



## **ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 122, 124 and 125**

**[EPA-HQ-OW-2016-0145; FRL9988-87-OW]**

**[RIN 2040-AF25]**

### **National Pollutant Discharge Elimination System (NPDES): Applications and Program Updates**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing certain revisions to the National Pollutant Discharge Elimination System permitting regulations proposed on May 18, 2016. The final regulatory changes are minor and will improve and clarify the regulations in the following major categories: regulatory definitions (“new discharger” and two definitions related to the discharge of pesticides from pesticides application); permit applications; and public notice. This final rule also updates the EPA contact information and web addresses for electronic databases, updates outdated references to best management practices guidance documents, and deletes a provision relating to best practicable waste treatment technology for publicly owned treatment works that is no longer applicable. The final revisions modernize the NPDES regulations, promote submission of complete permit applications, and clarify regulatory requirements to allow more timely development of NPDES permits that protect human health and the environment.

**DATES:** This final rule is effective on **[INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. **EPA–HQ–OW–2016–0145**. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Frank Sylvester, Water Permits Division, Office of Wastewater Management, Mail Code 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564-1279; email address: [sylvester.francis@epa.gov](mailto:sylvester.francis@epa.gov); or Janita Aguirre, Water Permits Division, Office of Wastewater Management, Mail Code 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 566-1149; email address: [aguirre.janita@epa.gov](mailto:aguirre.janita@epa.gov).

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**I. General Information**

*A. Does this action apply to me?*

Entities potentially affected by this action are: The EPA; authorized state, territorial, and tribal programs; and the regulated community. This table is not intended to be exhaustive, rather, it provides a guide for readers regarding entities that this action is likely to regulate.

TABLE I-1—ENTITIES POTENTIALLY AFFECTED BY THIS FINAL RULE

Category	Examples of potentially affected entities
State, Territorial, and Indian Tribal Governments	States and Territories authorized to administer the NPDES permitting program; States, Territories, and Indian Tribes that provide certification under section 401 of the CWA; States, Territories, and Indian Tribes that own or operate treatment works.
Municipalities	Publicly Owned Treatment Works (POTWs), municipal separate storm sewer systems (MS4s), or other municipal entities required to apply for or seek coverage under an NPDES individual or general permit and to perform routine monitoring as a condition of an NPDES permit.
Industry	Facilities required to apply for or seek coverage under an NPDES individual or general permit and to perform routine monitoring as a condition of an NPDES permit.

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under FOR FURTHER INFORMATION CONTACT.

*B. What action is the Agency taking and why?*

The EPA is finalizing certain minor, generally clarifying revisions to the NPDES regulations initially proposed on May 18, 2016.<sup>1</sup> The final regulatory changes improve and clarify regulations in the following major categories: regulatory definitions (“new discharger” and two definitions related to the discharge of pesticides from pesticides application); permit applications; and public notice. The final regulatory changes also update the EPA’s contact information and web addresses for electronic databases and outdated references to best management practices, and delete a provision that is no longer applicable (40 CFR 125.3(a)(1)(ii), relating to best practicable waste treatment technology for publicly owned treatment works). As a result of this final rule, the NPDES regulations will promote submission of complete permit applications, contain modernized regulatory requirements to allow more timely development of NPDES permits that protect human health and the environment, and be more clear and effective.

*C. What is the Agency’s authority for taking this action?*

These regulations are promulgated pursuant to the Clean Water Act, 33 U.S.C. 1251 *et seq.*, in particular, CWA sections 301, 304(i), 308, 402 and 501.

*D. What are the incremental costs and benefits of this action?*

This final rule promulgates minor, generally clarifying revisions to the NPDES regulations. The EPA has estimated that the revisions finalized in this action will result in an overall burden decrease to permitting authorities and the regulated community of approximately \$2,389,889 and

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<sup>1</sup> 81 FR 31343.

17,912 hours annually.

*E. How was the final rule developed?*

In developing this final rule, the EPA considered the public comments and feedback received from stakeholders on the May 18, 2016 proposal (hereafter referred to as the Proposed Rule). The EPA provided a 75-day public comment period after the Proposed Rule was published in the Federal Register.

Over 450 organizations and individuals submitted comments on a range of issues. The EPA received an additional 14,438 letters from individuals associated with mass letter writing campaigns. Some comments addressed issues beyond the scope of the proposed rulemaking; however, the EPA did not contemplate expanding the scope of the rulemaking or making regulatory changes to address the substance of these comments. In each section of this preamble, the EPA discusses significant public comments so that the public is fully aware of the Agency's basis for the final rule. For a full response to these and all other comments, see the EPA's Response to Comments document in the official public docket for this rulemaking.

In addition, the EPA met with all stakeholders who requested time to discuss the contents of the proposed rule. Records of each meeting are included in the official public docket.

**II. Rule Revisions Finalized in this Action**

The EPA has created a comparison document showing the revisions to the current NPDES regulations made by this final rule, and a second document showing the revisions made between the proposed and final rule. The EPA has posted both documents at: <https://www.epa.gov/npdes/npdes-application-and-program-updates>, and placed them in the docket for today's rule.

*A. Revisions to Part 122*

## 1. Purpose and Scope (Note to 40 CFR 122.1) – NPDES contact information

The EPA is finalizing the correction to the Note to 40 CFR 122.1, NPDES contact information, to delete outdated references to program contact information that are no longer accurate. The final Note also includes the updated website address for the NPDES homepage, <http://www.epa.gov/npdes/>.

The EPA received one public comment associated with this revision. The comment expressed support for the effort to remove the outdated information and questioned whether the EPA could remove the Note entirely or provide a more generic approach than including specific contact information that requires a rulemaking to update. While it is true that the Note to 40 CFR 122.1 could be deleted entirely or generically updated, the EPA's view is that providing up-to-date contact information in the Code of Federal Regulations (CFR) will save the permitting authorities and the public time when they seek to contact the EPA about these regulations. For instance, if the Note were deleted entirely, an interested party who is used to the information appearing in the regulatory text may spend unnecessary time searching the Internet and navigating the EPA's website for NPDES information. Instead, the EPA is retaining the Note and including the up-to-date NPDES homepage to provide a direct link for interested parties to find the EPA's NPDES-related information about a particular issue or program area.

## 2. NPDES Program Definitions (40 CFR 122.2)

### (a) Pesticide Discharges to Waters of the United States from Pesticide Application

In 2009, the Court of Appeals in *National Cotton Council, et al. v. EPA*, 553 F.3d 927 (6<sup>th</sup> Cir. 2009) found that point source discharges of biological pesticides and chemical pesticides that leave a residue to waters of the United States (U.S.) are pollutants under the CWA and therefore require NPDES permits. In response, the EPA issued the first Pesticide General Permit

on October 31, 2011 and reissued the permit on October 24, 2016.<sup>2</sup> The Proposed Rule added a definition of “pesticide applications to waters of the United States” to ensure the NPDES regulations are consistent with the 6<sup>th</sup> Circuit decision as implemented by the Agency’s Pesticide General Permit. In this action, the EPA includes a final definition for “Pesticide discharges to waters of the United States from pesticide application,” as well as a regulatory definition for “pesticide residue.”

The comments received on the proposal were mixed. Many comments requested additional language clarifications in order to be consistent with the court decision and to avoid confusion regarding the issue of whether or not pesticides must leave a residue to qualify as pollutants requiring permit coverage under the NPDES program. One comment requested that the EPA include definitions for “biological pesticides,” “chemical pesticides,” and “pesticide residue.”

In response to the comments received, this final rule includes minor wording changes from the proposal to use NPDES regulatory terminology such as “discharge” and to change “pesticide application” to “discharges to waters of the United States from pesticide application” to better reflect current NPDES terminology, which is used in both the 6<sup>th</sup> Circuit decision and the EPA’s Pesticide General Permit. Based on the comments received, this final rule also includes a regulatory definition of the term “pesticide residue” for purposes of clarifying which discharges to waters of the U.S. from the application of pesticides require NPDES permits. The EPA is not adding a regulatory definition for “biological pesticide”<sup>3</sup> in 40 CFR 122.2 because this concept and relevant regulatory definitions are already included in 40 CFR 174.3, 40 CFR

158.2000(a)(1), and 40 CFR 158.2100(b).

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<sup>2</sup> See <https://www.epa.gov/npdes/pesticide-permitting>. The EPA’s Pesticide General Permit applies only to areas and activities where states are not authorized to administer the NPDES program. Authorized states develop and issue their own permits for pesticide discharges to waters of the United States from pesticide application.

<sup>3</sup> This term, also called biopesticides, includes microbial pesticides, biochemical pesticides, and plant-incorporated protectants.



This definition in the final rule provides that the term “pesticide residue” in 40 CFR 122.2 includes the portion of a pesticides application that is discharged from a point source to waters of the U.S. and no longer provides pesticidal benefits. It also includes any degradates of the pesticide. This definition is identical to the definition of “pesticide residue” already used in the EPA’s Pesticide General Permit.

