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SUBCHAPTER 5. TECHNICAL REQUIREMENTS FOR AMBIENT STUDIES FOR DSW PERMITS

(Reserved.)

SUBCHAPTER 11. PROCEDURES AND CONDITIONS APPLICABLE TO NJPDES-DSW PERMITS

7:14A-11.1 Purpose and scope

(a) This subchapter sets forth specific conditions and procedures which are applicable only to DSW permits.

(b) The DSW program requires permits for the discharge of pollutants into surface waters of the State from any point source, stormwater discharge associated with industrial activity, and nonpoint sources regulated under N.J.A.C. 7:14A-2.5(d).

7:14A-11.2 Establishing DSW permit conditions

(a) In addition to the conditions established under N.J.A.C. 7:14A-6.3, the Department shall include in DSW permits one or more conditions which meet the following requirements, as applicable:

1. Pollutants for which the permittee is required to report noncompliance with an effluent limitation in accordance with N.J.A.C. 7:14A-6.10(a)1 shall be identified and listed in the permit. This list shall include any toxic pollutant or hazardous substance or another appropriate indicator specifically identified as the method to control a toxic pollutant or hazardous substance;
2. In addition to the monitoring requirements contained in N.J.A.C. 7:14A-6.5, to assure compliance with permit limitations, a permittee shall be required to monitor:
 - i. The mass, or other measurement specified in the permit, for each pollutant limited in the permit;
 - ii. The volume of effluent discharged from each outfall;
 - iii. Other measurements as appropriate, including pollutants in internal waste streams addressed at N.J.A.C. 7:14A-13.16(a), pollutants in intake water for net limitations addressed at N.J.A.C. 7:14A-13.4(k); parameters for noncontinuous discharges addressed at N.J.A.C. 7:14A-13.20; pollutants subject to notification requirements at N.J.A.C. 7:14A-11.3(a); and pollutants in sewage sludge, or other monitoring as specified in 40 C.F.R. 503 or as determined to be necessary on a case-by-case basis pursuant to section 405(d)(4) of the CWA; and
 - iv. In accordance with the test procedures under 40 C.F.R. 136 for the analyses of pollutants having approved methods (unless other test procedures have been specified in the permit), or according to a test procedure specified in the permit for pollutants with no approved methods pursuant to N.J.A.C. 7:14A-6.5(a)2. If more than one method exists for analyzing a pollutant and the Department specifies a

particular method in the permit, the Department shall provide the basis for selecting the particular method in the fact sheet for the draft permit in accordance with N.J.A.C. 7:14A-15.8;

3. For stormwater discharges associated with industrial activity that are not subject to an effluent limitation guideline, monitoring requirements shall be established on a case-by-case basis depending upon the nature and effect of the discharge. The permittee shall be required to monitor such discharges in accordance with (a)2 above, or, at a minimum:
 - i. The permittee shall be required to conduct an annual inspection of the facility to identify areas contributing to a stormwater discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;
 - ii. The permittee shall be required to prepare a report summarizing the result of the annual inspection conducted under (a)3i above. This report shall be accompanied by an annual certification that the facility is in compliance with its stormwater pollution prevention plan and the permit, except that if there are any incidents of non-compliance, those incidents shall be identified in the certification. If there are incidents of non-compliance, the report shall identify the steps being taken to remedy the non-compliance and to prevent such incidents from recurring. The permittee shall maintain this report and certification for a period of at least five years from the date of the report. This period may be extended by written request from the Department at any time; and
 - iii. Such report and certification shall be signed by a person described in N.J.A.C. 7:14A-4.9;
4. Permittees that are not required to submit monitoring reports at least annually pursuant to (a)3 above shall be required to report to the Department at least annually all instances of non-compliance not reported under N.J.A.C. 7:14A-6.7, 6.8 and 6.10;
5. For facilities that may operate at certain times as a means of transportation over water, the permit shall contain a condition that the discharge shall comply with any applicable regulations established for safe transportation, handling, carriage, and storage of pollutants as promulgated by the Secretary of the Department within which the Coast Guard is operating; and/or
6. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage shall not be substantially impaired, in accordance with N.J.A.C. 7:14A-11.4.

7:14A-11.3 Additional requirements for all existing manufacturing, commercial, mining, silviculture, and research facilities

(a) The following condition, in addition to those set forth in N.J.A.C. 7:14A-11.2 and the general conditions applicable to all permits in N.J.A.C. 7:14A-6.2, applies to all DSW permits for the facilities specified below:

1. In addition to the reporting requirements under N.J.A.C. 7:14A-6.5 and 6.10, all existing manufacturing, commercial, mining, and silvicultural dischargers and research facilities shall notify the Department, in writing, as soon as they know or have reason to believe:
 - i. That any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in the permit if such discharge will exceed the highest of the following notification levels:
 - (1) One hundred micrograms per liter (100 µg/L);
 - (2) Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - (3) Five times the maximum concentration value reported for the pollutant in the permit application in accordance with N.J.A.C. 7:14A-4.4(b); or
 - (4) The notification level established by the Department in accordance with N.J.A.C. 7:14A-6.2(b)2.
 - ii. With the exception of research facilities, that they have begun or expect to begin to use or manufacture as an intermediate or final product or by-product any toxic pollutant which was not reported in the permit application pursuant to N.J.A.C. 7:14A-4.3(a)19 or in the request for authorization under N.J.A.C. 7:14A-6.13(d), unless the general permit expressly refers to a "request for authorization" and does not require the request for authorization to include a listing of toxic pollutants.

7:14A-11.4 Permit denial or conditions requested by other governmental agencies

(a) If during the comment period for a draft DSW permit, the District Engineer of the Army Corps of Engineers advises the Department in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a point source DSW permit, the permit shall be denied and the applicant so notified.

(b) If the District Engineer advises the Department that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Department shall include the specified conditions in the permit.

(c) Review or appeal of a denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in this chapter. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the DSW permit for the duration of that stay.

(d) If, during the comment period, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other State or Federal Agency with jurisdiction over fish, wildlife, or public health advises the Department in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Department shall include the specified conditions in the permit to the extent they are determined necessary to carry out provisions of 40 CFR 122.49 and the State and Federal Acts.

(e) In appropriate cases the Department may consult with one or more of the agencies referred to in this section or other agencies it deems appropriate before issuing a draft permit and may reflect such agencies' views in the statement of basis, the fact sheet, or the draft permit.

7:14A-11.5 Stormwater discharges

- (a) The following concerns permit requirements for stormwater discharges:
1. Prior to October 1, 1994, discharges composed entirely of stormwater did not require a permit under Section 402 of the CWA except:
 - i. A discharge with respect to which a permit has been issued prior to February 4, 1987;
 - ii. A discharge associated with industrial activity from a point source;
 - iii. A discharge from a large municipal separate storm sewer system;
 - iv. A discharge from a medium municipal separate storm sewer system; and
 - v. A discharge which either the Director or the USEPA Regional Administrator determined to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This designation may have included a discharge from any conveyance or system of conveyances used for collecting and conveying stormwater runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under Section 402 of the CWA and (a)2 below or agricultural stormwater runoff which is exempted from the definition of point source at 40 CFR 122.2. The Director may have designated discharges from municipal separate

storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director may have considered the following factors:

- (1) The location of the discharge with respect to waters of the United States as defined at 40 CFR 122.2;
 - (2) The size of the discharge;
 - (3) The quantity and nature of the pollutants discharged to waters of the United States; and
 - (4) Other relevant factors.
2. The Director shall not require a permit under Section 402 of the CWA for discharges of stormwater runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including, but not limited to, pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.
 3. The permit requirements for large and medium municipal separate storm sewer systems, and for stormwater discharges associated with industrial activity that discharge through such systems, contained in 40 CFR 122.26(a)(3) and (a)(4) are incorporated into this chapter by reference.
 4. The Director may issue permits for municipal separate storm sewers that are designated under (a)1v above on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.
 5. For stormwater discharges associated with industrial activity which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Director shall issue either a single NJPDES permit (or a single authorization under a general NJPDES permit), with each discharger a co-permittee to a permit (or to an authorization under a general permit) issued to the operating entity for the portion of the system that discharges into waters of the United States, or individual permits (or authorizations under a general permit) to each discharger of stormwater associated with industrial activity through the non-municipal conveyance system.
 - i. All stormwater discharges associated with industrial activity that discharge through a stormwater discharge system that is not a municipal separate storm sewer shall be authorized by an individual permit (or by a single authorization under a general permit), or a permit (or authorization under a general permit) issued to the operating entity for the portion of the system that discharges to waters of the United States, with each discharger to the non-municipal

conveyance a co-permittee to that permit (or to that authorization under a general permit).

