations, the following authorities are hereby delegated to each of the Regional Administrators for the area which he administers.

(1) The authority to issue and condition permits or to deny applications for permits for discharge covered by the NDPES and by section 405 of the act.

(2) The authority pursuant to section 402(d)(1) of the act to receive from a State a copy of each permit application received by such State and to receive notice of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(3) The authority pursuant to section 402(d)(2)(A) of the act to object in writing to the issuance of any permit within 90 days of the date of his notification under section 402(b)(5) of the act.

(4) The authority pursuant to section 402(d)(2)(B) of the act to object in writing within 90 days of his receipt of a proposed permit from a State where finds that the issuance of such permit would be outside of the guidelines and requirements of the Act.

(b) The authority granted to the Administrator by section 308(a), and if exercised in conformance with § 125.35 of these regulations, section 308(b) of the Act is hereby delegated to each of the Regional Administrators for the area which he administers.

(c) These authorities may be redelegated to the Director, Enforcement Division, of each region.

Subpart B—Processing of Permits

§ 125.11 General provisions.

(a) All discharges of pollutants or combination of pollutants from all point sources into the navigable waters, the waters of the contiguous zone, or the ocean are unlawful and subject to the penalties provided by the Act, unless the discharger has a permit or is specifically relieved by law or regulation from the obligation of obtaining a permit. A discharge authorized by a permit must be consistent with the terms and conditions of such permit. Discharges in violation of permit terms and conditions may result in the institution of proceedings under the Act.

(b) The decision as to whether or on what conditions a permit authorizing a discharge will issue will be based upon an evaluation as to how such discharge will meet applicable requirements under the Act and other applicable laws and regulations. Subsequent to the taking of necessary implementing actions relating to such requirements, all discharges in order to receive a permit must meet the applicable requirements of sections 301, 302, 306, 307, 308, and 403, and all regulations pertaining thereto.

(c) In the period of time prior to the taking of necessary implementing actions relating to all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of the Act, the Administrator may issue permits under such conditions as he determines are necessary to carry out the provisions of the Act. Any permit issued shall include any conditions and limitations necessary to insure compliance with any applicable requirements of sections 301, 302, 306, 307, 308, and 403 that become applicable prior to the issuance of the permit. Foremost among other factors to be considered prior to the taking of the necessary implementing actions is the requirement for abatement measures designed to achieve, not later than July 1, 1977, best practicable (waste) control technology currently available for the particular point source (other than publicly owned treatment works) as determined by the Regional Administrator based upon information available to him and his professional judgment taking into account the intent of sections 301, 302, 306, 307, 308, and 403 of the Act. Likewise, publicly owned treatment works must achieve secondary treatment by July 1, 1977, or in accordance with the period specified in section 301(b)(1)(B) of the Act. Furthermore, any permit issued shall include any more stringent condition pursuant to section 301(b)(1)(C) of the Act as is necessary to insure compliance with any limitation, including those necessary to meet applicable water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulation (under authority preserved by section 510 of the Act) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to the Act. Plans prepared pursuant to section 303(e) of the Act or similar analyses, if available, should be employed in establishing such more stringent conditions. The likely impact or the existing impact of the discharge on the quality and uses of the receiving body of water where no adequate water quality standards exist also will have to be taken into account. The possibility of occurrence and the probability of effects of spills of materials from the point source shall be considered. The objections of any State or interstate agency whose waters may be affected by the discharge shall be duly considered when making any permit decision.

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

§ 125.12 Application for a permit.

(a) An applicant for a permit may secure the required application form(s) from the Regional Administrator. Application form(s) must be filed with the Regional Administrator.

(b) Any person who applied for a permit under the Refuse Act permit program operating under rules promulgated in the FEDERAL REGISTER on April 7, 1971, 33 CFR 209.131 and whose application has not been denied is not required to apply for a permit under these regulations unless the discharge described in the application for a Refuse Act permit has substantially changed in nature, volume, or frequency. Such Refuse Act permit application shall be considered to be an application under the NPDES and shall be treated accordingly.

(c) Any person now discharging whose discharge was not covered by the Refuse Act permit program but which is now subject to the NPDES must apply for a permit on or before April 16, 1973.

(d) Any person whose discharge began or will begin during the period of October 18, 1972, through July 15, 1973, inclusive, must apply for a permit not later than 60 days in advance of the date on which the discharge is to commence unless permission for a later application date has been granted by the Regional Administrator.

(e) Any person whose discharge will begin on or after July 16, 1973, must apply for a permit no later than 180 days in advance of the date on which the discharge is to commence unless permission for a later application date has been granted by the Regional Administrators.

(f) An application submitted by a corporation must be signed by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the application form originates. In the case of a partnership or a sole proprietorship the application must be signed by a general partner or the proprietor respectively. In the case of a municipal, State, Federal or other public facility, the application must be signed by either a principal executive officer, ranking elected official, or other duly authorized employee.

(g) Except as provided in § 125.12 (b) and (h)(4) and except as provided by the Administrator in regulations issued under the act, any person discharging or who proposes to discharge pollutants shall complete, sign, and submit an NPDES application short form in accordance with the instructions provided with such form.

(h)(1) If the information submitted by an applicant for an NPDES permit in Short Form A (relating to municipal wastewater treatment facilities) or any other information available to the Regional Administrator indicates any of the following, the applicant shall be required to complete, sign and submit a Standard Form A:

(i) The discharges from the facility have a total volume of more than 5 million gallons on any day of the year;

(ii) The facility serves a population in excess of 10,000; or

(iii) The facility receives wastes from an industrial user and such wastes

(A) Have a total volume of more than 50,000 gallons on any day of the year,

(B) Contain toxic pollutants,

(C) Have a total volume which constitutes more than 1 percent of the volume of the total discharge from the facility on any day of the year, or

(D) In combination with other discharges into the facility interfere with the operation of the facility or adversely affect the quality of the discharge from the facility.

(2) If the information submitted by an applicant for a permit on Short Form

C (relating to manufacturing establishments and mining) or in Short Form D (relating to services, wholesale and retail trade, and all other commercial establishments, including vessels, not engaged in manufacturing or agriculture) or any other information available to the Regional Administrator indicates any of the following, the applicant shall be required to complete, sign, and submit a Standard Form C:

(i) The discharges from the facility have a total volume of 50,000 gallons on any day of the year;

(ii) The discharges affect the water of any State other than the State of origin; or,

(iii) The discharges contain or may contain toxic pollutants.

(3) In addition to paragraph (h)(1) or (2) of this section, an applicant shall complete, sign, and submit the appropriate standard form if the Regional Administrator determines that such submission is necessary to determine whether or not and upon what conditions a permit should be issued for the discharges identified in the short form.

(4) Any applicant may submit a standard form without prior submission of a short form if he complies with all applicable filing dates and requirements.