By including the final definitions related to pesticide discharges to waters of the U.S. in the comprehensive NPDES definitions at 40 CFR 122.2, the regulations have increased clarity and consistency regarding discharges regulated under the CWA and therefore require NPDES permits. The final definitions do not change which pesticide discharges are subject to NPDES permitting.

#### (b) New Discharger

The EPA is finalizing the proposed correction of a typographical error in paragraph (d) of the New Discharger definition to change “NDPES” to “NPDES.” The EPA received no public comments associated with this revision.

### 3. Changes to Existing NPDES Permit Application Requirements (40 CFR 122.21)

The CWA directs the Administrator to “promulgate guidelines for the purpose of establishing uniform application forms,” and minimum requirements for the acquisition of information from owners and operators of point-sources of discharge. 33 U.S.C. 1314(i). The EPA regulations at 40 CFR part 122 implement this requirement. The EPA proposed specific revisions to clarify and update the permit application requirements in 40 CFR 122.21. In this action, the EPA is finalizing the revisions to the permit application requirements, as described in the following sections, to update and improve application consistency, accuracy, and usability.

The EPA regulations establish permit application requirements and corresponding forms for

use by all applicants for EPA-issued individual permits. Accordingly, the EPA has updated the eight application forms consistent with the final requirements addressed in this final rule.<sup>4</sup> An authorized state program may choose to use the EPA's forms or develop its own application forms; however, an authorized program's forms must collect all of the information that the Agency's regulations require.<sup>5</sup>

In the Proposed Rule, the EPA indicated that it had established a separate docket (EPA-HQ-OW-2016-0146) to receive comments on potential future changes to the application forms and information requests. Specifically, the EPA solicited comment on whether and how a separate future action should address the utility and clarity of the information requests and on how to minimize the information collection burden on respondents, including the use of appropriate automated, electronic, mechanical, or other forms of information technology (see 81 FR 31367, May 18, 2016). The EPA did not receive any substantive comments that identified duplication, redundancy or other ways to reduce burden associated with the forms that have not been otherwise discussed and/or addressed in this rulemaking.

(a) NPDES Contact Information (40 CFR 122.21(a)(2))

The EPA is finalizing the correction to 40 CFR 122.21(a)(2) to update contact information for obtaining application forms, as proposed. The final provision deletes outdated references to program contact information, and includes the updated website address for the NPDES homepage, <http://www.epa.gov/npdes>. The EPA received no public comments associated with this revision. In general, it is the EPA's view that providing up-to-date contact information in the CFR will save the permitting authorities and the public time when they seek to contact the EPA

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<sup>4</sup> For more information about the NPDES application forms and their history, see the preamble to the proposed rule: 81 FR 31345-31346 (May 18,2016) and 81 FR 31349 (May 18, 2016).

<sup>5</sup> 40 CFR 122.21(a)(2)(iv).

about these regulations. For instance, if this information were not provided in the regulation, an interested party may spend unnecessary time searching the Internet and navigating the EPA's website for NPDES information. Instead, the EPA is providing updated contact information for parties interested in obtaining the NPDES application forms.

(b) Industrial Classification Codes (40 CFR 122.21(f)(3))

The EPA is finalizing the revisions to the requirements at 40 CFR 122.21(f)(3), for all facilities except POTWs and treatment works treating domestic sewage (TWTDSs), to include North American Industry Classification System (NAICS) codes,<sup>6</sup> in addition to Standard Industrial Classification (SIC) codes,<sup>7</sup> that reflect the products or services provided by the facility.

Most comments received either supported or did not oppose the proposed requirement to include NAICS codes. While generally supporting the revision, several comments questioned why the EPA proposed to require submission of both SIC *and* NAICS codes, suggesting instead that the Agency should require one or the other, or provide flexibility to choose which code to submit. Some comments also expressed concern and requested clarification about the overall timing and transition process from SIC codes to NAICS codes.

The EPA's intent with the proposed rulemaking was to require both SIC and NAICS codes, as both codes provide useful information. For example, SIC codes are referenced in several Effluent Limitations Guidelines regulations that serve as the basis for effluent limitations in NPDES permits. While the EPA may elect to replace those SIC codes with NAICS codes at

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<sup>6</sup> NAICS code numbers and descriptions in the North American Industrial Classification System Manual prepared by the Executive Office of the President, Office of Management and Budget can be found online at: <http://www.census.gov/eos/www/naics/>.

<sup>7</sup> SIC code numbers and descriptions in the 1987 Standard Industrial Classification Manual prepared by the Executive Office of the President, Office of Management and Budget can be found online at: [http://www.osha.gov/pls/imis/sic\\_manual.html](http://www.osha.gov/pls/imis/sic_manual.html).

some point in the future, the SIC code is currently a critical piece of information needed for NPDES permitting purposes.<sup>8</sup> While the older SIC codes are still referenced in other regulations, NAICS codes are now the federal data standard typically used to identify and classify industrial operations.<sup>9</sup> Although the NAICS codes are not directly linked to most CWA implementing regulations, they are the recommended industry classification system in OMB's Statistical Policy Directive No. 8, and NAICS codes have effectively replaced SIC codes, which have not been updated since 1987. Use of the NAICS codes as the data standard across all federal data systems ensures consistency in assessments conducted across multiple federal databases. Use of the NAICS codes also allows the NPDES permit program to reflect the evolution of industries to which dischargers belong.

In many cases there is a one-to-one crosswalk between the SIC and NAICS codes; however, this is not always true. [Note: The United States Census Bureau provides online resources connecting SIC and NAICS codes:

<https://www.census.gov/eos/www/naics/concordances/concordances.html>]

Given that some CWA regulations use SIC codes, both codes remain important for permitting and data tracking purposes. Therefore, the final rule will require an applicant to provide both SIC and NAICS codes on application forms. After changes are made in the future to replace SIC code references in other CWA regulations, the EPA will evaluate revisiting the application forms to remove or revise the SIC code requirements.

(c) New Discharger Data Submission (40 CFR 122.21(k)(5)(vi), 40 CFR 122.21(j)(4)(i), and 40 CFR 122.21(j)(5)(i))

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<sup>8</sup> For example, see 40 CFR 414.11(a) which establishes effluent limitations guidelines subcategories using the 1987 SIC categories.

<sup>9</sup> See "North American Industry Classification System United States, 2017" Executive Office of the President, Office of Management and Budget, 2017.

Because they have not commenced discharge, applications for new dischargers require submission of estimates of the types and quantities of pollutants discharged. The regulations for non-POTWs require submission of actual effluent data (consistent with the effluent characterization data required in the applications for existing dischargers) no later than 24 months after the discharge has commenced. In the EPA's Proposed Rule, the Agency sought to revise application requirements for new dischargers, both POTWs and non-POTWs, to require the submission of effluent data that is required in the application for an existing discharger within 18 months from the commencement of discharge. For non-POTWs, the proposal shortened the period from 24 months to 18 months, and for POTWs, the proposal created the requirement for the first time. The revision sought to ensure that dischargers submit the required effluent data in a manner that is timely and consistent. Providing follow-up effluent data allows the permit writer to evaluate any discrepancies between estimated or anticipated effluent characteristics estimated and reported by the applicant prior to the commencement of discharge, and the effluent characteristics based on actual effluent data after the commencement of discharge.

In the proposed rulemaking, the EPA envisioned three months for a facility's treatment system to be operating efficiently, one year of sampling, and another three months to report data. The EPA received mixed comments on the proposed revisions to 40 CFR 122.21(k)(5)(vi), 40 CFR 122.21(j)(4)(i), and 40 CFR 122.21(j)(5)(i). Multiple comments generally supported the proposed revisions and one comment suggested that the timeframe should be shortened from the proposed 18 months to 16 months by reducing the time to report data from three months to one month. On the other hand, several comments objected to shortening the timeframe from 24 months to 18 months for new industrial (non-POTW) dischargers. They argued that 24 months is

necessary for optimizing facility operation and gathering and reporting representative data. One commenter pointed to examples in other rulemakings, such as the EPA's steam electric power sector effluent limitation standards and guidelines,<sup>10</sup> where the need for significant facility startup and optimization time is documented. Additionally, one comment suggested that many treatment systems are affected by rainfall or are dependent on biological treatment that takes longer than three months to establish and optimize. Another commenter suggested that 24 months is a more suitable timeframe for new POTWs as well, suggesting that it provides a more complete data set, representing close to two full annual cycles that account for potential seasonal fluctuations and their impacts on effluent quality and flow variability.

When the EPA first established<sup>11</sup> the non-POTW requirement at 40 CFR 122.21(k)(5)(vi) and the corresponding requirements in application Form 2D (for new sources and new dischargers), the Agency considered a range of options for the submission of "follow-up data." The range of options the EPA considered included requiring no additional information at all to requiring the submission of Form 2C (applicable to existing dischargers) after commencement of the discharge. When the EPA first established the requirement to provide follow-up data no later than two years after commencement of discharge, the Agency received no negative comments and the provision was generally supported. At that time, some commenters suggested that a "steady state" or optimized operations for non-POTWs may not be reached within one year's time and 24 months was therefore more appropriate.