- ii. Where there is more than one operating entity for a single system of such conveyances, all operating entities for stormwater discharges associated with industrial activity shall submit applications (or requests for authorization under a general permit).
 - iii. Any permit authorizing more than one operating entity shall identify the effluent limitations, or other permit conditions, if any, that apply to each operating entity.
6. Conveyances that discharge stormwater runoff combined with municipal sewage are point sources that require NJPDES permits applied for in accordance with N.J.A.C. 7:14A-4 or N.J.A.C. 7:14A-6.13, and are not subject to the provisions of this section.
 7. Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operating entity for the discharge is eligible for funding under title II, title III or title VI of the Federal Act. See 40 CFR part 35, subpart I, appendix A(b) H.2.j.
 8. On and after October 1, 1994, discharges composed entirely of stormwater, that are not otherwise already required by (a)1 above or (a)9 below to obtain a permit, require a permit applied for under (g) below. The Director shall not require a permit under Section 402 of the CWA for discharges of stormwater as provided in (a)2 above or agricultural stormwater runoff which is exempted from the definition of point source at 40 CFR 122.2 and 122.3.
 9. A stormwater discharge associated with industrial activity from a nonpoint source shall be required to obtain a NJPDES permit pursuant to (c)1 and (e)1iii below.

(b) The following concerns requests for information about stormwater discharges associated with industrial activity:

1. The Department may, by written notice, request any person whom the Department has reason to believe may own or operate a facility with a "stormwater discharge associated with industrial activity" as defined in N.J.A.C. 7:14A-1.2 to either:
 - i. Declare to the Department that person's intent to obtain a DSW permit for a "stormwater discharge associated with industrial activity"; or
 - ii. Provide information to the Department that explains why, in that person's judgment, that person is not required to obtain, for property or operations owned or operated by that person, a DSW permit for a "stormwater discharge associated with industrial activity" as defined in N.J.A.C. 7:14A-1.2. Such information may include:

- (1) Information about the nature, source, and location of the stormwater discharge from such property or operations (for example, that all of the stormwater soaks into the ground or is discharged to a combined sewer system, or falls for some specified reason outside the definition of "stormwater discharge associated with industrial activity"); or
 - (2) Relevant information concerning that person (for example, information explaining why that person does not have a duty under N.J.A.C. 7:14A-4.2(c) to obtain a NJPDES permit).
2. A written notice under (b)1 above shall include a statement that such notice was sent pursuant to this subsection and the State Act, and that failure to respond to such notice in the manner required by this subsection is a violation of the State Act. Such notice shall also briefly explain why the Department has reason to believe that person may own or operate a facility with a "stormwater discharge associated with industrial activity" as defined in N.J.A.C. 7:14A-1.2. (For example, one sufficient reason is information indicating that the person may own or operate an establishment classified under a Standard Industrial Classification (SIC) code expressly listed in the definition of "stormwater discharge associated with industrial activity," or a landfill, steam electric power generating plant, treatment works treating domestic sewage, or construction operation that results in the disturbance of land.) Such notice may also require the person's response to be on a form provided by the Department, and to include a certification substantially equivalent to that required in a permit application under N.J.A.C. 7:14A-4.9(d).
 3. Upon receipt of a written notice under (b)1 above, the person shall provide a written response in accordance with this subsection within 60 days, unless the notice specifies a longer time period. The Department, in its discretion, may also extend the time allowed for submitting a response for good cause shown.
 4. Nothing in (b)1 through 3 above shall exempt any person from any permit application deadline under this section and N.J.A.C. 7:14A-4.2(e), or prevent the Department from making other requests for information under N.J.A.C. 7:14A-2.11 or the State Act.

(c) Permit application requirements for stormwater discharges associated with industrial activity are as follows:

1. Dischargers of stormwater associated with industrial activity from point or nonpoint sources are required to apply for an individual NJPDES permit or request authorization under a final stormwater general NJPDES permit. (This subsection does not apply to discharges of such stormwater from nonpoint sources until November 3, 1997.) Facilities that are required or seek to obtain an individual permit, or any discharge of stormwater which the Director is evaluating for designation under (a)1v above and is not a municipal separate storm sewer shall submit a NJPDES application in accordance with the requirements of N.J.A.C. 7:14A-4 as modified and supplemented by the provisions of the remainder of this subsection and (h) below. Except as

provided in (c)1ii, vi and 2 below, applicants for an individual permit for discharges composed entirely of stormwater shall submit the NJPDES-1 Form and the NJPDES-2F Form. Applicants for an individual permit for discharges composed of stormwater and non-stormwater shall submit the NJPDES-1 Form, Form 2C, and the NJPDES-2F Form.

- i. Except as provided in (c)1ii through iv, vi and 2 below, the operating entity applying for an individual permit for a stormwater discharge associated with industrial activity subject to this section shall provide the following in the permit application:
 - (1) A site map showing topography (or indicating the outline of drainage areas covered in the application if a topographic map is unavailable) of the facility, including each of its drainage and discharge structures; the drainage area of each stormwater outfall; each drainage area not served by a stormwater outfall; paved areas and buildings within each drainage area; each area used at present or in the three years prior to the submittal of this application for outdoor storage or disposal of significant materials; each existing structural control measure to reduce pollutants in stormwater runoff; materials loading and access areas; areas where pesticides, herbicides, soil conditioners and fertilizers are applied; each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive stormwater discharges from the facility;
 - (2) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total drainage area of each outfall and of each area not served by an outfall (within a mile radius of the facility) and a narrative description of the following on-site features at the facility: Significant materials that in the three years prior to the submittal of this application (see (c)1i(4) below) have been treated, stored or disposed in a manner to allow exposure to stormwater; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application (see (c)1i(4) below), to minimize contact by these materials with stormwater runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in stormwater runoff; and a description of the treatment the stormwater receives, including

the ultimate disposal of any solid or fluid wastes other than by discharge;

- (3) A certification that all outfalls (and all drainage areas not served by outfalls) that should contain stormwater discharges associated with industrial activity have been tested or evaluated for the presence of non-stormwater discharges which are not authorized by a NJPDES permit; tests for such non-stormwater discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;
- (4) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application. For purposes of the preceding sentence, significant leaks or spills at a facility generally include releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the Clean Water Act (see 40 C.F.R. 110.10 and 40 C.F.R. 117.21) or Section 302 of CERCLA (see 40 C.F.R. 302.4). (The information which (c)1i(2) above and this subparagraph requires concerning events in the three years prior to the submittal of the application shall also be provided concerning events in previous years, if the applicant has information concerning such events.);
- (5) Quantitative data based on samples collected during storm events and collected in accordance with (h) below from all outfalls (and all drainage areas not served by outfalls) containing a stormwater discharge associated with industrial activity for the following parameters:
 - (A) Any pollutant limited in an effluent guideline to which the facility is subject;
 - (B) Any pollutant listed in the facility's NJPDES permit for its process wastewater (if the facility is operating under an existing NJPDES permit);
 - (C) Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;
 - (D) Any information on the discharge required under N.J.A.C. 7:14A-4.4(b)5i, ii and 6;