(i)(1) Upon submission of an NPDES application short form to the Regional Administrator an applicant shall pay a fee of $10 per application.

(2) Upon submission of an NPDES application standard form to the Regional Administrator an applicant shall pay a fee of $100 per application. If there is more than one outlet from which the discharge will flow, an additional $50 will be charged for each additional outlet.

(3) Any applicant submitting an NPDES application standard form to the Regional Administrator who previously filed an NPDES application short form with the Regional Administrator may deduct from the fee submitted with the standard form the amount previously submitted with the short form.

(4) If an applicant submits an NPDES application standard form to the Regional Administrator without prior submission of an NPDES application short form pursuant to § 125.12(h)(3), he shall pay the fee specified in paragraph (i)(2) of this section without the submission or deduction of the fee specified in paragraph (i)(1) of this section.

(5) Agencies or instrumentalities of Federal, State, or local governments will not be required to pay any fee in connection with the filing of an NPDES application.

(6) Checks and money orders shall be made out to the order of Environmental Protection Agency.

(j) Permittees who wish to continue to discharge subsequent to the expiration date of their permit must apply for reissuance of the permit using proper forms, not less than 180 days prior to the permit expiration date.

§ 125.13 Access to facilities and further information during evaluation of the application.

Permit application forms are designed to fit the normal situation for most facilities in the United States. In many cases however, further information and site visits may be necessary in order to evaluate the discharge completely and accurately. When the Regional Administrator determines that either further information or a site visit is necessary in order for the Environmental Protection Agency to evaluate the discharge, he shall so notify the applicant and in addition provide a date no later than 60 days hence by which time arrangements will have been made for receipt of the requested information and/or scheduling of the site visit. In the event that a satisfactory response is not received the permit may be issued or denied and the applicant so notified. Sections 308, 309, and 402(k) of the act provide for sanctions in the event of noncompliance with reasonable requests for additional information.

§ 125.4 Distribution of application and permit.

(a) When an application for a permit is received Regional Administrators shall determine if the applicant has provided all of the information required by the application form and by this section.

(b) In order to assure that the Secretary of the Army acting through the Chief of Engineers has adequate time to evaluate the impact of the proposed discharge on anchorage and navigation, Regional Administrators will forward to the District Engineer in the appropriate district one copy of the application form immediately upon its receipt in the regional office in completed form. Accompanying the application will be notice that the Environmental Protection Agency has received a request for a permit to discharge and that the District Engineer has a stated number of days to evaluate the impact of granting such permit upon anchorage and navigation and to advise the Regional Administrator of his evaluation. District Engineers of the Corps of Engineers will normally be given 30 days to evaluate the impact on anchorage and navigation. Where the Regional Administrator finds that less time should be allowed he should so advise the District Engineer of such lesser period of time while at the same time outlining his reasons for such lesser period of time. In all cases the Regional Administrator should advise the District Engineer that failure to answer within the allotted period of time will be deemed to be a finding that anchorage and navigation will not be substantially impaired by granting of this permit. Where the District Engineer advises the Regional Administrator that anchorage and navigation of any of the navigable waters would be substantially impaired by the granting of a permit, such permit will be denied and the applicant shall be so notified. Where the District Engineer advises the Regional Administrator that the imposition of specified conditions upon the permit is necessary to avoid any substantial impairment of any of the navigable waters, then the Regional Administrator shall include in the permit those conditions so specified by the District Engineer. Where the District Engineer notifies the Regional Administrator that more time is needed for his evaluation more time will be granted where it appears that the public interest warrants such extension.

(c) Upon receipt of an application which does not include a State certification where such certification is required by section 401 of the Act, the Regional Administrator will make available one copy of the application form to the State water pollution control agency for the State in which the discharge occurs or will occur. Accompanying the application will be a statement by the Regional Administrator that a request for a permit has been received by the Environmental Protection Agency, and that before the Agency can act upon such request, the State must (1) certify that the discharge will comply with the applicable provisions of sections 301, 302, 306, and 307 or (2) certify that there are no applicable effluent or other limitations under sections 301 and 302 and there are no applicable standards under sections 306 and 307, or (3) deny such certification or (4) waive its right to certify or to deny such certification. The Regional Administrator must also state that such certification or denial must be received within a specified reasonable period of time or a waiver will be deemed to have occurred.

(d) Upon receipt of an application from a Federal facility the Regional Administrator shall make one copy of the application form available to the State water pollution control agency for the State in which the discharge will occur. Accompanying the application will be statement by the Regional Administrator that a request for a permit has been received by the Environmental Protection Agency and that the Environmental Protection Agency would appreciate receiving from the State its comment on the discharge and any condition that the State would recommend applying to any permit that might issue for the discharge. The State should be requested specifically to provide what conditions it believes necessary in order that the discharge will comply with sections 301, 302, 306, 307, and 313 of the Act.

(e) Regional Administrators shall assist applicants for permits in coordinating the requirements of the Act with those of appropriate public health agencies.

(f) (1) Complete copies of all applications filed with the Environmental Protection Agency subsequent to June 1, 1973, shall be furnished to the Department of the Interior and Department of Commerce for comment, provided

that these agencies may waive their right to receive any permit applications or categories thereof. Regional Administrators shall meet with appropriate officials of the Department of Interior and Department of Commerce in order to reach agreement as to which existing application forms (filed prior to June 1, 1973) those agencies are to receive. Complete copies of all application forms requested shall be made available to those agencies for comment. When an application is transmitted to these agencies, accompanying it will be a notice that the Envionmental Protection Agency has received a request for a permit to discharge and that the agencies have a stated number of days in which to evaluate the impact of granting such permit upon the fish, shellfish, and wildlife resources of the State in which the discharge will occur, and to advise the Regional Administrator of their evaluations. The normal period of time to evaluate the effects of the discharge on fish, shellfish, and wildlife resources will be 30 days. In all cases the Regional Administrator should advise the agencies that failure to answer within the allotted period of time will be deemed to be a statement that the agencies do not choose to comment at this time. Where the agencies advise the Regional Administrator that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of the fish, shellfish, or wildlife resources, the Regional Administrator may include in the permit those conditions so specified by the agencies. Where the agency notifies the Regional Administrator that more time is needed for its evaluation more time will be granted where it appears to the Regional Administrator that the public interest warrants such extension.

(2) Similar arrangements should be agreed upon by appropriate officials of the Department of Interior and Regional Administrators concerning the review of permits which involve disposal of wastes to groundwater.

(g) If a permit issues, a copy of the permit and, if not previously transmitted, a copy of the application form shall be transmitted to the State in which the discharge is located. Copies of these documents shall be available for inspection and reproduction by the public in the regional office.

§ 125.15 State certification.