As the Agency did in 1984 and 1986, the EPA continues to take into consideration the needs of industry for regulatory certainty and the possible necessity for adjusting permit limits after

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<sup>10</sup> *Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category*, 80 FR 67837 (November 3, 2015).

<sup>11</sup> The EPA first proposed 40 CFR 122.21(k)(5)(vi) on October 1, 1984 (49 FR 38812) and first finalized the 24-month requirement on July 28, 1986 (51 FR 26982).

operation commences to protect human health and the environment. As a result, after evaluating the comments received, the EPA is retaining the 24-month requirement for non-POTWs to submit effluent data after the commencement of discharge and is not finalizing the proposed revision to 40 CFR 122.21(k)(5)(vi) to reduce the requirement to 18 months. As suggested by commenters, the additional six months could strengthen the quality of information submitted to the Agency.

The EPA is finalizing, in this action, the editorial changes to 40 CFR 122.21(k)(5)(vi) to remove the reference to a permit holder's presumed gender, as well as correcting the reference to the correct application form – Form 2C. In addition, after evaluating the comments received, and for the reasons discussed above in the context of new non-POTW dischargers, the EPA is finalizing revisions to 40 CFR 122.21(j)(4)(i) and 40 CFR 122.21(j)(5)(i) with modifications to require submission of follow-up data for new POTWs no later than 24 months after commencement of the discharge. Further details regarding the Agency's basis for these actions may be found in the Response to Comment document.

(d) Data Age for Permit Renewal (40 CFR 122.21(g)(7)(ix))

The EPA proposed a new paragraph (ix) to 40 CFR 122.21(g)(7), to mirror the existing language of 40 CFR 122.21(j)(4)(vi) and (vii), which is applicable to POTWs, and corresponding Form 2A. Proposed paragraph 40 CFR 122.21(g)(7)(ix) would have been applicable to industrial applicants and incorporated into Form 2C. The existing regulation for POTWs at 40 CFR 122.21(j)(4)(vi) provides that existing data may be used, if available, in lieu of sampling done solely for the purpose of the application. Additionally, 40 CFR 122.21(j)(4)(vii) provides that for POTWs, existing data for specified pollutants collected within four and one-half years of the application must be included in the pollutant data summary by the applicant. It also provides that

if sampling for a specific pollutant is done monthly or more frequently, it is only necessary to summarize all data collected within one year of the application. For the purpose of consistency, the EPA sought to adopt the same conditions on the use of existing data in lieu of sampling data collected solely for the purposes of the application for industrial applicants through the proposed 40 CFR 122.21(g)(7)(ix). The proposed requirement would have superseded the instructions to current Form 2C, applicable to industrial applicants, which provide flexibility to use existing data, but subject to different conditions. The Form 2C instructions provide that data from samples taken in the past may be used in lieu of the otherwise required sampling for application purposes if the samples meet all data requirements, all samples were taken no more than three years before application submission, and all data are representative of the present discharge.

The EPA received several comments on the proposed addition of 40 CFR 122.21(g)(7)(ix) (and conforming changes to the substance of Form 2C). Comments focused on the three years versus four and one-half years for acceptable data age, whether the one-year of summary data provision should be allowed, what constitutes representative samples, and general suggestions attempting to make the rule clearer.

After reviewing public comment, the EPA has decided to finalize its proposal to allow the use of data collected up to four and one-half years prior to the date of permit application, but has decided not to finalize other proposed elements in 40 CFR 122.21(g)(7)(ix) due to differences in data reporting requirements for POTWs in Form 2A and non-POTWs in Form 2C

Specifically, commenters noted that the proposed revisions to 40 CFR 122.21(g)(7)(ix) required that “All existing data...that is collected within four and one-half years of the application must be included in the pollutant data summary submitted by the applicant.” Commenters noted that this requirement was not consistent with the NPDES recordkeeping



requirement at 40 CFR 122.41(j)(2), which requires that most effluent monitoring data be retained for three years. Further, commenters noted that the use of the term “summary data” that was appropriate in the context of reporting under the POTW application requirements, was confusing with respect to the data reporting format required for non-POTWs in Form 2C.

With respect to the proposed revision that non-POTW applicants “must” provide all data from the past four and one-half years, the EPA agrees that the proposed requirement is inconsistent with the existing recordkeeping requirements, and has revised the provision to track the long-standing language in the instructions to Form C. The final data age provision at 40 CFR 122.21(g)(7)(ix) allows applicants to use data up to four and one-half years, but does not require four and one-half years of data. As discussed in the preamble to the proposed rule, the EPA has determined that the four and one-half year data age allowance, rather than the three-year allowance mentioned only in the existing Form 2C instructions, provides applicants with additional flexibility and a more practical timeframe (i.e., their previous five-year permit term minus the 180-day application period) for collection of effluent characterization data. This four and one-half year timeframe has been in place for POTWs since the revisions to Form 2A were promulgated in 1999, and the EPA has seen no problems associated with this existing POTW requirement.

Consistent with the language from the existing Form 2C application instructions, the final provision at 40 CFR 122.21(g)(7)(ix) also clarifies that existing data may only be used where they remain representative of the current discharge characteristics. With respect to comments regarding whether data are “representative” of the discharge, the EPA considers the discussion and examples included in the existing and revised instructions to the application forms to provide the appropriate level of detail.

The final regulatory provision at 40 CFR 122.21(g)(7)(ix) also removes the term “summary data” which the EPA agrees is unnecessary and confusing with respect to the data reporting format in Form 2C.

(e) Reporting Electronic Mail Address

The EPA is finalizing revisions to the following paragraphs in 40 CFR 122.21 to request the applicant’s electronic mailing address (email) as proposed: 40 CFR 122.21(c)(2)(ii)(B), 40 CFR 122.21(f)(4), 40 CFR 122.21(j)(1)(ii), 40 CFR 122.21(j)(1)(viii)(2) and (3), 40 CFR 122.21(j)(9), 40 CFR 122.21(q)(1)(i), 40 CFR 122.21(q)(2)(i), 40 CFR 122.21(q)(8)(vi)(A), 40 CFR 122.21(q)(9)(iii)(D) and (E), 40 CFR 122.21(q)(9)(iv)(A), 40 CFR 122.21(q)(10)(ii)(A), 40 CFR 122.21(q)(10)(iii)(K)(1), 40 CFR 122.21(q)(11)(ii)(A), 40 CFR 122.21(q)(12)(i), and 40 CFR 122.21(q)(13). The EPA received one public comment associated with these revisions. The comment expressed general support for these revisions, and did not contain any substantive comments requiring the EPA’s response.

(f) Reporting Numbers of Significant Industrial Users (SIUs) and Non-Significant Categorical Industrial Users (NSCIUs)

The CWA directs the EPA to publish “regulations establishing pretreatment standards for introduction of pollutants into treatment works” (33 U.S.C. 1317). Under the NPDES regulations at 40 CFR 122.21(j)(6), POTW permit applicants must provide certain information for SIUs that discharge to the treatment works (33 U.S.C. 1314(i) and 1317). SIUs are either industrial dischargers that deliver either large volumes (daily average of 25,000 gallons or more) of wastewater to the POTW for final treatment, are subject to Categorical Pretreatment Standards (known as categorical industrial users or “CIUs”), or both. The wastewater from these facilities may affect the operation and performance of the POTW, and may contain pollutants that are

otherwise uncharacteristic of domestic sewage. In the Proposed Rule, the EPA proposed revisions to 40 CFR 122.21(j)(6)(i) and (ii) of the NPDES application regulations to reflect changes in the definition of SIU in the general pretreatment regulations at 40 CFR 403.3(v). Before a 2005 regulation which streamlined the pretreatment regulations for existing and new sources (70 FR 60191), all CIUs were defined as SIUs.<sup>12</sup> The 2005 regulation changed the definition to authorize the POTW Control Authority<sup>13</sup> to determine that certain CIUs meeting prescribed conditions could be classified as non-significant CIUs (NSCIUs) as opposed to SIUs. The ability to designate a CIU as an NSCIU resulted in reduced reporting requirements for the facility as well as the control authority because permittees are not required to report information about NSCIUs as often.<sup>14</sup>

In this action, the EPA is finalizing some of the changes to 40 CFR 122.21(j)(6)(i) identified in the Proposed Rule. Prior to this final rule, the EPA's regulations and application Form 2A asked for the number of CIUs and the number of SIUs. By changing the requirement to report only the number of SIUs and NSCIUs, instead of CIUs, the permitting authority will gain a clearer picture in Form 2A of the number of CIUs that are designated as NSCIUs since all CIUs are categorized as either SIUs or NSCIUs.

While the EPA did not receive any comments in opposition to this proposed revision to 40 CFR 122.21(j)(6)(i), the EPA received comments and questions regarding the inclusion of the

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<sup>12</sup> 70 FR 60134, October 14, 2005.

<sup>13</sup> "Control authority," defined at 403.3(f), means a POTW with an approved POTW pretreatment program; or, in the absence of a POTW pretreatment program, the authorized state pretreatment program; or the EPA in the absence of an authorized state pretreatment program.