- (E) Measurements or estimates of the maximum flow rate and of the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and
 - (F) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);
- (6) In preparing a permit application under (c)1i, both outfalls and drainage areas not served by outfalls shall be regulated in the same manner as “outfalls” for purposes of (c)1i(5)(D) above, (h) below, and N.J.A.C. 7:14A-4.4(b);
- (7) Any operating entity for a discharge composed entirely of stormwater is exempt from the requirements of N.J.A.C. 7:14A-4.3(a)17 and 21, and 4.4(a), (b)3i and ii and (b)7; and
- (8) Any operating entity for a new source or new discharge (as defined in N.J.A.C. 7:14A-1.2) composed in part or entirely of stormwater shall include estimates for the pollutants or parameters listed in (c)1i(5) above instead of actual sampling data, along with the source of each estimate. Any operating entity for a new source or new discharge composed in part or entirely of stormwater must provide quantitative data for the parameters listed in (c)1i(5) above within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the NJPDES permit for the discharge. Any operating entity for a new source or new discharge composed entirely of stormwater is exempt from the requirements of N.J.A.C. 7:14A-4.3(a)17 and 21iii and 4.4(b)3 through 7.
- ii. The operating entity for an existing or new stormwater discharge that is associated with construction activity solely under subparagraph 1x of the definition of "stormwater discharge associated with industrial activity" in N.J.A.C. 7:14A-1.2 is exempt from the requirements of (c)1i above and N.J.A.C. 7:14A-4.3(a)11, (a)16 through 24, (c) and (d) and 4.4, and shall not submit the NJPDES-2F Form. Such operating entity shall, if applying for an individual permit, submit the NJPDES-1 Form and provide a narrative description of:
- (1) The location and the nature of the construction activity;

- (2) The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;
 - (3) Proposed measures, including best management practices, to control pollutants in stormwater discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;
 - (4) Proposed measures to control pollutants in stormwater discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;
 - (5) An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and
 - (6) The name of the receiving water.
- iii. The operating entity for an existing or new discharge composed entirely of stormwater from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with (c)1i above, unless the facility:
- (1) Has had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at anytime since November 16, 1987; or
 - (2) Has had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or
 - (3) Contributes to a violation of a water quality standard.
- iv. The operating entity for an existing or new discharge composed entirely of stormwater from a mining operation is not required to submit a permit application in accordance with (c)1i above, unless the discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.
- v. Applicants shall provide such other information as the Director may reasonably require under N.J.A.C. 7:14A-4.3(e) to determine whether

to issue a permit and may require any facility subject to (c)1ii above to comply with (c)1i above.

- vi. Until December 31, 1992, applicants for renewal of a NJPDES permit or for a new or modified NJPDES permit for a stormwater discharge associated with industrial activity were allowed to submit Form 2C rather than Form 2F (and rather than the information required under (c)1i above) if the permit or application addressed all such stormwater discharges.
2. A group application submitted to USEPA under 40 CFR 122.26(c)(2) does not qualify under (c)1 above as an application for an individual NJPDES permit, or as a request for authorization under a NJPDES general permit. However, if a facility was approved by the USEPA as a member of a group application pursuant to 40 CFR 122.26(e)(2) and applies to the Department for an individual NJPDES permit for a stormwater discharge associated with industrial activity, the Department may accept the quantitative data in Part 2 of that group application in lieu of quantitative data collected at the applicant's facility for that stormwater discharge, provided that:
 - i. The quantitative data in Part 2 of that group application is submitted to the Department by the entity that prepared the group application or by the applicant; and
 - ii. The USEPA has not informed that entity that the quantitative data in Part 2 that was submitted to the Department is inaccurate or incomplete.

(d) Application requirements for large and medium municipal separate storm sewer discharges, and for a discharge from a municipal separate storm sewer that is designated under (a)1v above, are contained in 40 CFR 122.26(d), which is incorporated into this chapter by reference. Also incorporated into this chapter by reference, for purposes of this subsection only, are the definitions at 40 CFR 122.26(b)(2), (5), (6), and (9) of "illicit discharge," "major municipal separate storm sewer outfall," "major outfall" and "outfall." References to a "NJPDES permit" or "permit" in 40 CFR 122.26(b)(2) and (d) shall be understood to mean a NJPDES permit under this chapter, unless the context clearly indicates otherwise. Applicants for a discharge under this subsection are exempt from the requirements of N.J.A.C. 7:14A-4.3(a)11 and 16 through 24, (c) through (e) and 4.4(a) and (b)3 through 7.

(e) Any operating entity for a discharge required to obtain a permit under (a)1 or 9 above that does not have an effective NJPDES permit authorizing its stormwater discharges shall submit an application for an individual permit or a request for authorization for a general permit in accordance with the following deadlines:

1. Except as provided in (e)1i through vii below, for any "stormwater discharge associated with industrial activity" as defined in N.J.A.C. 7:14A-1.2 which is not authorized by a stormwater general permit, a permit application made pursuant to (c) above, or a request for authorization for a stormwater general permit, shall have been submitted to the Director by April 1, 1993.

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- i. For any stormwater discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, powerplant, or uncontrolled sanitary landfill, permit requirements are contained in (g) below.
- ii. Facilities that are owned or operated by a municipality and that were rejected by the USEPA as members of part 1 group application under 40 CFR 122.26(e)(2) shall have submitted an individual application or a request for authorization for a general permit no later than 180 days after the date of receipt of the notice of rejection or April 1, 1993, whichever was later.
- iii. If the discharge is from a nonpoint source and is not from a point source or identified under (e)1iv below, the permit application or request for authorization shall be submitted by November 3, 1997. No NJPDES permit shall require pollutants in such a discharge to be controlled before November 3, 1997.
- iv. If the Department classifies the discharge as a "stormwater discharge associated with industrial activity" under paragraph 2 in the definition of that term in N.J.A.C. 7:14A-1.2, the permit application or request for authorization shall be submitted within 180 days of receipt of written notice of such classification, unless a later submission date is requested and approved by the Department.
- v. A group application submitted to USEPA under 40 CFR 122.26(e)(2) does not qualify under this paragraph as an application for an individual NJPDES permit, or as a request for authorization under a NJPDES general permit. If a facility was approved by the USEPA as a member of a group application pursuant to 40 CFR 122.26(e)(2), or if a facility which was a participant of a group application was not approved or rejected by the USEPA pursuant to 40 CFR 122.26(e)(2) by April 1, 1993, the facility shall have either applied for an individual NJPDES permit, or have submitted a written request for authorization under an applicable NJPDES general permit, by October 1, 1993 (except as provided in (e)1i above).
- vi. When an individual application for discharges of stormwater is submitted pursuant to (c) above for a facility that already has an individual DSW permit that does not authorize all of those discharges, then that application shall be submitted in the following manner:
 - (1) If that DSW permit has expired, or is due to expire within 180 days of the submission of that application, then that application shall be submitted as part of the application for renewal of that

DSW permit (such submission may supplement a renewal application previously submitted to the Department).

- (2) If that DSW permit has not expired and is not due to expire within 180 days of the submission of that application, then that application shall be submitted either as part of the application for renewal of that DSW permit, or in a request under N.J.A.C. 7:14A-16.4 to modify that DSW permit to authorize all of those discharges of stormwater.

vii. For facilities submitting an individual application for a new discharge of stormwater associated with industrial activity, application deadlines are contained in N.J.A.C. 7:14A-4.2(e)1.