(a) Section 401(a)(1) of the Act, provides that "Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 306, and 307 of the Act. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 301(b) and 302, and there is not an applicable standard under sections 306 and 307, the State shall so certify." Where certification is required, no license or permit shall be granted until the certification has been obtained or has been waived. A waiver occurs when the certifying agency fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed 1 year) after receipt of such request. Three months shall generally be considered to be a reasonable period of time. If, however, special circumstances identified by the Regional Administrator require that action on a permit application be taken within a more limited period of time, the Regional Administrator shall determine a reasonable lesser period of time, advise the certifying agency of the need for action by a particular date and that, if certification is not received by the date established, it will be considered that the requirement for certification has been waived. Similarly, if it appears that circumstances may reasonably require a period of time longer than 3 months, the Regional Administrator may afford the certifying agency up to 1 year to provide the required certification before determining that a waiver has occurred. Where such extension of time is made at the request of the certifying agency, the request must be in writing and must include the reasons for the request.

(b) Any certification provided shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to insure compliance with any applicable effluent limitations and other limitations under sections 301 or 302 of the Act, standard of performance under section 306 of the Act, or prohibition, effluent standard, or pretreatment standard under section 397 of the Act, and with any other appropriate requirement of State law set forth in such certification.

(c) Discharges from agencies or instrumentalities of the Federal Government, as provided in section 401(a)(6) of the Act, do not require certification pursuant to section 401.

Subpart C—Terms and Conditions of Permits

§ 125.21 Prohibitions.

(a) No permit shall be issued in cases where the applicant, pursuant to section 401 of the Act, is required to obtain a State or other appropriate certification that the discharge will comply with the applicable provisions of sections 301, 302, 306, and 307 and such certification was denied.

(b) No permit shall be issued where pursuant to section 401(a)(2) of the Act, the imposition of conditions cannot insure compliance with the applicable water quality requirements of all affected States.

(c) No permit shall be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, anchorage and navigation of any of the navigable waters would be substantially impaired by the discharge.

(d) No permit shall be issued for the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste into the navigable waters.

(e) No permit shall be issued for any discharge from a point source in conflict with a plan or an amendment thereto approved pursuant to section 208(b) of the Act.

(f) No permit shall be issued for any discharge to the territorial sea, the waters of the contiguous zone, or the oceans, prior to the promulgation of guidelines under section 403(c) of the Act unless the Regional Administrator determines it to be in the public interest.

(g) No permit shall be issued for any discharge to the territorial sea, the waters of the contiguous zone, or the oceans, after promulgation of guidelines under section 403(c) except in compliance with such guidelines.

(h) No permit shall be issued for any discharge to the territorial sea, the waters of the contiguous zone, or the oceans, subsequent to the promulgation of guidelines pursuant to section 403(c) of the Act, where insufficient information exists to make a reasonable judgment as to whether the discharge complies with any such guidelines.

§ 125.22 Conditions of permits.

(a) Regional Administrators shall insure that the terms and conditions of all issued permits provide for and insure the following:

(1) That all discharges authorized by the permit shall be consistent with the terms and conditions of the permit; that facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants must be reported by submission of a new application, or, if such discharge does not violate effluent limitations specified in the permit, by submission to the Regional Administrator of notice of such new or increased discharges of pollutants; that the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit;

(2) That following notice and opportunity for a public hearing the permit may be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:

(i) Violation of any terms or conditions of the permit;

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

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

(3) That the permittee shall permit the Regional Administrator or his authorized representative, and/or the authorized representative of the State water pollution control agency in the case of non-Federal facilities, upon the presentation of his credentials:

(i) To enter upon the permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit;

(ii) To have access to and copy at reasonable times any records required to be kept under terms and conditions of the permit;

(iii) To inspect at reasonable times any monitoring equipment or method required in the permit; or

(iv) To sample at reasonable times any discharge of pollutants.

(4) That the permittee shall at all times maintain in good working order and operate as efficiently as possible any facilities or systems of control installed or utilized by the permittee to achieve compliance with the terms and conditions of the permit.

(5) The issuance of a permit does not convey any property rights either in real estate or material, or any exclusive privileges, nor does it authorize any injury to private property or invasion of rights, nor any infringement of Federal, State, or local laws or regulations; nor does it obviate the necessity of obtaining State or local assent required by law for the discharge authorized.

(6) That if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the Act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the Regional Administrators shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and so notify the permittee.

(b) Permits shall also include such special conditions as are necessary to assure compliance with applicable effluent limitations or other water quality requirements including schedules of compliance, treatment standards, and such other conditions as the Regional Administrator considers necessary or appropriate to carry out the provisions of the Act. Permits shall also contain such other conditions as the District Engineer of the Corps of Engineers considers to be necessary to insure that navigation and anchorage will not be substantially impaired. Also, conditions recommended by State water pollution control officials, Federal and State fish, shellfish, and wildlife resources officials, or other governmental officials may be added to permits if the Regional Administrator believes such recommended conditions will aid in carrying out the purposes of the Act. Furthermore, all permits will be conditioned upon achieving compliance with any applicable effluent limitations and other limitations, and monitoring requirements set forth in any certification issued pursuant to section 401 of the Act.

§ 125.23 Schedules of compliance in permits.

Regional Administrators shall follow the procedures below in setting schedules of compliance in permits:

(a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, and other applicable requirements, the permittee shall be required to take specific steps to achieve compliance with the following:

(1) Any schedule of compliance contained in:

(i) Applicable effluent standards and limitations; or,

(ii) Water quality standards, if more stringent; or,

(iii) Any other legally applicable requirements, if more stringent.

(2) In the absence of any applicable schedule of compliance, in the shortest reasonable period of time, such period to be consistent with the guidelines and requirements of the Act.

(b) In any case where the period of time for compliance specified in paragraph (a) of this section exceeds 9 months, a schedule of compliance shall be specified in the permit which will set forth interim requirements and the dates for their achievement; in no event shall more than 9 months elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) is more than 9 months and is not readily divided into stages for completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement. For each permit schedule of compliance, interim dates and the final date for compliance shall, to the extent practicable, fall on the last day of the months of March, June, September, and December.

(c) Not later than 14 days following each interim date and the final date of compliance the permittee shall provide the Regional Administrator with written notice of the permittee's compliance or noncompliance with the interim or final requirements.

(d) The Regional Administrator may, upon request of the applicant, and after public notice, revise or modify a schedule of compliance in an issued permit if he determines good and valid cause (such as an act of God, strike, flood, materials shortage, or other event over which the permittee has little or no control) exists for such revision. All revisions or modifications made pursuant to this subsection during the period ending 30 days prior to the date of preparation of such list, shall be included in the list prepared by the Regional Administrator pursuant to § 125.23(e) below.