<sup>14</sup> CIUs must report in June and December each year (or more frequently) on their continued compliance with categorical pretreatment standards and submit those reports to the (pretreatment) Control Authority. 40 CFR 403.12(e)(1). Significant non-CIUs (SIUs not subject to categorical pretreatment standards) must also report similar information every 6 months to the Control Authority (403.12(h)). Where, however, a facility is designated as an NSCIU, it need only submit annual reports certifying that it never discharges more than 100 gallons of total categorical wastewater on any given day, and information to support that certification. 40 CFR 403.12(q).

phrase “trucked or hauled wastes” in its definition of SIU to 40 CFR 122.21(j)(6)(i). By including this phrase, the EPA intended to clarify that the reported number should include not only those SIUs and NSCIUs directly connected to the POTW, but also those SIUs and NSCIUs that truck or haul their wastes to the POTW. This rule does not change how trucked or hauled wastes are defined or regulated under the pretreatment program. Based on the comments received, the EPA has modified the final version of the provision from what was proposed to clarify that the number of SIUs and NSCIUs reported on application forms pursuant to 40 CFR 122.21(j)(6)(i) includes the number of SIUs and NSCIUs that deliver their waste to the POTW through means other than direct connection (e.g., pipe), including delivery via truck or haul.

The EPA received additional comments regarding the proposed revisions to 40 CFR 122.21(j)(6)(ii). Multiple comments raised the concern that, as proposed, 40 CFR 122.21(j)(6)(ii) would require POTWs to report detailed information on a potentially significant number of CIUs which the control authority determined to be NSCIUs. Commenters suggested that this would increase the reporting burden for the POTW and would run counter to the flexibility provided by 40 CFR 403.3(v).

The EPA agrees and is not finalizing the proposed revision to 40 CFR 122.21(j)(6)(ii) so that the changes in this final rule carry forward the burden reduction established by previous changes to 40 CFR 403.3(v) and 403.12(q). In accordance with 40 CFR 403.3(v) and 403.12(q), the pretreatment control authority determines that NSCIUs consistently comply with all applicable categorical pretreatment standards, annually submit a certification and data necessary to support the certification, and never discharge any untreated concentrated wastewater. Additionally, in determining whether a CIU is an NSCIU, the control authority must find that the NSCIU has no reasonable potential for adversely affecting the POTW’s operation. Annual reports and

supporting data submitted to the control authority contain the information sought in 40 CFR 122.21(j)(6)(ii)(A) through (G). As a result, requiring POTWs to submit detailed information for all NSCIUs, as proposed in 40 CFR 122.21(j)(6)(ii), would negate the burden reduction provided by 403.3(v) and 403.12(q). Therefore, the EPA is not finalizing the proposed revision to 40 CFR 122.21(j)(6)(ii) and is instead retaining the previous requirements applicable only to SIUs to provide specific information. The requirements in 40 CFR 122.21(j)(6)(ii)(A)-(G) to provide specific information do not apply to NSCIUs.

(g) Cooling Water Intake Structure Indication (40 CFR 122.21(f)(9))

The EPA is finalizing the proposed revision to add paragraph 40 CFR 122.21(f)(9), with modification. The final rule requires the applicant to indicate whether the facility uses cooling water and to specify the source of the cooling water. The EPA is not finalizing the parenthetical note provided in the proposed version of 40 CFR 122.21(f)(9). The EPA has determined that the explanation about the applicability of application requirements under 40 CFR 122.21(r) is best placed in the application form instructions. The parenthetical note to 40 CFR 122.21(f)(9) in the proposed rulemaking was not a proposed new requirement and would have imposed no new additional requirements.

Most of the public comments received on this revision were supportive; however, one comment questioned the purpose and need for this revision, and suggested the requirement would create additional burden and costs on facilities that use cooling water, but are not subject to the requirements at 40 CFR 122.21(r). No specific costs or burdens were shared or suggested by the commenter.

The EPA agrees that all facilities, not just those subject to 40 CFR 122.21(r), would be subject to the requirement to indicate the use and source of cooling water; however, the EPA has

determined that this requirement would not cause undue burden or impose any significant costs. By requiring indication of the use and source of cooling water, a permitting authority will receive key information necessary to effectively and efficiently develop an NPDES permit for the facility. For facilities already covered by 40 CFR 122.21(r), the final provision would notify the permitting authority that the application information under 40 CFR 122.21(r) is forthcoming. For facilities that are not already covered by 40 CFR 122.21(r), the final provision would provide valuable information on cooling water intake structures at minimal burden to the applicant. The final rule revision does not alter any existing requirements in 40 CFR 122.21(r) or 40 CFR 125.91.

h. Indication of Requests for Technology-based Variances (40 CFR 122.21(f) and 122.21(j))

The EPA is finalizing revisions, as proposed, to 40 CFR 122.21(f) and 122.21(j) to require applicants to indicate whether they are requesting any of the technology-based variances allowed under 40 CFR 122.21(m) for non-POTWs and 40 CFR 122.21(n) for POTWs.

While some public comments received on this revision expressed support, other comments suggested that there may be instances where it would not be known whether a technology-based variance would be requested at the time of application.

The final rule ensures the permitting authority is aware of a technology-based variance request, if known, at the time of permit application, which will enable the permitting authority to more effectively and efficiently coordinate with the applicant and appropriate regulators on the technology-based variance request. The EPA acknowledges that there may be some instances where an applicant will not yet know at the time of application whether they will request a technology-based variance. The final rule does not and is not intended to limit an applicant's

ability to request a technology-based variance only to the time of application. The final rule does not alter any existing requirements in 40 CFR 122.21(m) or 40 CFR 122.21(n), and an applicant continues to be able to request a technology-based variance consistent with existing statutory and regulatory requirements.

#### 4. Best Management Practices (BMPs) (40 CFR 122.44(k)(4))

The EPA is finalizing the correction to the Note to 40 CFR 122.44(k)(4), Best Management Practices (BMPs), as proposed to delete outdated references to information sources that are no longer available. The final Note also includes the website address where updated BMP information is contained to ensure that the most current BMP guidance is provided.

The EPA received several comments on the proposed correction, including those from a municipality, trade associations, an authorized state NPDES program, and a state association. Several of the comments recommended that the listed BMP guidance documents be replaced by a general reference to the website where updated BMP guidance documents are contained to ensure that the most current BMP guidance is provided. One commenter also felt that listing some but not all documents in the note could imply that the included documents are preferred by the EPA, when others may be just or more appropriate for use by states. While the EPA agrees that the list of documents is not exhaustive, the Agency has maintained the list of existing guidance document titles and associated EPA publication numbers because it will save permitting authorities, regulated entities, and the public time when they seek these documents by using the EPA National Service Center for Environmental Publications (NSCEP) website (<https://www.epa.gov/nscep>). Additionally, existing text in the Note to 40 CFR 122.44(k)(4) makes clear that updates to the listed documents may also be available and all guidance documents are available to the public through the NSCEP website.

## *B. Revisions to Part 124*

### 1. Public Notice Requirements (40 CFR 124.10(c))

The CWA requires that a “copy of each permit application and each permit issued [under 402 of the Act] shall be available to the public” (33 U.S.C. 1342(j)). The CWA also requires that notice be provided to the public, as well as any other state whose waters may be affected, of each NPDES permit application and that an opportunity be provided for a public hearing before ruling on each permit application. 33 U.S.C. 1342(a)(2) and (b)(3). The EPA is finalizing 40 CFR 124.10(c)(2)(iv) to allow permitting authorities to provide public notice of permitting actions for NPDES major individual and general permits on the permitting authority's publicly available website in lieu of the newspaper publication requirement in 40 CFR 124.10(c)(2)(i). In addition, the EPA is finalizing the requirement to post the draft permit and fact sheet on the permitting authority's publicly available website for the duration of the public comment period where the permitting authority chooses to use online public notice for a draft permit. However, the EPA is not finalizing the proposed requirement for a permitting authority that chooses the option to use website public notice to additionally post the final permit, fact sheet and response to comments on the website for the entire term of the permit. The final rule meets the objectives of the EPA's proposal, although the EPA made some changes to the regulatory language in response to public comments and after further consideration of the Agency's policy objectives and existing regulatory language. The EPA's objectives in the proposal were to provide permitting authorities with an alternative method of providing notice of permit applications and hearings, and affirm flexibility in reaching the public through a variety of methods that would greatly expand public access to applications and draft permits. In addition to the substantive changes described in the following section, the final rule also includes editorial changes that are not substantive in nature.