2. Any entity whose group application to USEPA pursuant to 40 CFR 122.26(c)(2) and (e)(2) listed New Jersey facilities shall have provided the information in (e)2i and ii below to the Department by December 2, 1992. Any entity whose group application to USEPA included New Jersey facilities shall provide to the Department, within 30 days of the Department's request, a copy of the entire group application or any portion thereof specified by the Department.

i. An identification, by name and location, of all New Jersey facilities participating in the group application, including all facilities that the group or trade association approved as an addition to a group application pursuant to 40 CFR 122.26(e)(2)(v); and

ii. A narrative description summarizing the industrial activities of participants of the group application.

3. Any entity whose group application to USEPA pursuant to 40 CFR 122.26(c)(2) and (e)(2) listed New Jersey facilities shall have provided the information in (e)3i through iii below to the Department within 30 days of the USEPA decision to approve or deny the members of the group application (see 40 CFR 122.26(e)(2)(ii)) or by December 2, 1992, whichever was later. The entity shall also have provided to the Department the information in (e)3i and ii below for any facility that the group or trade association approved as an addition to a group application pursuant to 40 CFR 122.26(e)(2)(v). The entity shall have provided this information within 30 days of the USEPA approval or denial of the addition or by December 2, 1992, whichever was later.

i. An identification, by name and location, of all facilities participating in the group application;

ii. A copy of the USEPA decision to approve or deny the participating facilities as members of the group application; and

iii. A narrative description summarizing the industrial activities of participants of the group application.

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4. For any discharge from a large or medium municipal separate storm sewer system, application deadlines are contained in 40 CFR 122.26(e)(3) and (4), which is incorporated into this chapter by reference.
5. A permit application or request for authorization shall be submitted to the Director within 60 days of notice, unless a later submission date is requested and approved by the Director, for:
 - i. A stormwater discharge which the Director or the EPA Regional Administrator determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States (see (a)1v above); and
 - ii. A stormwater discharge subject to (c)1v above.
6. Facilities with existing NJPDES permits for stormwater discharges associated with industrial activity shall maintain existing permits. Facilities with permits for stormwater discharges associated with industrial activity which expire on or after May 18, 1992 shall submit a new application in accordance with the requirements of N.J.A.C. 7:14A-4 and (c) above 180 days before the expiration of such permits.
7. The Director shall issue or deny individual permits (or authorization under general permits) for discharges composed entirely of stormwater under this section in accordance with the following schedule:
 - i. The Director shall issue or deny individual permits (or authorization under general permits) for stormwater discharges associated with industrial activity no later than April 1, 1994, or for new sources or existing sources which did not submit a complete NJPDES permit application or request for authorization by April 1, 1993, one year after receipt of a complete NJPDES permit application or request for authorization (unless the general permit specifies a shorter time period);
 - ii. The Director shall issue or deny permits for large or medium municipal separate storm sewer systems by the deadlines contained in 40 CFR 122.26(e)(7)(ii) and (iii), which are incorporated into this chapter by reference.
- (f) The following concerns petitions:
 1. Any operating entity for a municipal separate storm sewer system may petition the Director to require a separate NJPDES permit for any discharge into the municipal separate storm sewer system.
 2. Any person may petition the Director to require a NJPDES permit for a point source discharge which is composed entirely of stormwater which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.
 3. The owner of or operating entity for a municipal separate storm sewer system may petition the Director to reduce the Census estimates of the population

served by such separate system to account for stormwater discharged to combined sewers as defined by 40 CFR 35.2005(b)(11) that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the NJPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

4. Any person may petition the Director for the designation of a large or medium municipal separate storm sewer system as defined by paragraph 4 of the definitions of "large municipal separate storm sewer system" or "medium municipal separate storm sewer system" in N.J.A.C. 7:14A-1.2.
5. The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition.

(g) The following concerns discharges composed entirely of stormwater under Section 402(p)(6) of the Federal Act. Any operating entity for a point source required to obtain a permit under (a)8 above shall submit an application for an individual permit, or a request for authorization under a general permit, in accordance with the following requirements.

1. The operating entity shall submit an application or request for authorization in accordance with the following deadlines:
 - i. A discharger which the Director determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States shall submit an application or request for authorization to the Director within 180 days of receipt of notice, unless a later submission date is requested and approved by the Director; or
 - ii. All other dischargers shall submit an application or request for authorization to the Director no later than August 7, 2001.
2. The operating entity shall submit an application or request for authorization in accordance with the following requirements, unless otherwise modified by the Director:
 - i. An individual application for non-municipal discharges shall meet the requirements contained in (c)1 above.
 - ii. Applications for municipal separate storm sewer discharges shall meet the requirements contained in (d) above.
 - iii. Requests for authorization under a general permit issued by the Director shall meet the requirements contained in N.J.A.C. 7:14A-6.13(d).

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(h) When "quantitative data" for a pollutant are required in an individual NJPDES permit application for a stormwater discharge, the applicant shall collect samples in accordance with N.J.A.C. 7:14A-4.4(b) (also see (c)1i(6) above) and the following requirements:

1. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area;
2. A flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge as follows:
 - i. The flow-weighted composite sample for a stormwater discharge may consist of:
 - (1) Continuous sampling;
 - (2) A combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge; with each aliquot being separated by a minimum period of fifteen minutes; or
 - (3) A combination of a minimum of three sample aliquots taken for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes;
 - ii. Applicants submitting permit applications for stormwater discharges under this section may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Department;
 - iii. A minimum of one grab sample may be taken for stormwater discharges from holding ponds or other impoundments with a retention period greater than 24 hours;
 - iv. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required;
 - v. For stormwater discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants requiring analysis under (c) above; and
 - vi. For all stormwater permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants requiring analysis under (c) above except pH, temperature, cyanide,

total phenols, chlorine produced oxidants, oil and grease, fecal coliform, and fecal streptococcus; and

3. The Department may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples that may differ from protocols for collecting samples under 40 C.F.R. 136, and additional time for submitting data on a case-by-case basis.

(i) The operating entity for a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Department or the Regional Administrator under (a)1v above shall submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include the information required under 40 C.F.R. 122.42(c), which is incorporated into this chapter by reference.

(j) (Reserved)

7:14A-11.6 Federal criteria and standards for DSW permits

(a) The following Federal criteria and standards apply to DSW permits:

1. The criteria and standards for the imposition of technology-based treatment requirements in DSW permits shall be as set forth in 40 C.F.R. 125, Subpart A;
2. The criteria for issuance of a permit to aquaculture projects shall be as set forth in 40 C.F.R. 125, Subpart B;
3. The criteria and standards for determining fundamentally different factors shall be as set forth in 40 C.F.R. 125, Subpart D;
4. The criteria and standards for determining alternative effluent limitations for the thermal component of a discharge shall be as set forth in 40 C.F.R. 125, Subpart H;
5. The criteria applicable to cooling water intake structures shall be as set forth in 40 C.F.R. 125, Subpart I, when the USEPA adopts these criteria;
6. The criteria and standards for best management practices for ancillary industrial activities shall be as set forth in 40 C.F.R. 125, Subpart K;
7. The criteria and standards for imposing conditions for the disposal of sewage sludge shall be as set forth in 40 C.F.R. 125, Subpart L; and
8. The criteria for ocean discharges shall be as set forth in 40 C.F.R. 125, Subpart M.

(b) Whenever the provisions elsewhere in this chapter are more stringent than the criteria and standards referenced in this section, the more stringent provisions elsewhere in this chapter shall apply.