(e) On the last day of the months of February, May, August, and November the Regional Administrator shall prepare a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the Regional Administrator of compliance or noncompliance with each interim or final requirement (as required pursuant to (b) above). Such list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

(1) Name and address of each noncomplying permittee;

(2) A short description of each instance of noncompliance (e.g., failure to submit preliminary plans, 2-week delay in commencement of construction of treatment facility; failure to notify the Regional Administrator of compliance with interim requirement to complete construction by June 30, etc.);

(3) A short description of actions or proposed actions by the permittee or the Regional Administrator to comply or enforce compliance with the interim or final requirement; and

(4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objections from State fish and wildlife agency).

§ 125.24 Effluent limitations in permits.

(a) In the application of effluent standards and limitations, water quality standards, and other applicable requirements, the Regional Administrator shall, for each permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight, and except for discharges whose constituents cannot be appropriately expressed by weight). The Regional Administrator may, in his discretion, in addition to the specification of daily quantitative limitations by weight, specify other limitations, such as average or maximum concentration limits, for the level of pollutants in the authorized discharge. Effluent limitations for multiproduct operations shall provide for appropriate waste variations from such plants. Where a schedule of compliance is included as a condition in a permit, effluent limitations shall be included for the interim period as well as for the period following the final compliance date.

(b) Notwithstanding any other provision in the regulations in this part, any point source the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which is so constructed as to meet all applicable standards of performance (as defined in section 306 of the Act) shall not be subject to any more stringent standard of performance during a 10-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes

of section 167 or section 169 (or both) of the Internal Revenue Code of 1954, whichever period ends first.

§ 125.25 Duration of permits.

(a) No permit will issue for a period longer than 5 years.

(b) Permits of less than 5 years' duration may issue in appropriate cases and Regional Administrators shall give great weight to the advice of State or interstate water pollution control officials on the appropriate duration for particular permits.

(c) All permits will be for a fixed term.

§ 125.26 Special categories of permits.

(a) Disposal of pollutants into wells.

(1) If an applicant for a permit is disposing or proposes to dispose of pollutants into wells as part of a program to meet the proposed terms and conditions of a permit, the Regional Administrator shall specify additional terms and conditions in the permit which shall (i) prohibit the disposal, or (ii) control the disposal in order to prevent pollution of ground and surface water resources and to protect the public health and welfare.

(2) The Regional Administrator shall utilize in his review of any permits proposed to be issued for the disposal of pollutants into wells, any policies, technical information, or requirements, specified by the Administrator in regulations issued pursuant to the Act or in directives issued to regional offices.

(b) Discharges from publicly owned treatment works.

(1) If the permit is for a discharge from a publicly owned treatment work, the Regional Administrator shall require the permittee to provide notice to the Regional Administrator of the following:

(i) Any new introduction of pollutants into such treatment works from a source which would be a new source as defined in section 306 of the Act if such source were discharging pollutants;

(ii) Any new introduction of pollutants which exceeds 10,000 gallons on any 1 day into such treatment works from a source which would be subject to section 301 of the Act if such source were discharging pollutants; and,

(iii) Any substantial change in volume or character of pollutants being introduced into such treatment works by a source introducing pollutants into such works at the time of issuance of the permit.

(2) Such notice shall include information on:

(i) The quality and quantity of effluent to be introduced into such treatment works, and,

(ii) Any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works.

(3) The permittee shall require any industrial user of such treatment works to comply with the requirements of sections 204(b), 307, and 308 of the Act. Any industrial user subject to the requirements of section 307 of the Act shall be required by the permittee to prepare and transmit to the Regional Administrator periodic notice (over intervals not to exceed 9 months) of progress toward full compliance with section 307 requirements.

(4) The permittee shall require any industrial user of storm sewers to comply with the requirement of section 308 of the Act.

§ 125.27 Monitoring, recording, and reporting.

(a) Any permit shall be subject to such monitoring requirements as may be reasonably required by the Regional Administrator, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

(b) Any discharge which:

(1) Is not a minor discharge; or

(2) The Regional Administrator requires to be monitored; or

(3) Contains toxic pollutants for which an effluent standard has been established by the Administrator pursuant to section 307(a) of the Act, shall be monitored by the permittee for at least the following:

(i) Flow (in gallons per day); and,

(ii) All of the following pollutants;

(A) Pollutants (measured either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the permit;

(B) Pollutants which the Regional Administrator finds, on the basis of information available to him, could have a significant impact on water quality;

(C) Pollutants specified by the Administrator, in regulations issued pursuant to the Act, as subject to monitoring;

(c) Each effluent flow or pollutant required to be monitored pursuant to paragraph (b) of this section shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels may be monitored at more frequent intervals than relatively constant effluent flow and pollutant levels which may be monitored at less frequent intervals.

(d) The Regional Administrator shall specify recording requirements for any permit which requires monitoring of the authorized discharge consistent with the following:

(1) The permittee shall maintain records of all information resulting from any monitoring activities required of him in his permit;

(2) Any records of monitoring activities and results shall include for all samples:

(i) The date, exact place, and time of sampling;

(ii) The dates analyses were performed;

(iii) Who performed the analyses;

(iv) The analytical techniques/methods used; and

(v) The results of such analyses;

(3) The permittee shall be required to retain for a minimum of 3 years any records of monitoring activities and results including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Regional Administrator.

(e) The Regional Administrator shall require periodic reporting (at a frequency of not less than once per year) on the proper NPDES reporting form of monitoring results obtained by a permittee pursuant to monitoring requirements in a permit. Such reporting periods, whose length shall be determined by the Regional Administrator shall end on the last day of March, June, September, and/or December.

Subpart D—Notice and Public Participation

§ 125.31 Formulation of tentative determinations and draft permits.

(a) The regional staff shall formulate and prepare tentative determinations with respect to a permit in advance of public notice of the proposed issuance or denial of the permit. Such tentative determinations shall include at least the following:

(1) A proposed determination to issue or to deny a permit for the discharge described in the application; and,

(2) If the determination proposed in paragraph (a)(1) of this section is to issue the permit, the following additional tentative determinations;

(i) Proposed effluent limitations for those pollutants proposed to be limited;

(ii) A proposed schedule of compliance, as provided in § 125.23 of these regulations, including interim dates and requirements, for meeting the proposed effluent limitations; and,

(iii) A brief description of any other proposed special conditions (other than those required by § 125.22(a) of the regulations in this part) which will have a significant impact upon the discharge described in the application.

(b) The regional staff shall organize the tentative determinations prepared pursuant to paragraph (a) of this section into a draft permit.

§ 125.32 Public notice.