Most of the public comments received on providing the option for online posting of public notice via the permitting authority's website in lieu of newspaper publication were supportive. Some comments urged the EPA to retain the option of, or require, public notice in local daily and weekly publications (e.g., newspapers), citing environmental justice (EJ) concerns, lack of access to the Internet for certain populations and communities who do not use the Internet for religious or other reasons (e.g., Amish, Mennonite, and Hutterite) as the need for public notice in printed publications. While some comments suggested that only members of the public already aware of where to seek information about permits would have easy access to the public notice and permit documents, many comments also stated that allowing public notice online in lieu of printed publications would result in notice to the broadest possible audience as well as modernize public notice options and potentially allow the permitting authority to save time and money. After consideration of these comments, the EPA is finalizing the option for online public notice for the NPDES actions described in 40 CFR 124.10(a)(1), as well as the regulatory note reminding the permitting authority to ensure that the method(s) of public notice used effectively informs all interested communities and allows access to the permitting process for those seeking to participate. The EPA expects that this would include newspaper notices in areas that continue to be best served by printed publications with NPDES-regulated entities owned or operated by identifiable populations (e.g., Amish, Mennonite, and Hutterite) who do not use certain technologies (e.g., computers or electricity) and areas known or likely to include members of identifiable populations who do not have access to or use certain technologies. The EPA also expects that this would include newspaper notices in areas known or likely to have limited broadband Internet access, areas with underserved or economically disadvantaged communities, areas with prolonged electrical system outages, and during large-scale disasters

(e.g., hurricanes).

As noted in the preamble to the Proposed Rule,<sup>15</sup> the EPA has carefully evaluated the potential effect of this revision on underserved communities with EJ concerns. In formulating the proposal, the EPA consulted a study conducted by Native Public Media that found that the primary source for national and international news among Native American tribes is the Internet.<sup>16</sup> Newspapers were listed as only the third most commonly used source for news. The EPA also consulted the final National Environmental Justice Advisory Council (NEJAC), EJ in Permitting Subgroup Report.<sup>17</sup> The report states that “[n]otification of the public by publishing in the legal section of regional newspapers is antiquated and ineffective. This method should not be counted on to communicate, even if legally required.”<sup>18</sup> The NEJAC specifically listed website postings as a method to ensure meaningful public participation. Given, among other things, the wide availability of the Internet and based on the EJ in Permitting Subgroup Report’s results, the EPA concludes that notice via the Internet would be a viable and effective method of informing the public of the NPDES actions listed in 40 CFR 124.10(a)(1). Mandating publication of public notice in newspapers in all cases was appropriate when 40 CFR 124.10(c)(2)(i) was promulgated in 1982, 12 years before the Internet became widely available for public and commercial use. Now, however, websites, along with tailored methods to ensure they are consulted, are often more appropriate avenues for widely disseminating information to the public, and many states currently supplement the required newspaper publication by posting NPDES actions on their websites.

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<sup>15</sup> 81 FR 31359 (May 18, 2016).

<sup>16</sup> Morris, Traci L, and Sascha D. Meinrath. “New Media, Technology and Internet Use in Indian Country” Native Public Media, available at [http://www.atalm.org/sites/default/files/NPM-NAF\\_New\\_Media\\_Study\\_2009\\_small.pdf](http://www.atalm.org/sites/default/files/NPM-NAF_New_Media_Study_2009_small.pdf).

<sup>17</sup> See, “Enhancing Environmental Justice in EPA Permitting Program.” National Environmental Justice Advisory Council. April 2011, available at <https://www.epa.gov/sites/production/files/2015-02/documents/ej-in-permitting-report-2011.pdf>.

<sup>18</sup> *Id.*, p.20.

Further, the purpose of this revision is to provide permitting authorities with flexibility in reaching their public in a way that is most effective for their communities (e.g., newspaper publication, Internet notice, or a combination of these methods). Although neither the CWA nor its implementing regulations specify the best or preferred method for providing notice to the public, 40 CFR 25.3(c)(7) specifically emphasizes that agencies should “use all feasible means to create opportunities for public participation, and to stimulate and support participation.” Additionally, 40 CFR 124.10(c)(4) states that public notice of NPDES actions listed in 40 CFR 124.10(a)(1) *shall* be given by “[a]ny other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.” Therefore, permitting authorities are required to consider the appropriate method or methods to best inform and engage with their public.

Permitting authorities continue to have the option to publish public notices in local daily and weekly newspaper publications. The EPA’s decision to allow an option for online public notice does not alter the existing requirements of 40 CFR 124.10(c)(2)(i) if a permitting authority chooses to continue the traditional method of providing notice of an NPDES permit action in a newspaper publication. To ensure all interested parties are aware of permitting authorities’ intended method(s) of public notification, the EPA expects permitting authorities to make their public aware of whether public notices will be made available online, both online and in local newspapers, or solely in local newspaper publications. In addition, the EPA’s decision to allow an option for online public notice does not in any way affect the requirements of 40 CFR 124.10(c)(1) which require that a copy of the notice must be mailed directly to persons who have joined the appropriate mailing list. 40 CFR 124.10(c)(1)(ix)(C) requires notification of the public

of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. In addition, permitting authorities could clearly advertise on the website or in print the ability to sign up for notifications of draft permits via paper mail or email to ensure that all interested parties are aware of and receive effective notification of permitting actions. Further, the EPA's revisions to the public notice requirements for certain enumerated actions in 40 CFR 124.10 do not affect the notice requirements for "issuance" of final permit decisions, and the EPA is in no way suggesting that Internet posting fulfills the separate final permit decision notice requirements of 40 CFR 124.15.

Public comments received on the proposed requirement to post permit documentation (e.g., final permit, fact sheet, response to comments) online for the term of the permit were mixed. Opposing comments suggested that maintaining permit documentation online for the duration of the permit term would further strain the limited resources of permitting authorities, especially related to creating and maintaining a website and increasing server storage for archived materials. Some comments suggested that these related capital and operating costs would exceed any cost savings from foregoing printing the public notice in local newspaper publications. The EPA is aware of state and EPA permitting authorities that already post final permits and fact sheets on their websites for the duration of the permit. The EPA supports and encourages the continuation of this additional transparency; however, based on the comments received from permitting authorities concerned with the most effective use of their resources, the Agency is not finalizing the requirement to maintain the permit documentation on the website for the term of the permit. Instead, where the permitting authority opts for online public notice of a draft permit,

as defined in 40 CFR 122.2,<sup>19</sup> the draft permit and fact sheet must be posted on the permitting authority's website for the duration of the public comment period, when the public's need for timely access to permitting documents is the greatest. This posting is in addition to meeting the existing requirements in 40 CFR 124.10(d), which outline the required contents of public notices for all NPDES actions described in 40 CFR 124.10(a)(1). This additional requirement for posting draft permits and fact sheets will ensure that interested members of the public are not only aware of the information contained in the public notice document, but are able to view the contents of the draft permit and fact sheet online, as well. Typically, permitting authorities provide copies of final permits upon request.

To be clear, online public notice is an option for all NPDES actions described in 40 CFR 124.10(a)(1), which includes more than draft permits. However, for the NPDES actions described in 40 CFR 124.10(a)(1) other than draft permits, there would not be a draft permit or fact sheet to post on the permitting authority's publicly available website for the duration of the public comment period. Therefore, the EPA is specifying in the final rule that the requirement to post the draft permit and fact sheet on the website for the duration of the public comment period applies only for public notice of draft permits as defined in 122.2. The EPA expects permitting authorities using the option for online public notices to publish the information in a prominent, clear, and easily accessible location on their public website. The EPA notes that in meeting the requirement to make the draft permit and fact sheet available for the duration of the public comment period, the permitting authority's website must clearly include a link to access these documents, while the actual document could be hosted elsewhere, such as in a repository of

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<sup>19</sup> Draft permit means a document prepared under 40 CFR 124.6 indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in 40 CFR 124.5, are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination, as discussed in 40 CFR 124.5, is not a "draft permit." A "proposed permit" is not a "draft permit."

permit documents.

In the Proposed Rule, the EPA also requested comments on, but did not propose specific regulatory text for, three additional topics related to the public notice regulations: 1) revising 40 CFR 124.10(c) to *require* NPDES permitting authorities to public notice all NPDES permits and hearings on the permitting authority's publicly available website; 2) whether proposed revisions to public notice requirements in 40 CFR 124.10(c) should be expanded to include NPDES non-major individual and general permits; and 3) ways in which NPDES permits and fact sheets could be posted electronically to make it easier for the Agency's Enforcement and Compliance History Online (ECHO) information system to link to the permit fact sheets. The comments received on these three additional topics generally expressed confusion or requested clarification about what the EPA intended. Based on these comments, the EPA has decided not to make changes to the public notice regulations to address these issues at this time.

The EPA's decision to allow public notice of permitting actions for NPDES major individual and general permits on the permitting authority's publicly available website, in lieu of the newspaper publication requirement, increases transparency and promotes opportunities for public involvement. It also preserves states' flexibility to notice in a way that best ensures their public will be given a meaningful opportunity to participate in the NPDES permitting process. While mandating public notice of permitting activities in newspapers was appropriate when 40 CFR 124.10(c)(2)(i) was promulgated in 1982, the EPA recognizes that websites, along with other tailored means for ensuring the public consults the website, are often more appropriate avenues for widely disseminating information to the public.

### *C. Revisions to Part 125*

#### 1. Deletion of 40 CFR 125.3(a)(1)(ii))

The EPA is finalizing, as proposed, the deletion of 40 CFR 125.3(a)(1)(ii) to remove an outdated regulation that is no longer applicable. The regulation was derived from statutory authority that was repealed in 1981. The removal of this provision from the regulations will avoid confusion regarding its applicability.