7:14A-11.7 Variances and modifications under the State and Federal acts

(a) Any discharger may request a variance from effluent limitations by filing a request by the close of the public comment period established pursuant to N.J.A.C. 7:14A-15.10 as follows:

1. A variance under N.J.A.C. 7:9B-1.8 or 1.9 for achieving water quality based effluent limitations. An applicant shall follow the procedures in N.J.A.C. 7:9B-1.8 or 1.9.
2. A variance under Section 316(a) of the Federal Act for the thermal component of any discharge. A copy of the request submitted to USEPA pursuant to 40 C.F.R. 125, Subpart H, shall be submitted simultaneously to the Department as required under 40 C.F.R. 125. Such request shall be determined in accordance with N.J.A.C. 7:14A-11.11.

(b) A discharger which is not a POTW may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the time period specified in this subsection:

1. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitation guideline was based shall be submitted as follows:
 - i. For a request for a variance from best practicable control technology currently available (BPT), by the close of the public comment period established under N.J.A.C. 7:14A-15.10.
 - ii. For a request for a variance from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.
 - iii. Any request for a variance made under this paragraph shall explain how the requirements of 40 C.F.R. 125, Subpart D have been met.
2. A request for a variance from the BAT requirements of Section 301(b)(2)(F) of the Federal Act for non-conventional pollutants (ammonia; chlorine; color; iron; total phenols (4AAP) and any other pollutant which the Administrator lists under Section 301(g)(4) of the Federal Act) pursuant to Section 301(c) of the Federal Act because of the economic capability of the owner or operating entity, or pursuant to Section 301(g) of the Federal Act shall be submitted as follows:
 - i. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline a requester shall submit:
 - (1) An initial request to the Regional Administrator and to the Department, stating the name of discharger, the permit number, the outfall number(s), the applicable effluent guideline, and

whether the discharger is requesting a Section 301(c) or Section 301(g) modification or both. This request shall be filed not later than 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977; and

- (2) A complete request no later than the close of the public comment period established under N.J.A.C. 7:14A-15.10, demonstrating that the requirements of N.J.A.C. 7:14A-15.13 and the applicable requirements of 40 C.F.R. 125 have been met. Notwithstanding this provision, the complete request under section 301(g) shall be filed 180 days before the Department is required to make a final decision (unless the Department establishes a shorter or longer period).
- ii. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with (b)2i(2) above, and need not be preceded by an initial request under (b)2i(1) above.
3. A request for a modification, under Section 302(b)(2) of the Federal Act, of water quality related effluent limitations developed by the USEPA under Section 302(a) of the Federal Act shall be submitted by the close of the public comment period established under N.J.A.C. 7:14A-15.10 on the permit for which the modification is being sought.
4. A request for a modification of effluent limitations which are more stringent than the BAT based limitations established in accordance with N.J.A.C. 7:14A-13.4 shall be submitted by the close of the public comment period established under N.J.A.C. 7:14A-15.10 on the permit for which the modification is being sought. For a modification requested under this paragraph, the relief and procedures in N.J.A.C. 7:9B-1.8 or 1.9 shall apply.

(c) Notwithstanding the time period requirements in (a) and (b) above, the Department may send notification before a draft permit is issued under N.J.A.C. 7:14A-15.6 that the draft permit will likely contain limitations which are eligible for variances. In the notice, the Department may require as a condition of consideration of any potential variance request submission a request explaining how the requirements of 40 C.F.R. 125 applicable to the variance have been met and may require submission of such a request within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon granting of the variance.

(d) A discharger who cannot file a complete request required under (a)1, (b)2i(2), 2ii or 4 above may request a one time extension. The extension may be granted or denied at the discretion of the Department. If the extension request is denied, the Department shall state the reason(s) for the denial. An extension shall be limited to:

1. Twelve months for a variance requested under (a)1 or (b)4; or
2. Six months for a variance requested under (b)2i(2) or 2ii.

7:14A-11.8 Decisions on variances

(a) The Department may grant or deny a request for a variance for the thermal component of a discharge under Section 316(a) of the Federal Act.

(b) The Department may deny, forward to the Regional Administrator with a written concurrence, or submit to USEPA without recommendation a completed request for:

1. A variance based on the economic capability of the applicant under Section 301(c) of the Federal Act; and
2. A variance based on water quality related effluent limitations under Section 302(b)(2) of the Federal Act.

(c) The Department may deny or forward to the Regional Administrator with a written concurrence a completed request for:

1. A variance based on the presence of "fundamentally different factors" from those on which an effluent limitation guideline was based; and
2. A variance based on certain water quality factors under section 301(g) of the Federal Act.

(d) The Department shall reopen or revoke and reissue a permit, after final action by the USEPA, for a variance from water quality based effluent limitations under N.J.A.C. 7:9B-1.8 or 1.9.

(e) If the USEPA approves the variance, the Department shall prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that determination under 40 C.F.R. 124.64, or under N.J.A.C. 7:14A-17.2 if the variance was denied or partially denied by the Department.

7:14A-11.9 Procedures for variances

(a) A request for a variance filed under N.J.A.C. 7:14A-11.7 shall be processed as follows:

1. If, at the time that a request for a variance is submitted, the Department has received an application for issuance or renewal of a permit but has not yet prepared a draft permit, the Department may:
 - i. Prepare a draft permit for public notice incorporating the Department's decision on the variance request; or
 - ii. If the variance determination will cause significant delay in issuing the permit, separate the variance request from the permit application and process the permit application.
2. If, at the time that a request for a variance is submitted the Department has published public notice of the draft permit but has not issued a final permit decision, the Department may:
 - i. Stay administrative proceedings concerning the draft permit and prepare a new draft permit incorporating the Department's decision on the variance request; or

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- ii. If the variance determination will cause significant delay in issuing the permit, separate the variance request from the draft permit and issue the final permit decision.
3. If the final permit decision has been issued and a variance request has been separated from a draft permit pursuant to (a)1 or 2 above, the Department may subsequently prepare a new draft permit for public notice incorporating the Department's decision on the variance request.

(b) The Department may grant a stay of an effluent limitation(s) until a decision on a variance is made in accordance with the following:

1. For a request under Section 301(g), effluent limitations shall not be stayed unless:
 - i. In the judgment of the Department, the stay or variance sought will not result in the discharge of pollutants in quantities which may be reasonably anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistence in the environment, acute toxicity, chronic toxicity, or synergistic propensities;
 - ii. In the judgment of the Department, there is a substantial likelihood that the discharger will succeed on the merits of its appeal; and
 - iii. The discharger files a bond or appropriate security as deemed necessary by the Department to assure timely compliance with the requirements from which a variance is sought in the event that the appeal is unsuccessful.
2. For a request other than under Section 301(g), the requirements for requesting a stay in accordance with N.J.A.C. 7:14A-17.6 shall apply.

7:14A-11.10 Public notice of Section 316(A) request

(a) In addition to the information required under N.J.A.C. 7:14A-15.10(f), public notice of a DSW draft permit for a discharge where a request under section 316(a) of the Federal Act and Section 6 of the State Act has been filed under N.J.A.C. 7:14A-11.7(a)2 shall include:

1. A statement that the thermal component of the discharge is subject to effluent limitations under Sections 301 and 306 of the Federal Act and Section 6 of the State Act and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under Sections 301 or 306 of the Federal Act and Section 6 of the State Act;
2. A statement that a Section 316(a) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under Section 316(a) and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and

3. If the applicant has filed an early screening request pursuant to 40 C.F.R. 125.72 for a Section 316(a) variance, a statement that the applicant has submitted such a request.