(a) Public notice of every complete application for a permit shall be circulated in a manner designed to inform interested and potentially interested persons of the discharge and of the proposed determination to issue or to deny a permit for the discharge. Public notice of hearings shall be circulated in a manner designed to inform interested and potentially interested persons of the discharge and of the intention to hold a hearing on the matter of the proposal to issue or deny a permit for the discharge. Procedures for the circulation of public notice shall include at least the following:

(1) Notice shall be circulated within the geographical area of the proposed discharge; such circulation shall include any one of the following:

(i) Posting in the post office and public places of the municipality nearest the premises of the applicant in which the effluent source is located;

(ii) Posting near the entrance to the applicant's premises and in nearby places; or

(iii) Publishing in local newspapers and periodicals, or, if appropriate, in a daily newspaper of general circulation; except that public notice of hearings shall be published in at least one newspaper of general circulation within the geographical area of the discharge in all cases.

(2) Notice shall be mailed to the applicant and to any person or group upon request; and

(3) The Regional Administrator shall add the name of any person or group upon request to a mailing list to receive copies of notices for all applications within the State or within a certain geographical area.

(4) Regional Administrators shall notify Federal and State fish, shellfish, and wildlife resource agencies and other appropriate government agencies of each complete application for a permit and of hearings and shall provide such agencies an opportunity to submit their written views and recommendations on each complete application.

(b) (1) Where notice is being given of an application for a permit, the Regional Administrator shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views concerning the tentative determinations or request that a hearing be held. All written comments submitted during the 30-day comment period shall be retained by the Regional Administrator and considered in the formulation of his final determinations with respect to the application. Extensions of time for the receipt of comments following the end of the comment period may be granted by the Regional Administrator when the public interest warrants.

(2) Where notice is being given of a hearing, the Regional Administrator shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may prepare themselves for the hearing.

(c) The contents of public notice of an application shall include at least the following:

(1) Name, address, phone number of regional office issuing the public notice;

(2) Name and address of each applicant;

(3) Brief description of each applicant's activities or operations which result in the discharge described in the application including a statement of whether the application pertains to new or existing discharges (e.g., new municipal waste treatment plant, existing steel manufacturing, drainage from existing mining activities);

(4) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway;

(5) A statement of the regional staff's tentative determination to issue or deny a permit for the discharge described in the application.

(6) A brief description of the procedures for the formulation of final determinations, including the 30-day comment period required by paragraph (b) of this section and any other means by which interested persons may influence or comment upon those determinations;

(7) Address and phone number of premises at which interested persons may obtain further information, request a copy of the fact sheet prepared pursuant to § 125.33, request a copy of the draft permit prepared pursuant to § 125.31, and inspect and copy forms and related documents; and

(8) Where applicable, a statement that confidential information has been received that may be used to determine some of the conditions for the permit.

(d) The contents of public notice of any hearing shall include at least the following:

(1) Name, address, and phone number of regional office holding the hearing;

(2) Name and address of each applicant whose application will be considered at the hearing;

(3) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway;

(4) A brief reference to the public notice issued for each application, including identification number and date of issuance;

(5) Information regarding the time and location for the hearing;

(6) The purpose of the hearing;

(7) A concise statement of the issues raised by the persons requesting the hearing;

(8) Address and phone number of premises at which interested persons may obtain further information, request a copy of each draft permit prepared pursuant to § 125.31, request a copy of each fact sheet prepared pursuant to § 125.33, and inspect and copy forms and related documents;

(9) A brief description of the nature of the hearing, including the rules and procedures to be followed; and

(10) Where applicable, a statement that confidential information has been received that may be used to determine some of the conditions for the permit.

(e) The Regional Administrator, in his discretion, may include in any notice of application for a permit under paragraph (c) of this section a notice of hearing in accordance with paragraph (d) of this section, whether or not any request for such hearing shall have been submitted to him.

(f) Any public notice issued under this section may describe more than one discharge except that each discharge will be described separately.

(g) If individual States, in connection with applications for certification required by section 401 of the Act, wish to enter into agreements for joint Federal-State public notice concerning permits, the Regional Administrator may, after consulting with headquarters, approve mutually satisfactory agreements consistent with this section.

§ 125.33 Fact sheets.

(a) For every discharge which has a total volume of more than 500,000 gal on any day of the year the Regional Administrator shall prepare and, following public notice, shall send to the applicant, and upon request to any other person, a fact sheet with respect to the application described in the public notice. The contents of fact sheets shall include at least the following information:

(1) A sketch or detailed description of the location of the discharge described in the application;

(2) A quantitative description of the discharge described in the application which includes at least the following:

(i) The rate of frequency of the proposed discharge; if the discharge is continuous, the average daily flow in gallons per day or million gallons per day, and where appropriate the maximum and minimum flow in gallons per day or million gallons per day;

(ii) The average summer and winter temperatures of the discharge in degrees Fahrenheit and where appropriate the maximum and minimum temperature in degrees Fahrenheit; and

(iii) The average daily discharge in pounds per day, and milligrams per liter where appropriate, of any pollutants which are present in significant quantities or which are subject to limitations or prohibition under section 301, 302, 306, or 307 of the Act and regulations published thereunder;

(3) The tentative determinations required under § 125.31 of the regulations in this part.

(4) A brief citation, including a brief identification of the uses for which the receiving waters have been classified, of the water quality standards and effluent standards and limitations applied to the proposed discharge; and,

(5) A more detailed description of the procedures for the formulation of final determinations than that given in the public notice including:

(i) The term of the 30-day comment period required by § 125.32 of these regulations and the address where comments will be received;

(ii) Procedures for requesting a hearing and the nature thereof; and,

(iii) Any other procedures by which the public may participate in the formulation of the final determinations.

(b) The Regional Administrator shall add the name of any person or group upon request to a mailing list to receive copies of fact sheets.

(c) The Regional Administrator shall transmit one copy of each fact sheet to appropriate officials of Federal and State fish, shellfish, and wildlife resource agencies.

§ 125.34 Hearings and appeals.

(a) *Definitions.*—(1) "Party" shall mean the officials designated by the Administrator or the Regional Administrator to prepare permits for issuance, the applicant for a permit, and any person who files a request for hearing or a request to be a party pursuant to paragraph (c) of this section.

(2) "Person" shall mean the State water pollution control agency of any State or States in which the discharge or proposed discharge shall originate or which may be affected by such discharge, the applicant for a permit, and any foreign country, Federal agency, or other person or persons having an interest which may be affected.

(3) The term "Administrator" means the Administrator, Environmental Protection Agency, or any officer or employee of the Agency to whom authority may be delegated to act in his stead, including, where appropriate, a judicial officer.

(4) The term "judical officer" means an officer or employee of the Environmental Protection Agency appointed as a judicial officer, pursuant to these rules who shall meet the qualifications and perform functions as herein provided.

(i) *Office.*—There may be designated for the purposes of these regulations one or more judicial officers. As work requires, there may be a judicial officer designated to act for the purposes of a particular case.

(ii) *Qualifications.*—A judicial officer may be a permanent or temporary employee of the Agency who performs other duties for the Agency. Such judicial officer shall not be employed by the office of enforcement and general counsel or the office of air and water programs or have any connection with the preparation or presentation of evidence for a hearing.