### **III. Rule Revisions Not Finalized in this Action**

The EPA is not finalizing the proposed changes to 40 CFR 122.3(a) due to the recent enactment of the Vessel Incidental Discharge Act, which exempts discharges incidental to the normal operations of a vessel from NPDES permitting requirements consistent with the existing regulatory language at 40 CFR 122.3(a).

In addition, the EPA received numerous comments on proposed revisions to the following eleven regulatory sections. The Agency requires additional time to analyze these comments and deliberate on appropriate next steps and thus is not taking final action on the proposed revisions to these at this time. The EPA has not made any final substantive decisions with respect to the proposed revisions to these sections.

At this time, the EPA is deferring final action on the proposed revisions to:

1. Definition of Proposed Permit (40 CFR 122.2)
2. Definition of Whole Effluent Toxicity (WET) (40 CFR 122.2)
3. Application Requirements - Latitude and Longitude (40 CFR 122.21(f)(2); (g)(1); (h)(1); (i)(1)(iii); (j)(1)(i); (j)(3)(i)(C); (j)(8)(ii)(A)(3); (k)(1); (q)(1)(i); (q)(8)(ii)(A); (q)(9)(iii)(B); (q)(10)(iii)(B); (q)(11)(iii)(B); (q)(12)(i); (r)(3)(ii))
4. Reasonable Potential Determinations for New Discharges (40 CFR 122.44(d))
5. Dilution Allowances (40 CFR 122.44(d))
6. Antidegradation Reference (40 CFR 122.44(d))

7. Anti-backsliding (40 CFR 122.44(l))
8. Design Flows for POTWs (40 CFR 122.45(b))
9. Objection to Administratively Continued Permits (40 CFR 123.44)
10. CWA Section 401 Certification Process (40 CFR 124.55(b))
11. Fact Sheet Requirements (40 CFR 124.56)

#### **IV. Impacts**

This final rule involves minor, mostly clarifying revisions to the NPDES regulations. It is the EPA's view that many of these revisions will generally not result in new or increased impacts or information collection by authorized states or the regulated community. It is also the EPA's view that in some cases, the revisions finalized in this action, including deleting outdated information, modernizing public notice options, and clarifying requirements, will reduce burden. As the EPA modifies the NPDES application forms to conform with the regulatory changes in this rule, it is also modernizing the instructions and format of the application forms. As discussed below, the changes to the instructions and format of the application forms will also reduce burdens. A summary of the impacts assessment is provided in this section for each topic.

##### *Purpose and Scope of the NPDES Program (40 CFR 122.1)*

The revision to this note is being made to inform the public of ways to contact the NPDES program and will not result in changes to the existing program or program requirements. The note in the past regulation contained an outdated address and telephone number for the EPA's Office of Water. Providing updated information will save the permitting authorities and the public time when they seek to contact the EPA about these regulations.

##### *NPDES Program Definitions: Pesticide Discharges to Waters of the United States from Pesticide Application, Pesticide Residue, and New Discharger (40 CFR 122.2)*



The final revisions to the NPDES program definitions at 40 CFR 122.2 for “pesticide discharges to waters of the United States from pesticide application,” “pesticide residue,” and “new discharger” will not result in a change to the burden associated with this information collection. These revisions are being made to improve programmatic clarity and would not result in substantive changes to the existing program or program requirements.

Adding definitions for “pesticide discharges to waters of the United States from pesticide application” and “pesticide residue” brings the NPDES definitions in concert with the way the EPA’s Pesticide General Permit has been interpreting and regulating such applications since 2011. These definitions would not change burden and would not change the universe of permittees and activities that the Pesticide General Permit covers.

The EPA is correcting a typographical error in paragraph (d) of the definition “New discharger” by correcting “NDPES” to “NPDES.”

#### *Application Requirements (40 CFR 122.21)*

The final revisions to 40 CFR 122.21 related to application requirements together with the modifications to the instructions and format of the existing application forms would result in a reduction in burden. In fact, the EPA estimates that the changes to various application requirements will result in a total reduction to permittees and permitting authorities of 17,912 hours and \$1,023,042 in costs per year. These savings estimates consist of both specific changes to the information being collected on forms and general efforts to reformat forms for increased clarity. For more details, please refer to section 12 of the ICR Supporting Statement in the docket of this rule (Docket ID No. EPA-HQ-OW-2016-0145) and the docket associated with this rule’s ICR (Docket ID EPA-HQ-OW-2018-0629).

#### *Changes to Information Previously Collected by the EPA*

The EPA is revising several data fields to refine the content and improve the consistency among the forms, to improve the consistency with the Agency's current data standards, and improve the clarity and usability of the forms. For example, for every question where it is applicable, the revised forms direct the applicant to "stop" or "skip" to the next appropriate question depending on the applicant's response. As another example, the revisions to Form 2A create a consistent format with the other forms by reformatting the previous sections A, B, and C into six major sections with detailed instructions. Further, instructions are provided for Form 2B for the very first time.

Revisions to the instructions and format of the application forms will make them easier to use and understand and is expected to result in a decrease in effort for permittees applying for coverage. The EPA also expects that the revisions will improve the quality of information being collected, which may reduce the need for follow-up questions and data requests, and the time necessary for the permitting authority to develop a permit. The EPA expects such efforts to reformat forms for increased clarity to result in a reduction of 25,426 hours and \$1,534,937 in costs based on an estimated 20,663 responses or applications per year.

#### *New Information to be Collected by the EPA*

The estimated burden associated with the new requirement for permittees to report up to four NAICS codes on application Form 1 (40 CFR 122.21(f)(3)) is expected to result in a burden increase of 1,224 hours and \$73,893 in added costs based on an estimated 12,240 responses or applications per year. The estimated burden associated with the new requirement for permittees to provide an email address in Forms 1, 2A, 2B, and 2S (multiple locations in 40 CFR 122.21) is expected to result in a burden increase of 11,526 hours and \$695,839 in added costs based on an estimated 20,663 responses or applications per year. This increased burden is applicable to

permittees only. Permitting authorities (authorized states and the EPA) are expected to experience reduced burden associated with more efficient communication. The estimated burden associated with this new requirement for permitting authorities is a reduction of 5,005 hours and savings of \$247,235 per year for state permitting authorities based on 20,019 responses per year.

The estimated burden associated with the change in reporting requirements for permittees reporting the number of SIUs and NSCIUs (40 CFR 122.21(j)(6)(i)) is expected to result in a burden decrease of 77 hours and \$3,804 for state permitting authorities based on an estimated 306 responses or applications per year. It is not estimated to result in a change of burden for permittees.

The estimated burden associated with the revision that requires the applicant to indicate whether the facility uses cooling water and to specify the source of the cooling water (40 CFR 122.21(f)(9)) is expected to result in additional burden of 73 hours and \$4,416 for power plants and manufacturers that use cooling water, based on an estimated 293 responses or applications per year. For permitting authorities, the revision is expected to result in more efficient permitting because the permitting authority can initiate data submissions and reviews earlier in the permitting process. The EPA estimates this will result in a burden decrease of 227 hours and \$11,214 for state permitting authorities based on 227 responses or application per year.

The revision that requests an applicant to indicate whether they are seeking a technology variance (40 CFR 122.21(f)(10) and 122.21(j)) is estimated to have such a small impact due to the small number of technology variance requests made per year that this impact is assumed to be 0 hours and no change in burden. Similarly, the revision that requires new POTW dischargers to provide data for specific analytes (40 CFR 122.21(j)(4)(i) and whole effluent toxicity (40 CFR 122.21(j)(5)(i)) within 24 months of commencement of discharge is estimated to incur no

additional burden or costs. Permitting authorities typically require characterization data requirements for new dischargers in the initial NPDES permit, and the only variation made pursuant to this rule is the timeframe (24 months) for collecting and reporting the data.

*Best Management Practices (BMPs) (40 CFR 122.44(k)(4))*

The revision to this note is being made to ensure the public is aware of the most current BMP guidance because the note in the past regulation contained outdated references to information sources that are no longer available. This revision will not result in a change to the burden associated with this information collection.

*Public Notice Requirements (40 CFR 124.10(c))*

The EPA is finalizing 40 CFR 124.10(c)(2)(iv) to allow permitting authorities to provide public notice of permitting actions for NPDES major individual and general permits on the permitting authority's publicly available website in lieu of the newspaper publication requirement in 40 CFR 124.10(c)(2)(i). In addition, where the permitting authority chooses to use online public notice for a draft permit, the EPA is finalizing the requirement to post the draft permit and fact sheet on the permitting authority's publicly available website for the duration of the public comment period. However, the EPA is not finalizing the proposed requirement for a permitting authority that chooses the option to use website public notice to additionally post all final permits, fact sheets, and response to comments on the website for the entire term of the permit. The purpose of this revision is to provide the permitting authority with an alternative method of providing notice of permit applications and hearings and provide flexibility to reach communities in a variety of methods. It is the EPA's understanding that the traditional approach to newspaper publication has become costly for permitting authorities to implement. The EPA's final revisions intend to alleviate those costs by allowing the permitting authority to use its

publicly available website as an alternative to the traditional newspaper publication.