7:14A-11.11 *Special procedures for decisions on thermal variances under Section 316(A)*

(a) Except as provided in 40 C.F.R. 124.65, the only issues connected with issuance of a particular permit on which the Department will make a final decision before the final permit decision is issued under N.J.A.C. 7:14A-15.15 are whether alternative effluent limitations would be justified under Section 316(a) of the Federal Act and Section 6 of the State Act and whether cooling water intake structures will use the best available technology under Section 316(b) of the Federal Act. A permit applicant who seeks an early decision on these issues should request it and furnish supporting reasons with the permit application filed under N.J.A.C. 7:14A-4.2. The Department shall decide whether or not to make an early decision. If the Department makes an early decision, such a decision on issues under Section 6 of the State Act and Section 316(a) or (b) of the Federal Act and the grant of the balance of the permit shall be considered issuance of a final permit decision under this chapter, subject to the requirements of public notice and comment and adjudicatory hearing requests of N.J.A.C. 7:14A-15 and 17.

(b) If the Department, on review of the administrative record, determines that the information necessary to decide issues under Section 6 of the State Act and Section 316(a) of the Federal Act is not likely to be available before the final permit decision, the Department may issue a permit under N.J.A.C. 7:14A-15.15 for a term up to five years. This permit shall require achievement of the effluent limitations initially proposed for the thermal component of the discharge no later than the date otherwise required by State or Federal law. However, the permit shall also afford the permittee an opportunity to file a demonstration under Section 316(a) of the Federal Act after conducting such studies as are required under 40 C.F.R. 125, Subpart H. A new discharger may not exceed the thermal effluent limitation which is initially proposed unless and until its State Act Section 6 and Federal Act Section 316(a) variance request is finally approved.

(c) Any proceeding held under (a) above shall be subject to public notice as required by N.J.A.C. 7:14A-15.10 and shall be conducted at a time allowing the permittee to take necessary measures to meet the final compliance date in the event its request for modification of thermal limits is denied.

(d) Whenever the Department defers the decision under Section 316(a) of the Federal Act and Section 6 of the State Act, any decision under Section 316(b) may be deferred.

7:14A-11.12 *Discharges from combined sewer overflows*

Permits issued for discharges from combined sewer overflows shall include applicable provisions of the Federal Combined Sewer Overflow (CSO) Policy (59 Federal Register 18688, published April 19, 1994) incorporated herein at Appendix C.

APPENDIX A (Reserved)

APPENDIX B (Reserved)

APPENDIX C

FEDERAL POLICY ON COMBINED SEWER OVERFLOWS

Appendix C incorporates the Federal policy on combined sewer overflows published in the Federal Register on April 19, 1994.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4732-7]

Combined Sewer Overflow (CSO) Control Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final policy.

SUMMARY: EPA has issued a national policy statement entitled "Combined Sewer Overflow (CSO) Control Policy." This policy establishes a consistent national approach for controlling discharges from CSOs to the Nation's waters through the National Pollutant Discharge Elimination System (NPDES) permit program.

FOR FURTHER INFORMATION CONTACT: Jeffrey Lape, Office of Wastewater Enforcement and Compliance, MC-4201, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-7361.

SUPPLEMENTARY INFORMATION: The main purposes of the CSO Control Policy are to elaborate on the Environmental Protection Agency's (EPA's) National CSO Control Strategy published on September 8, 1989, at 54 FR 37370, and to expedite compliance with the requirements of the Clean Water Act (CWA). While implementation of the 1989 Strategy has resulted in progress toward controlling CSOs, significant public health and water quality risks remain.

This Policy provides guidance to permittees with CSOs, NPDES authorities and State water quality standards authorities on coordinating the planning, selection, and implementation of CSO controls that meet the requirements of the CWA and allow for public involvement during the decision-making process.

Contained in the Policy are provisions for developing appropriate, site-specific NPDES permit requirements for all combined sewer systems (CSS) that overflow as a result of wet weather events. For example, the Policy lays out two alternative approaches--the "demonstration" and the "presumption" approaches--that provide communities with targets for CSO controls that achieve compliance with the Act, particularly protection of water quality and designated uses. The Policy also includes enforcement initiatives to require the immediate elimination of overflows that occur during dry weather and to ensure that the remaining CWA requirements are complied with as soon as practicable.

The permitting provisions of the Policy were developed as a result of extensive input received from key stakeholders during a negotiated policy dialogue. The CSO stakeholders included representatives from States, environmental groups, municipal organizations and others. The negotiated dialogue was conducted during the Summer of 1992 by the Office of Water and the Office of Water's Management Advisory Group. The enforcement initiatives, including one which is underway to address CSOs during dry weather, were developed by EPA's Office of Water and Office of Enforcement.

EPA issued a Notice of Availability on the draft CSO Control Policy on January 19, 1993, (58 FR 4994) and requested comments on the draft Policy by March 22, 1993. Approximately forty-one sets of written comments were submitted by a variety of interest groups including cities and municipal groups, environmental groups, States, professional organizations and others. All comments were considered as EPA prepared the Final Policy. The public comments were largely supportive of the draft Policy. EPA received broad endorsement of and support for the key principles and provisions from most commenters. Thus, this final Policy does not include significant changes to the major provisions of the draft Policy, but rather, it includes clarification and better explanation of the elements of the Policy to address several of the questions that were raised in the comments. Persons wishing to obtain copies of the public comments or EPA's summary analysis of the comments may write or call the EPA contact person.

The CSO Policy represents a comprehensive national strategy to ensure that municipalities, permitting authorities, water quality standards authorities and the public engage in a comprehensive and coordinated planning effort to achieve cost effective CSO controls that ultimately meet appropriate health and environmental objectives. The Policy recognizes the site-specific nature of CSOs and their impacts and provides the necessary flexibility to tailor controls to local situations. Major elements of the Policy ensure that CSO controls are cost effective and meet the objectives and requirements of the CWA.

The major provisions of the Policy are as follows.

CSO permittees should immediately undertake a process to accurately characterize their CSS and CSO discharges, demonstrate implementation of minimum technology-based controls identified in the Policy, and develop long-term CSO control plans which evaluate alternatives for attaining compliance with the CWA, including compliance with water quality standards and protection of designated uses. Once the long-term CSO control plans are completed, permittees will be responsible to implement the plans' recommendations as soon as practicable.

State water quality standards authorities will be involved in the long-term CSO control planning effort as well. The water quality standards authorities will help ensure that development of the CSO permittees' long-term CSO control plans are coordinated with the review and possible revision of water quality standards on CSO-impacted waters.

NPDES authorities will issue/reissue or modify permits, as appropriate, to require compliance with the technology-based and water quality-based

requirements of the CWA. After completion of the long-term CSO control plan, NPDES permits will be reissued or modified to incorporate the additional requirements specified in the Policy, such as performance standards for the selected controls based on average design conditions, a post-construction water quality assessment program, monitoring for compliance with water quality standards, and a reopener clause authorizing the NPDES authority to reopen and modify the permit if it is determined that the CSO controls fail to meet water quality standards or protect designated uses. NPDES authorities should commence enforcement actions against permittees that have CWA violations due to CSO discharges during dry weather. In addition, NPDES authorities should ensure the implementation of the minimum technology-based controls and incorporate a schedule into an appropriate enforceable mechanism, with appropriate milestone dates, to implement the required long-term CSO control plan. Schedules for implementation of the long-term CSO control plan may be phased based on the relative importance of adverse impacts upon water quality standards and designated uses, and on a permittee's financial capability.

EPA is developing extensive guidance to support the Policy and will announce the availability of the guidances and other outreach efforts through various means, as they become available. For example, EPA is preparing guidance on the nine minimum controls, characterization and monitoring of CSOs, development of long-term CSO control plans, and financial capability.

Permittees will be expected to comply with any existing CSO-related requirements in NPDES permits, consent decrees or court orders unless revised to be consistent with this Policy.