(iii) *Functions.*—The Administrator may delegate any or part of his authority to act in a given case under this section to a judicial officer. The administrator may delegate his authority to make findings of fact and draw conclusions of law in a particular proceeding, provided that this delegation shall not preclude the judicial officer from referring any motion or case to the Administrator when the judicial officer determines such referral to be appropriate. The Administrator, in deciding a case himself, may consult with and assign the preliminary drafting of conclusions of law and findings of fact to any judicial officer.

(5) The term "regional hearing clerk" means an employee of the Environmental Protection Agency designated by the Regional Administrator to establish a repository for all documents relating to hearings under this section.

(b) *Public hearings.*—(1) Where the Regional Administrator finds a significant degree of public interest in a proposed permit or group of permits, he may hold a public hearing to consider such permit or permits. Public notice of such hearings shall be given in the manner specified in § 125.32.

(2) Hearings held pursuant to this paragraph shall be conducted by the Regional Administrator, or his designee, in an orderly and expeditious manner.

(3) Any person shall be permitted to submit oral or written statements and data concerning the proposed permit. The Regional Administrator, or his designee, shall have discretion to fix reasonable limits upon the time allowed for oral statements, and may require the submission of statements in writing.

(4) Following the public hearing, the Regional Administrator may make such modifications in the terms and conditions of proposed permits as may be appropriate and shall issue or deny the permit. The Regional Administrator shall provide a notice of such issuance or denial to any person who participated in the public hearing and to appropriate persons on the mailing list established under § 125.32(a)(3). Such notice shall briefly indicate any significant changes which have been made from terms and conditions set forth in the draft permit. Any permit issued following a public hearing shall become effective 30 days after the date it is issued by the Regional Administrator, unless the Regional Administrator grants a request for an adjudicatory hearing pursuant to paragraph (c) of this section.

(c) *Adjudicatory hearings.*—(1) Within 30 days following issuance of public notice of a permit application pursuant to § 125.32, or, if a public hearing is held pursuant to § 125.34(b), within 20 days following the issuance of the notice provided in § 125.34(b)(4), any person may submit to the Regional Administrator a request for an adjudicatory hearing to consider the proposed permit and its conditions. If the request for an adjudicatory hearing is granted in accordance with § 125.34(f), any person may submit a request to be a party within 30 days after the date of publication of public notice of an adjudicatory hearing in a newspaper of general circulation as required by § 125.32.

(2) Requests for and adjudicatory hearing and requests to be a party under this paragraph shall:

(i) State the name and address of the person making such request;

(ii) Identify the interest of the requester, and any person represented by issuance or nonissuance of the permit;

(iii) Identify any other persons whom the requester represents;

(iv) Include an agreement by the requester, and any person represented by the requester, to be subject to examination and cross-examination, and in the case of a corporation, to make any employee available for examination and cross-examination at his own expense, upon the request of the presiding officer, on his own motion or on the motion of any party.

(3) In addition to the information required under § 125.34(c)(2), any request for an adjudicatory hearing shall state with particularity the reasons for the request, and the issues proposed to be considered at the hearing.

(4) In addition to the information required under § 125.34(c)(2), any request to be a party shall state the position of the requestor on the issues to be considered at the hearing.

(d) *Filing and service.*—(1) All documents or papers required or authorized to be filed, shall be filed with the regional hearing clerk, except as otherwise herein provided. Except for requests for an adjudicatory hearing or request to be a party, at the same time that a party files documents or papers with the clerk, it shall serve upon all other parties copies thereof, with a certificate of service on each document or paper, including those filed with the regional hearing clerk. Filing shall be deemed timely if received by the regional hearing clerk within the time allowed by this section.

(2) In addition to copies served on all other parties, each party shall file with the regional hearing clerk an original and two copies of all papers filed in connection with an adjudicatory hearing.

(e) *Time.*—In computing any period of time prescribed or allowed by the regulations in this part, except as otherwise provided, the day of the act or event from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and holidays, shall be included in computing the time allowed for the filing of any document or paper, except that when such time expires on a Saturday, Sunday, or legal holiday, such period shall be extended to include the next following business day.

(f) *Notice of hearing.*—Within 5 days following the expiration of the time allowed by § 125.34(c)(1) for submitting a request for an adjudicatory hearing the Regional Administrator shall determine whether such request meets the requirements of § 125.34(c). If any request meets such requirements and sets forth material issues relevant to the question whether a permit should be issued, and what conditions to such permit would be required to carry out the provisions of the Act, the matter shall be assigned promptly for hearing: *Provided,* That if the Regional Administrator holds a public hearing under § 125.34(b), no request for an adjudicatory hearing shall be timely until after the conclusion of such public hearing. The Regional Administrator shall treat all other requests for a hearing as requests to be a party, and shall grant any such request meeting the requirements of § 125.34 (c)(2) and (c)(4). The hearing shall be held in the State in which the discharge or proposed discharge shall occur, or at such other accessible location as is appropriate. The Regional Administrator shall issue public notice of such hearing in the manner specified in § 125.32. The hearing shall take place not less than 30 days after the issuance of public notice of such hearing.

(g) *Additional parties.*—The Regional Administrator shall review all requests to be a party submitted pursuant to § 125.34(c). He shall grant any request meeting the requirements of that section. Following the expiration of the time provided by § 125.34(c) for the submission of requests to be a party, any person may file a motion for leave to intervene in an adjudicatory hearing. A

motion must set forth the grounds for the proposed intervention and the position and interest of the movant in the proceeding. A motion for leave to intervene in a hearing must ordinarily be filed prior to the commencement of the first prehearing conference. Any motion filed after that time must contain, in addition to the information set forth in § 125.34 (c), a statement of good cause for the failure to file the motion prior to the commencement of the first prehearing conference and shall be granted only upon a finding (1) that extraordinary circumstances justify the granting of the motion, and (2) that the intervenor shall be bound by agreements, arrangements and other matters previously made in the proceeding.

(h) *Consolidation.*—The Regional Administrator, in his discretion, may consolidate two or more proceedings to be held under this section whenever it appears that this will expedite or simplify consideration of the issues. Consolidation shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred. At the conclusion of proceedings under this section, the Regional Administrator shall issue one decision.

(i) *Representation.*—Parties may be represented by counsel or other duly qualified representative.

(j) *Duties and authorities of presiding officer.*—Presiding officers at adjudicatory hearings shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the disposition of proceedings, and to maintain order. They shall have all powers necessary to that end, including the following:

(1) To administer oaths and affirmations;

(2) To rule upon offers of proof and receive relevant evidence;

(3) To regulate the course of the hearings and the conduct of the parties and their counsel therein;

(4) To hold prehearing conferences in accordance with § 125.34(k);

(5) To consider and rule upon all procedural and other motions appropriate in such proceedings;

(6) To take any action authorized by these regulations or in conformance with law.