At the time of the proposed rulemaking, the EPA estimated the cost of public notice of draft permits in newspapers for NPDES major facilities, sewage sludge facilities and general permits to be approximately \$1.6 million per year, nationally.<sup>20</sup> This estimate excluded the costs of preparing the content of the NPDES public notice, and the costs of the other methods to provide notice besides newspaper publication, such as direct mailing. Based on information provided in the public comments received on the proposed rulemaking, the cost to post a public notice online was estimated to be \$113 per notice; whereas the cost to post a public notice in a newspaper was estimated to be \$1,416 per notice.<sup>21</sup> The EPA estimates that issuance of public notice via website in lieu of newspaper results in a burden reduction of \$1,303 per NPDES action (a total reduction of \$1,419,673 per year).<sup>22</sup> The rule allows but does not require state and federal permitting authorities to use electronic public notice instead of newspaper publication. In developing burden estimates, the EPA assumed that states and the EPA would continue to publish at least some notifications in newspapers, and therefore the burden associated with public notice would not be reduced in those instances.

*Deletion of 40 CFR 125.3(a)(1)(ii)*

The deletion of 40 CFR 125.3 (a)(1)(ii) from the NPDES regulations will not result in change to the burden associated with this requirement. By deleting this outdated provision, the EPA clarifies that this provision no longer applies to regulated entities.

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<sup>20</sup> In the preamble to the proposed rulemaking, the EPA used \$1,000 (in 2010\$) as the publication cost for a public notice in a newspaper and assumed that there are 1,600 NPDES permit actions that require public notice via newspaper publication each year; thus, we arrive at the \$1.6 million per year estimate. (81 FR 31366, May 18, 2016).

<sup>21</sup> See the EPA's ICR No. 0229.23, Animal Sector public notice burden estimates, adjusted for inflation using [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm).

<sup>22</sup> The EPA based these estimates on authorized states providing public notice for 1,049 individual permits online per year, and the EPA providing public notice for 41 general permits online per year at a savings of \$1,303 per notice. This is estimated to result in savings of \$-1,366,847 and \$-52,826 for states and the EPA, respectively.

## **V. Compliance Dates**

With this final action, authorized states, territories, and tribes have up to one year to revise, as necessary, their NPDES regulations to adopt the requirements of this rule, or two years if statutory changes are needed, as provided at 40 CFR 123.62. At a minimum, the EPA anticipates any permitting authority using state-developed NPDES application forms would need to update their regulations and application forms, as needed, in order to be in compliance with the application requirements finalized in this rulemaking.

The EPA recognizes that each authorized program has unique state statutes and regulations, and that many of the revisions finalized in this rule are clarifying in nature. As a result, the EPA anticipates that in most instances, the program revisions that will be occurring to conform to this rule will be nonsubstantial, as contemplated in 40 CFR 123.62. For those instances where the EPA determines that an authorized program's conforming program revision is substantial, the process outlined in 40 CFR 123.62(b)(2) will be followed. In addition, authorized programs may have to update their NPDES program documents (e.g., program description, Attorney General statement) to reflect these revisions, whether they are substantial or nonsubstantial. See 40 CFR 123.62(b)(1).

## **VI. Statutory and Executive Order Reviews**

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any revisions made in response to interagency review have been documented in the docket for this action.

### *B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this final rule can be found in the rule's economic analysis.

### *C. Paperwork Reduction Act (PRA)*

The information collection activities in this rule has been submitted for approval to the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2575.01. It will be assigned an OMB control number upon approval by OMB. You can find a copy of the ICR submitted to OMB in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable – and EPA cannot collect any information set out in the ICR - until OMB approves them. In addition, the EPA will post a copy of the final ICR to the docket for this rule upon approval by OMB.

CWA section 402 and the NPDES regulations require collection of information primarily used by permitting authorities, permittees, and the EPA to make NPDES permitting decisions. The burden and costs associated with the entire NPDES program are accounted in an approved ICR (EPA ICR number 0229.23, OMB control no. 2040-0004). This final rule and the corresponding updated application forms require revisions to the ICR to reflect changes to the forms and other information collection requirements. EPA is reflecting the paperwork burden and costs associated with this rule in a separate ICR instead of revising the existing ICR for the entire program for administrative reasons. Eventually, EPA plans to consolidate the burden and costs in this ICR into that master ICR for the entire NPDES program and discontinue this separate collection. EPA expects the changes set out in this final rule along with changes to the instructions and format of the NPDES permit applications to result in an overall burden decrease to permitting authorities and the regulated community of approximately \$2,389,889 and 17,912

hours annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the Federal Register and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

#### *D. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden, or otherwise has a positive economic effect on the small entities subject to the rule. This rule eliminates inconsistencies between regulations and application forms, streamlines and updates application forms, provides clarification to existing regulations, deletes outdated regulatory provisions, updates Agency contact information, and provides for new programmatic flexibility in providing public notice on NPDES permitting actions. We have therefore concluded that this action would have no net regulatory burden for directly regulated small entities.

#### *E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. This final rule eliminates inconsistencies between regulations and application forms, streamlines



and updates application forms, provides clarification to existing regulations, deletes outdated regulatory provisions, updates Agency contact information, and provides for new programmatic flexibility in providing public notice on NPDES permitting actions. This final rule does not impose significant burden on the EPA, states, or the regulated community, or specifically, any significant burden on any small entity. With respect to any impacts on any authorized state programs, the costs involved in this action are imposed only by participation in a voluntary federal program. UMRA generally excludes from the definition of “federal intergovernmental mandate” duties that arise from participation in a voluntary federal program. Thus, this final rule is not subject to the requirements of section 202 and 205 of the UMRA. For the same reason, the EPA has determined that this rule contains no regulatory requirements that will significantly affect small governments. Thus, this final rule is not subject to the requirements of section 203 of UMRA.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This final rule does not have tribal implications, as specified in Executive Order 13175. The EPA considered the impacts on tribes, and concluded that there would be no substantial direct compliance costs or impact on tribes. Because the purpose of the final rule is to eliminate inconsistencies between regulations and application forms, streamline and update application forms, provide clarification to existing regulations, delete outdated regulatory provisions, update Agency contact information, and provide for new programmatic flexibility in providing public

notice on NPDES permitting actions, it will not have substantial direct effects on: tribal governments; the relationship between the federal government and Indian tribes; or the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Executive Order 13175 does not apply to this action and the EPA determined that tribal consultation was not necessary for this action.

*H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because these changes to procedural requirements and forms do not address environmental health risk or safety risks.

*I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not a “significant energy action” because it does not have a significant adverse effect on the supply, distribution or use of energy. This final rule eliminates inconsistencies between regulations and application forms, provides clarifications to existing regulations, deletes outdated provisions, and provides for new programmatic flexibility in providing public notice on NPDES permitting actions.

*J. National Technology Transfer and Advancement Act*

This final rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations*

The EPA has determined that the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This final rule eliminates inconsistencies between regulations and application forms, provides clarifications to existing regulations, deletes outdated provisions, and provides for new programmatic flexibility in providing public notice on NPDES permitting actions.

In addition, the EPA's final revision related to the option for online public notice, in lieu of newspaper publication, of NPDES actions considered potential effects on environmental justice communities. The final rule includes a regulatory note reminding the permitting authority to ensure that the method(s) of public notice used effectively informs all interested communities and allows access to the permitting process for those seeking to participate. This includes potentially utilizing newspaper notices in areas that continue to be best served by printed publications, such as in areas known or likely to have limited broadband Internet access, areas with underserved or economically disadvantaged communities, areas with prolonged electrical system outages, and during large-scale disasters (e.g., hurricanes).

*L. Congressional Review Act (CRA)*

This action is subject to the CRA and the EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

## **List of Subjects**

### *40 CFR Part 122*

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

### *40 CFR Part 124*

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

### *40 CFR Part 124*

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

Dated: December 21, 2018.

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Andrew R. Wheeler,

Acting Administrator. Environmental Protection Agency.

For the reasons set out in the preamble, EPA amends Chapter I of Title 40 of the Code of Federal Regulations as follows:

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

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

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

**Subpart A—Definitions and General Program Requirements**

2. Section 122.1 is amended by revising “NOTE TO § 122.1” to read as follows:

**§ 122.1 Purpose and scope.**

\* \* \* \* \*

[NOTE TO § 122.1: Information concerning the NPDES program and its regulations can be obtained by contacting the Water Permits Division (4203), Office of Wastewater Management, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 and by visiting the homepage at <http://www.epa.gov/npdes/>.]

3. Section 122.2 is amended by:

- a. Revising paragraph (d) of the definition of “new discharger”; and
- b. Adding in alphabetical order definitions for “pesticide discharges to waters of the United States from pesticide application” and “pesticide residue”.

The revision and additions read as follows:

**§ 122.2 Definitions.**

\* \* \* \* \*

*New discharger* \* \* \*

- (d) Which has never received a finally effective NPDES permit for discharges at that "site."