The policy is organized as follows:

I. Introduction

- A. Purpose and Principles
- B. Application of Policy
- C. Effect on Current CSO Control Efforts
- D. Small System Considerations
- E. Implementation Responsibilities
- F. Policy Development

II. EPA Objectives for Permittees

- A. Overview
- B. Implementation of the Nine Minimum Controls
- C. Long-Term CSO Control Plan
 - 1. Characterization, Monitoring, and Modeling of the Combined Sewer Systems
 - 2. Public Participation
 - 3. Consideration of Sensitive Areas
 - 4. Evaluation of Alternatives
 - 5. Cost/Performance Consideration
 - 6. Operational Plan
 - 7. Maximizing Treatment at the Existing POTW Treatment Plant

8. Implementation Schedule
9. Post-Construction Compliance Monitoring Program

III. Coordination With State Water Quality Standards

- A. Overview
- B. Water Quality Standards Reviews

IV. Expectations for Permitting Authorities

- A. Overview
- B. NPDES Permit Requirements
 1. Phase I Permits--Requirements for Demonstration of the Nine Minimum Controls and Development of the Long-Term CSO Control Plan
 2. Phase II Permits--Requirements for Implementation of a Long-Term CSO Control Plan
 3. Phasing Considerations

V. Enforcement and Compliance

- A. Overview
- B. Enforcement of CSO Dry Weather Discharge Prohibition
- C. Enforcement of Wet Weather CSO Requirements
 1. Enforcement for Compliance With Phase I Permits
 2. Enforcement for Compliance With Phase II Permits
- D. Penalties

List of Subjects in 40 CFR Part 122

Water pollution control.

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

Dated: April 8, 1994.

Carol M. Browner,

Administrator.

Combined Sewer Overflow (CSO) Control Policy

I. Introduction

A. Purpose and Principles

The main purposes of this Policy are to elaborate on EPA's National Combined Sewer Overflow (CSO) Control Strategy published on September 8, 1989 at 54 FR 37370 (1989 Strategy) and to expedite compliance with the requirements of the Clean Water Act (CWA). While implementation of the 1989 Strategy has resulted in progress toward controlling CSOs, significant water quality risks remain.

A combined sewer system (CSS) is a wastewater collection system owned by a State or municipality (as defined by section 502(4) of the CWA) which conveys sanitary wastewaters (domestic, commercial and industrial wastewaters) and storm water through a single-pipe

system to a Publicly Owned Treatment Works (POTW) Treatment Plant (as defined in 40 CFR 403.3(p)). A CSO is the discharge from a CSS at a point prior to the POTW Treatment Plant. CSOs are point sources subject to NPDES permit requirements including both technology-based and water quality-based requirements of the CWA. CSOs are not subject to secondary treatment requirements applicable to POTWs.

CSOs consist of mixtures of domestic sewage, industrial and commercial wastewaters, and storm water runoff. CSOs often contain high levels of suspended solids, pathogenic microorganisms, toxic pollutants, floatables, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants. CSOs can cause exceedances of water quality standards (WQS). Such exceedances may pose risks to human health, threaten aquatic life and its habitat, and impair the use and enjoyment of the Nation's waterways.

This Policy is intended to provide guidance to permittees with CSOs, National Pollutant Discharge Elimination System (NPDES) permitting authorities, State water quality standards authorities and enforcement authorities. The purpose of the Policy is to coordinate the planning, selection, design and implementation of CSO management practices and controls to meet the requirements of the CWA and to involve the public fully during the decision making process.

This Policy reiterates the objectives of the 1989 Strategy:

1. To ensure that if CSOs occur, they are only as a result of wet weather;
2. To bring all wet weather CSO discharge points into compliance with the technology-based and water quality-based requirements of the CWA; and
3. To minimize water quality, aquatic biota, and human health impacts from CSOs.

This CSO Control Policy represents a comprehensive national strategy to ensure that municipalities, permitting authorities, water quality standards authorities and the public engage in a comprehensive and coordinated planning effort to achieve cost-effective CSO controls that ultimately meet appropriate health and environmental objectives and requirements. The Policy recognizes the site-specific nature of CSOs and their impacts and provides the necessary flexibility to tailor controls to local situations. Four key principles of the Policy ensure

that CSO controls are cost-effective and meet the objectives of the CWA. The key principles are:

1. Providing clear levels of control that would be presumed to meet appropriate health and environmental objectives;
2. Providing sufficient flexibility to municipalities, especially financially disadvantaged communities, to consider the site-specific nature of CSOs and to determine the most cost-effective means of reducing pollutants and meeting CWA objectives and requirements;
3. Allowing a phased approach to implementation of CSO controls considering a community's financial capability; and
4. Review and revision, as appropriate, of water quality standards and their implementation procedures when developing CSO control plans to reflect the site-specific wet weather impacts of CSOs.

This Policy is being issued in support of EPA's regulations and policy initiatives. This Policy is Agency guidance only and does not establish or affect legal rights or obligations. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made by applying the law and regulations on the basis of specific facts when permits are issued. The Administration has recommended that the 1994 amendments to the CWA endorse this final Policy.

B. Application of Policy

The permitting provisions of this Policy apply to all CSSs that overflow as a result of storm water flow, including snow melt runoff (40 CFR 122.26(b)(13)). Discharges from CSSs during dry weather are prohibited by the CWA. Accordingly, the permitting provisions of this Policy do not apply to CSOs during dry weather. Dry weather flow is the flow in a combined sewer that results from domestic sewage, groundwater infiltration, commercial and industrial wastewaters, and any other non-precipitation related flows (e.g., tidal infiltration). In addition to the permitting provisions, the Enforcement and Compliance section of this Policy describes an enforcement initiative being developed for overflows that occur during dry weather.

Consistent with the 1989 Strategy, 30 States that submitted CSO permitting strategies have received EPA approval or, in the case of one State, conditional approval of its strategy. States and EPA Regional Offices should review these strategies and negotiate appropriate revisions to them to implement this Policy. Permitting

authorities are encouraged to evaluate water pollution control needs on a watershed management basis and coordinate CSO control efforts with other point and nonpoint source control activities.

C. Effect on Current CSO Control Efforts

EPA recognizes that extensive work has been done by many Regions, States, and municipalities to abate CSOs. As such, portions of this Policy may already have been addressed by permittees' previous efforts to control CSOs. Therefore, portions of this Policy may not apply, as determined by the permitting authority on a case-by-case basis, under the following circumstances:

1. Any permittee that, on the date of publication of this final Policy, has completed or substantially completed construction of CSO control facilities that are designed to meet WQS and protect designated uses, and where it has been determined that WQS are being or will be attained, is not covered by the initial planning and construction provisions in this Policy; however, the operational plan and post-construction monitoring provisions continue to apply. If, after monitoring, it is determined that WQS are not being attained, the permittee should be required to submit a revised CSO control plan that, once implemented, will attain WQS.
2. Any permittee that, on the date of publication of this final Policy, has substantially developed or is implementing a CSO control program pursuant to an existing permit or enforcement order, and such program is considered by the NPDES permitting authority to be adequate to meet WQS and protect designated uses and is reasonably equivalent to the treatment objectives of this Policy, should complete those facilities without further planning activities otherwise expected by this Policy. Such programs, however, should be reviewed and modified to be consistent with the sensitive area, financial capability, and post-construction monitoring provisions of this Policy.
3. Any permittee that has previously constructed CSO control facilities in an effort to comply with WQS but has failed to meet such applicable standards or to protect designated uses due to remaining CSOs may receive consideration for such efforts in future permits or enforceable orders for long-term CSO control planning, design and implementation.

In the case of any ongoing or substantially completed CSO control effort, the NPDES permit or other enforceable mechanism, as

appropriate, should be revised to include all appropriate permit requirements consistent with Section IV.B. of this Policy.