(k) *Prehearing conference.*—(1) In the discretion of the presiding officer, a prehearing conference or conferences may be held prior to any adjudicatory hearing. All parties will be given reasonable notice of time and location of any such conference. In the discretion of the presiding officer, persons other than parties may attend. At the conference, the presiding officer may:

(i) Obtain stipulations and admissions, and identify disputed issues of fact and law;

(ii) Set a hearing schedule which includes definite or tentative times for as many of the following as are deemed necessary by the presiding officer:

(A) Oral and written statements;

(B) Submission of written direct testimony as required or authorized by the presiding officer;

(C) Oral direct and cross-examination where necessary;

(D) Oral argument, if appropriate.

(iii) Identify matters of which official notice may be taken;

(iv) Consider limitation of the number of expert and other witnesses;

(v) Consider the procedure to be followed at the hearing; and

(vi) Consider any other matter that may expedite the hearing or aid in the disposition of the matter.

(2) The results of any conference shall be summarized in writing by the presiding officer and made part of the record.

(l) *Exchange of witness lists and documents.*—At a prehearing conference or within some reasonable time set by the presiding officer at a prehearing conference, each party shall make available to the other parties the names of the expert and other witnesses he expects to call, together with a brief narrative summary of their expected testimony. Copies of all documents and exhibits which he expects to introduce into evidence shall be marked for identification as ordered by the presiding officer. Thereafter, witnesses, documents, or exhibits may be added and narrative summaries of expected testimony amended only upon motion by a party.

(m) *Evidence.*—(1) The presiding officer shall admit all relevant and material evidence, except evidence that is unduly repetitious. Relevant and material evidence may be received at any hearing even though inadmissible under the rules of evidence applicable to judicial proceedings. The weight to be given evidence shall be determined by its reliability and probative value. Parties shall have the right to cross-examine a witness who appears at an adjudicatory hearing to the extent that such cross-examination is necessary for a full and true disclosure of the facts. In multiparty proceedings the presiding officer may limit cross-examination to one party on each side if it appears that the cross-examination by one party will adequately protect parties similarly situated. Other parties may, however, engage in cross-examination upon alleging that their cross-examination will go into matters not already covered by previous cross-examination.

(2) When a party will not be prejudiced thereby, the presiding officer may order all or part of the evidence to be submitted in written form.

(3) Rulings of the presiding officer on the admissibility of evidence, the propriety of cross-examination, and other procedural matters, shall be final and shall appear in the record.

(4) Interlocutory appeals may not be taken.

(5) Parties shall be automatically presumed to have taken exception to an adverse ruling.

(n) *Record.*—Adjudicatory hearings shall be stenographically reported and transcribed, and the original transcript shall be a part of the record and the sole official transcript. Copies of the transcript shall be available from the Environmental Protection Agency. Any party may within 10 days following the completion of the hearing submit proposed findings and conclusions.

(o) *Decision.*—(1) Within 20 days after completion of an adjudicatory hearing, the presiding officer shall certify the record, together with any proposed findings and conclusions submitted by the parties, to the Regional Administrator for decision. Within 15 days following certification of the record, the Regional Administrator or a responsible employee designated by the Regional Administrator shall issue a tentative or recommended decision. Any party may, within 10 days following the issuance of the tentative or recommended decision, submit exceptions to that decision, including written evidence relating to any facts officially noticed by the Regional Administrator or the responsible employee in the tentative or recommended decision. Within 30 days following the issuance of the tentative or recommended decision, the Regional Administrator shall issue a decision, and promptly notify the parties and the Administrator thereof. Such decision shall become the final decision of the Agency unless within 30 days after its issuance any party shall have appealed the decision to the Administrator, or the Administrator, on his own motion, shall have stayed the effectiveness of the decision of the Regional Administrator pending review.

(2) The decision of the Regional Administrator shall include a statement of findings and conclusions, and a decision, including the reasons and basis therefore, on all issues of fact, law, or discretion presented by the proposed findings and conclusions of the parties.

(p) *Appeal or review of decision of Regional Administrator.*—(1) Any party shall have the right to appeal to the Administrator from a decision of the Regional Administrator following an adjudicatory hearing.

(2) Where the Administrator, on his own motion, reviews a decision of the Regional Administrator, he shall provide to all parties a written statement of those issues to be considered on review. Any party may file briefs and reply briefs in accordance with paragraph (p) (3) and (4) of this section, limited to those issues identified by the Administrator.

(3) The appeal shall be in the form of a brief, filed within 30 days after notice of the decision of the Regional Administrator or, where the Administrator reviews a decision of the Regional Administrator on his own motion, within 30 days after the Administrator forwards the statement of issues under paragraph (p) (2) of this section. The brief shall contain, in the order indicated, the following:

(i) A subject index of the matter in the brief, with page references, and a table of cases, textbooks, statutes, and other material cited, with page references thereto;

(ii) A concise statement of the case;

(iii) A specification of the questions intended to be urged, including any objections to rulings of the presiding officer, to the validity of facts officially noticed, or to any matter in the decision of the Regional Administrator.

(iv) The argument presenting clearly the points of fact and law relied upon in support of the position taken on each question, with specific references to the record and to statutory or other material relied upon; and,

(v) A proposed decision for the Administrator's consideration in lieu of the decision of the Regional Administrator.

(4) Within 10 days after the expiration of time for filing briefs under paragraph (p)(3) of this section, any party may file a reply brief to any brief or briefs submitted by any other party. Such reply briefs shall follow the format prescribed in paragraph (p)(3) of this section, except that the proposed decision of the Administrator may be omitted.

(q) *Decision upon appeal.*—(1) Upon appeal from an initial decision, the Administrator shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and may, in his discretion, exercise any of the powers specified in § 125.34(j).

(2) In rendering his decision, the Administrator shall adopt, modify, or set aside the findings, conclusions, and decision contained in the decision of the Regional Administrator, and shall include in his decision a statement of the reasons or basis for his action.

(3) In those cases where the Administrator believes that he requires further information or additional views of the parties as to the form and content of the decision to be rendered, the Administrator, in his discretion, may withhold final action pending the receipt of such additional information or views. The Administrator may, in his discretion, allow oral argument on appeal or review of a decision of the Regional Administrator.

(4) The decision of the Administrator on appeal shall become effective as specified by him therein or 20 days after the date of the decision, whichever first occurs; however, the Administrator may in his discretion stay the operation of his decision pending judicial review. Notice of the Administrator's decision on appeal shall be given to all parties.

§ 125.35 Public access to information.