\* \* \* \* \*

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

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

\* \* \* \* \*

#### **Subpart B—Permit Application and Special NPDES Program Requirements**

4. Section 122.21 is amended by:

- a. Revising paragraphs (a)(2)(i) introductory text and (a)(2)(i)(A), (c)(2)(ii)(B), (f) introductory text, and (f)(3) and (4);
- b. Adding paragraphs (f)(9) and (10);
- c. Revising paragraph (g) introductory text;
- d. Adding paragraph (g)(7)(ix);
- e. Revising paragraphs (j)(1)(ii) and (j)(1)(viii)(D)(2) and (3);
- f. Adding paragraph (j)(1)(ix); and

g. Revising paragraphs (j)(4)(i), (j)(5)(i), (j)(6)(i), (j)(9), (k) introductory text, (k)(5)(vi), (q)(2)(i), (q)(8)(vi) introductory text, (q)(8)(vi)(A), (q)(9)(iii)(D) and (E), (q)(9)(iv)(A), (q)(10)(ii)(A), (q)(10)(iii)(K)(I), (q)(11)(ii)(A), (q)(12)(i), and (q)(13).

The revisions and additions read as follows:

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

(a) \* \* \*

(2) \* \* \*

(i) All applicants for EPA-issued permits must submit applications on EPA permit application forms. More than one application form may be required from a facility depending on the number and types of discharges or outfalls found there. Application forms may be obtained by contacting: U.S. EPA, Mail Code 4203M, 1200 Pennsylvania Ave. NW., Washington, DC 20460 or by visiting <http://www.epa.gov/npdes>. Applications for EPA-issued permits must be submitted as follows:

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

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) \* \* \*

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

\* \* \* \* \*



(f) *Information requirements.* All applicants for NPDES permits, other than POTWs and other TWTDS, vessels, and pesticide applicators, must provide the information in paragraphs (f)(1) through (10) of this section to the Director, using the application form provided by the Director. Additional information required of applicants is set forth in paragraphs (g) through (k) and (q) through (r) of this section.

\* \* \* \* \*

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

(4) The operator's name, address, telephone number, electronic mail address, ownership status, and status as Federal, State, private, public, or other entity.

\* \* \* \* \*

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

(10) An indication of whether the facility is requesting any of the variances at 40 CFR 122.21(m), if known at the time of application.

(g) *Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.* Existing manufacturing, commercial, mining, and silvicultural dischargers applying for NPDES permits, except for those facilities subject to the requirements of § 122.21(h), shall provide the following information to the Director, using application forms provided by the Director.

\* \* \* \* \*

(7) \* \* \*

(ix) Where quantitative data are required in paragraphs (g)(7)(i) through (viii) of this section, existing data may be used, if available, in lieu of sampling done solely for the purpose of the

application, provided that: all data requirements are met; sampling was performed, collected, and analyzed no more than four and one-half years prior to submission; all data are representative of the discharge; and all available representative data are considered in the values reported.

\* \* \* \* \*

(j) \* \* \*

(1) \* \* \*

(ii) *Applicant information.* Name, mailing address, telephone number, and electronic mail address of the applicant, and indication as to whether the applicant is the facility's owner, operator, or both;

\* \* \* \* \*

(viii) \* \* \*

(D) \* \* \*

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

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

\* \* \* \* \*

(ix) An indication of whether applicant is operating under or requesting to operate under a variance as specified at 40 CFR 122.21(n), if known at the time of application.

\* \* \* \* \*

(4) \* \* \*

(i) As provided in paragraphs (j)(4)(ii) through (x) of this section, all applicants must submit to the Director effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the United States, except for CSOs. The Director may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The Director may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone. For POTWs applying prior to commencement of discharge, data shall be submitted no later than 24 months after the commencement of discharge;

\* \* \* \* \*

(5) \* \* \*

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

\* \* \* \* \*

(6) \* \* \*

(i) Number of significant industrial users (SIUs) and non-significant categorical industrial users (NSCIUs), as defined at 40 CFR 403.3(v), including SIUs and NSCIUs that truck or haul waste, discharging to the POTW; and

\* \* \* \* \*

(9) *Contractors.* All applicants must provide the name, mailing address, telephone number, electronic mail address and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility; and

\* \* \* \* \*

(k) *Application requirements for new sources and new discharges.* New manufacturing, commercial, mining and silvicultural dischargers applying for NPDES permits (except for new discharges of facilities subject to the requirements of paragraph (h) of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of § 122.26(c)(1) and this section (except as provided by § 122.26(c)(1)(ii)) shall provide the following information to the Director, using the application forms provided by the Director:

\* \* \* \* \*

(5) \* \* \*

(vi) No later than 24 months after the commencement of discharge from the proposed facility, the applicant is required to complete and submit items V and VI of NPDES application Form 2C (see § 122.21(g)). However, the applicant need not complete those portions of Item V requiring tests which have already been performed and reported under the discharge monitoring requirements of the NPDES permit.

\* \* \* \* \*

(q) \* \* \*

(2) \* \* \*

(i) The name, mailing address, telephone number, and electronic mail address of the applicant; and

\* \* \* \* \*

(8) \* \* \*

(vi) If sewage sludge from the applicant's facility is provided to another "person who prepares," as defined at 40 CFR 503.9(r), and the sewage sludge is not subject to paragraph (q)(8)(iv) of this section, the applicant must provide the following information for each facility receiving the sewage sludge:

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

\* \* \* \* \*

(9) \* \* \*

(iii) \* \* \*

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

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

\* \* \* \* \*

(iv) \* \* \*

(A) Whether the applicant has contacted the permitting authority in the State where the bulk sewage sludge subject to §503.13(b)(2) will be applied, to ascertain whether bulk sewage sludge subject to §503.13(b)(2) has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name, phone number, and electronic mail address if available, of a contact person at the permitting authority;

\* \* \* \* \*

(10) \* \* \*

(ii) \* \* \*

(A) The site name or number, contact person, mailing address, telephone number, and electronic mail address for the surface disposal site; and

\* \* \* \* \*

(iii) \* \* \*

(K) \* \* \*

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

\* \* \* \* \*

(11) \* \* \*

(ii) \* \* \*

(A) The name and/or number, contact person, mailing address, telephone number, and electronic mail address of the sewage sludge incinerator; and

\* \* \* \* \*

(12) \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

**Subpart C—Permit Conditions**

5. Section 122.44 is amended by revising the “Note to paragraph (k)(4)” read as follows:

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

\* \* \* \* \*

(k) \* \* \*

(4) \* \* \*

**NOTE TO PARAGRAPH (K)(4):** Additional technical information on BMPs and the elements of BMPs is contained in the following documents: Guidance Manual for Developing Best Management Practices (BMPs), October 1993, EPA No. 833/B-93-004, NTIS No. PB 94-178324, ERIC No. W498); Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices, September 1992, EPA No. 832/R-92-005, NTIS No. PB 92-235951, ERIC No. N482); Storm Water Management for Construction Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA No. 833/R-92-001, NTIS No. PB 93-223550; ERIC No. W139; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices, September 1992; EPA 832/R-92-006, NTIS No. PB 92-235969, ERIC No. N477; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA 833/R-92-002, NTIS No. PB 94-133782; ERIC No. W492. These and other EPA guidance documents can be obtained through the National Service Center for Environmental Publications (NSCEP) at <http://www.epa.gov/nscep>. In addition, States may have BMP guidance documents.

These EPA guidance documents are listed here only for informational purposes; they are not

binding and EPA does not intend that these guidance documents have any mandatory, regulatory effect by virtue of their listing in this note.

\* \* \* \* \*

## **PART 124—PROCEDURES FOR DECISIONMAKING**

6. The authority citation for part 124 continues to read as follows:

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

### **Subpart A—General Program Requirements**

7. Section 124.10 is amended by revising (c) introductory text and adding paragraph (c)(2)(iv) to read as follows:

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

\* \* \* \* \*

(c) Methods (applicable to State programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)). Public notice of activities described in paragraph (a)(1) of this section shall be given by the following methods:

\* \* \* \* \*

(2) \* \* \*

(iv) For NPDES major permits and NPDES general permits, in lieu of the requirement for publication of a notice in a daily or weekly newspaper, as described in paragraph (c)(2)(i) of this section, the Director may publish all notices of activities described in paragraph (a)(1) of this section to the permitting authority's public website. If the Director selects this option for a draft permit, as defined in § 122.2, in addition to meeting the requirements in paragraph (d) of this



section, the Director must post the draft permit and fact sheet on the website for the duration of the public comment period.

**Note to paragraph (c)(2)(iv):** The Director is encouraged to ensure that the method(s) of public notice effectively informs all interested communities and allows access to the permitting process for those seeking to participate.

\* \* \* \* \*

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

8. The authority citation for part 125 continues to read as follows:

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

**Subpart A—Criteria and Standards for Imposing Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Act**

**§125.3 [Amended]**

9. Section 125.3 is amended by removing and reserving paragraph (a)(1)(ii).

[FR Doc. 2019-01339 Filed: 2/11/2019 8:45 am; Publication Date: 2/12/2019]