(a) Certifications issued pursuant to section 401 of the Act; the comments of all governmental agencies on a permit application, draft permits prepared pursuant to § 125.31, and all information and data provided by an applicant or a permittee identifying the nature and frequency of a discharge shall be available to the public without restriction. All other information (other than effluent data) which may be submitted by an applicant in connection with a permit application or which may be furnished by a permittee in connection with required periodic reports shall also be available to the public unless the applicant or permittee specifically identifies and is able to demonstrate to the satisfaction of the Regional Administrator or his authorized representative that the disclosure of such information or a particular part thereof to the general public would divulge methods or processes entitled to protection as trade secrets.

(b) Where the applicant or permittee is able to demonstrate to the satisfaction of the Regional Administrator or his authorized representative that the disclosure of the information or a particular part thereof (other than effluent data) would result in methods or processes entitled to protection as trade secrets being divulged, the Regional Administrator shall treat the information or the particular part (other than effluent data) as confidential in accordance with the purposes of section 1905 of title 18 of the United States Code and not release it to any unauthorized person: *Provided, however,* That if access to such information is subsequently requested by any person, the procedures specified in section 2 of title 40 of the Code of Federal Regulations will be complied with. Such information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out the Act or when relevant in any proceeding under the Act.

(c) Where the applicant or permittee is unable to demonstrate to the satisfaction of the Regional Administrator or his authorized representative that the disclosure of the information or a particular part thereof (other than effluent data) would result in methods or processes entitled to protection as trade secrets being divulged, the Regional Administrator shall notify the applicant or permittee of his decision. He shall also notify the applicant or permittee that failure to request within 10 days a General Counsel's determination shall result in the information in question being released to the public. Where within the 10-day period the applicant or permittee requests a General Counsel's determination, the Regional Administrator shall request advice from the office of General Counsel stating the reasons that he believes that the information will not result in methods or processes entitled to protection as trade secrets being divulged. A copy of the Regional Administrator's request shall be transmitted simultaneously to the applicant or permittee. The General Counsel shall determine whether the information in question would if revealed divulge methods or processes entitled to protection as trade secrets. In making such determination, the General Counsel shall consider any additional information received by the Office of General Counsel within 30 days of receipt of the request from the Regional Administrator. If the General Counsel determines that the information being considered would not if revealed divulge methods or processes entitled to protection as trade secrets, he shall so advise the Regional Administrator and shall notify the permittee or applicant claiming trade secrecy of such determination by certified mail. No sooner than 30 days following the mailing of such notice, the Regional Administrator shall make available to the public upon request the information determined not to constitute methods or processes entitled to protection as trade secrets.

(d) Notwithstanding paragraphs (a) and (b) of this section, the Administrator may withhold any information from the public when the release of such information would violate statutes or Executive orders or regulations issued pursuant thereto, concerned with the national security.

Subpart E—Miscellaneous

§ 125.41 Objections to permit by another State.

(a) Whenever following receipt of the certification described in § 125.15 the Regional Administrator determines that a discharge may affect the quality of the waters of any State other than the State that made the certification, the Regional Administrator shall, within 30 days of such certification, notify such other State and the applicant of his determination and shall transmit to such other State a copy of the fact sheet described in § 125.33 and upon request, a copy of the application and a copy of the draft permit prepared pursuant to § 125.31. If such other State determines, within 60 days from the date notice was received from the Regional Administrator, that the discharge will affect the quality of its waters so as to violate any water quality requirement in such State, such other State shall within such 60-day period notify the Regional Administrator in writing of its objection to the issuance of a permit and request a public hearing on the objection. Upon receipt of such request, the Regional Administrator shall hold a hearing in conformity with § 125.34 herein. Based upon the record, a permit shall issue, provided that if the imposition of conditions can not assure compliance with the applicable water quality requirements of all of the affected States, the permit shall be denied.

(b) Each affected State shall be afforded an opportunity to submit written recommendations to the Regional Administrator which the Regional Administrator may incorporate into the permits if issued. Should the Regional Administrator fail to incorporate any written recommendations thus received, he shall provide to the affected State or States a written explanation of his reasons for failing to accept any of the written recommendations.

(c) Where an interstate agency has authority over waters that may be affected by the issuance of a permit, it shall be afforded the rights of a State pursuant to paragraphs (a) and (b) of this section.

§ 125.42 Other legal action.

(a) Section 402(a)(4) of the Act provides that "permits issued under this title shall [also] be deemed to be per-

mits issued under section 13 of the Act of March 3, 1899," (the Refuse Act.) Discharges without a permit or in violation of permit terms and conditions may result in the institution of proceedings under the Refuse Act.

(b) Except as provided in section 402(k) of the Act, the mere filing of an application for a permit to discharge into waters covered by the NPDES will not preclude legal action in appropriate cases for violation of the Act and section 13 of the Act of March 3, 1899 (the Refuse Act). The institution of either a civil or criminal action by the United States may not preclude the acceptance or continued processing of a permit application.

§ 125.43 Environmental impact statements.

Section 511(c)(1) of the Act provides that with the exception of permits for new sources as defined in section 306, no action of the Administrator taken pursuant to the Act (concerning permits) shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

§ 125.44 Final decision of the Regional Administrator.

(a) Where no request for a public hearing or an adjudicatory hearing has been granted, no less than 30 days after the date of public notice of a permit application required by § 125.32 the Regional Administrator shall, after consideration of (1) the tentative determinations and draft permit prepared pursuant to § 125.31; (2) any comments, objections, and recommendations received from the applicant, involved Federal, State, local and foreign government agencies, and the public; and (3) the requirements and policies expressed in the Act and these regulations; make determinations with respect to each permit.

(b) Where the determination of the Regional Administrator pursuant to paragraph (a) of this section with respect to any permit is substantially unchanged from the tentative determinations and draft permit prepared pursuant to § 125.31, the Regional Administrator shall issue or deny the permit as appropriate, and such action shall be the final action of the Environmental Protection Agency.

(c) Where the determinations of the Regional Administrator pursuant to paragraph (a) of this section with respect to any permit are substantially changed from the tentative determinations and draft permit prepared pursuant to § 125.31, the Regional Administrator shall forward his revised determinations to the applicant, and shall give public notice of such revised determinations in the manner specified in § 125.32. If within 30 days following the date of such notice, no request for an adjudicatory hearing meeting the requirements of § 125.34(c) and subsection (d) of this section has been received, the determinations of the Regional Administrator shall become final and he shall issue or deny the permit as appropriate and such action shall be the final action of the Environmental Protection Agency: *Provided*, The Regional Administrator may decide to hold a public hearing pursuant to § 125.34(b).

(d) A request for an adjudicatory hearing under this section will only be granted when such request meets all the requirements of § 125.34(c) and such request pertains to the substantial changes proposed with respect to such permit by the Regional Administrator.

(e) When a hearing in held pursuant to § 125.34, final actions of the Environmental Protection Agency will be made pursuant to that section.

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