D. Small System Considerations

The scope of the long-term CSO control plan, including the characterization, monitoring and modeling, and evaluation of alternatives portions of this Policy may be difficult for some small CSSs. At the discretion of the NPDES Authority, jurisdictions with populations under 75,000 may not need to complete each of the formal steps outlined in Section II.C. of this Policy, but should be required through their permits or other enforceable mechanisms to comply with the nine minimum controls (II.B), public participation (II.C.2), and sensitive areas (II.C.3) portions of this Policy. In addition, the permittee may propose to implement any of the criteria contained in this Policy for evaluation of alternatives described in II.C.4. Following approval of the proposed plan, such jurisdictions should construct the control projects and propose a monitoring program sufficient to determine whether WQS are attained and designated uses are protected.

In developing long-term CSO control plans based on the small system considerations discussed in the preceding paragraph, permittees are encouraged to discuss the scope of their long-term CSO control plan with the WQS authority and the NPDES authority. These discussions will ensure that the plan includes sufficient information to enable the permitting authority to identify the appropriate CSO controls.

E. Implementation Responsibilities

NPDES authorities (authorized States or EPA Regional Offices, as appropriate) are responsible for implementing this Policy. It is their responsibility to assure that CSO permittees develop long-term CSO control plans and that NPDES permits meet the requirements of the CWA. Further, they are responsible for coordinating the review of the long-term CSO control plan and the development of the permit with the WQS authority to determine if revisions to the WQS are appropriate. In addition, they should determine the appropriate vehicle (i.e., permit reissuance, information request under CWA section 308 or State equivalent or enforcement action) to ensure that compliance with the CWA is achieved as soon as practicable.

Permittees are responsible for documenting the implementation of the nine minimum controls and developing and implementing a long-term CSO control plan, as described in this Policy. EPA recognizes that financial considerations are a major factor affecting the implementation of CSO controls. For that reason, this Policy allows consideration of a permittee's financial capability in connection with

the long-term CSO control planning effort, WQS review, and negotiation of enforceable schedules. However, each permittee is ultimately responsible for aggressively pursuing financial arrangements for the implementation of its long-term CSO control plan. As part of this effort, communities should apply to their State Revolving Fund program, or other assistance programs as appropriate, for financial assistance.

EPA and the States will undertake action to assure that all permittees with CSSs are subject to a consistent review in the permit development process, have permit requirements that achieve compliance with the CWA, and are subject to enforceable schedules that require the earliest practicable compliance date considering physical and financial feasibility.

F. Policy Development

This Policy devotes a separate section to each step involved in developing and implementing CSO controls. This is not to imply that each function occurs separately. Rather, the entire process surrounding CSO controls, community planning, WQS and permit development/revision, enforcement/compliance actions and public participation must be coordinated to control CSOs effectively. Permittees and permitting authorities are encouraged to consider innovative and alternative approaches and technologies that achieve the objectives of this Policy and the CWA.

In developing this Policy, EPA has included information on what responsible parties are expected to accomplish. Subsequent documents will provide additional guidance on how the objectives of this Policy should be met. These documents will provide further guidance on: CSO permit writing, the nine minimum controls, long-term CSO control plans, financial capability, sewer system characterization and receiving water monitoring and modeling, and application of WQS to CSO-impacted waters. For most CSO control efforts however, sufficient detail has been included in this Policy to begin immediate implementation of its provisions.

II. EPA Objectives for Permittees

A. Overview

Permittees with CSSs that have CSOs should immediately undertake a process to accurately characterize their sewer systems, to demonstrate implementation of the nine minimum controls, and to develop a long-term CSO control plan.

B. Implementation of the Nine Minimum Controls

Permittees with CSOs should submit appropriate documentation demonstrating implementation of the nine minimum controls, including any proposed schedules for completing minor construction activities.

The nine minimum controls are:

1. Proper operation and regular maintenance programs for the sewer system and the CSOs;
2. Maximum use of the collection system for storage;
3. Review and modification of pretreatment requirements to assure CSO impacts are minimized;
4. Maximization of flow to the POTW for treatment;
5. Prohibition of CSOs during dry weather;
6. Control of solid and floatable materials in CSOs;
7. Pollution prevention;
8. Public notification to ensure that the public receives adequate notification of CSO occurrences and CSO impacts; and
9. Monitoring to effectively characterize CSO impacts and the efficacy of CSO controls.

Selection and implementation of actual control measures should be based on site-specific considerations including the specific CSS's characteristics discussed under the sewer system characterization and monitoring portions of this Policy. Documentation of the nine minimum controls may include operation and maintenance plans, revised sewer use ordinances for industrial users, sewer system inspection reports, infiltration/inflow studies, pollution prevention programs, public notification plans, and facility plans for maximizing the capacities of the existing collection, storage and treatment systems, as well as contracts and schedules for minor construction programs for improving the existing system's operation. The permittee should also submit any information or data on the degree to which the nine minimum controls achieve compliance with water quality standards. These data and information should include results made available through monitoring and modeling activities done in conjunction with the development of the long-term CSO control plan described in this Policy.

This documentation should be submitted as soon as practicable, but no later than two years after the requirement to submit such documentation is included in an NPDES permit or other enforceable mechanism. Implementation of the nine minimum controls with appropriate documentation should be completed as soon as practicable but no later than January 1, 1997. These dates should be included in an appropriate enforceable mechanism.

Because the CWA requires immediate compliance with technology-based controls (section 301(b)), which on a Best Professional Judgment basis should include the nine minimum controls, a compliance schedule for implementing the nine minimum controls, if necessary, should be included in an appropriate enforceable mechanism.

C. Long-Term CSO Control Plan

Permittees with CSOs are responsible for developing and implementing long-term CSO control plans that will ultimately result in compliance with the requirements of the CWA. The long-term plans should consider the site-specific nature of CSOs and evaluate the cost effectiveness of a range of control options/strategies. The development of the long-term CSO control plan and its subsequent implementation should also be coordinated with the NPDES authority and the State authority responsible for reviewing and revising the State's WQS. The selected controls should be designed to allow cost effective expansion or cost effective retrofitting if additional controls are subsequently determined to be necessary to meet WQS, including existing and designated uses.

This policy identifies EPA's major objectives for the long-term CSO control plan. Permittees should develop and submit this long-term CSO control plan as soon as practicable, but generally within two years after the date of the NPDES permit provision, Section 308 information request, or enforcement action requiring the permittee to develop the plan. NPDES authorities may establish a longer timetable for completion of the long-term CSO control plan on a case-by-case basis to account for site-specific factors which may influence the complexity of the planning process. Once agreed upon, these dates should be included in an appropriate enforceable mechanism.

EPA expects each long-term CSO control plan to utilize appropriate information to address the following minimum elements. The Plan should also include both fixed-date project implementation schedules (which may be phased) and a financing plan to design and construct

the project as soon as practicable. The minimum elements of the long-term CSO control plan are described below.

1. Characterization, Monitoring, and Modeling of the Combined Sewer System

In order to design a CSO control plan adequate to meet the requirements of the CWA, a permittee should have a thorough understanding of its sewer system, the response of the system to various precipitation events, the characteristics of the overflows, and the water quality impacts that result from CSOs. The permittee should adequately characterize through monitoring, modeling, and other means as appropriate, for a range of storm events, the response of its sewer system to wet weather events including the number, location and frequency of CSOs, volume, concentration and mass of pollutants discharged and the impacts of the CSOs on the receiving waters and their designated uses. The permittee may need to consider information on the contribution and importance of other pollution sources in order to develop a final plan designed to meet water quality standards. The purpose of the system characterization, monitoring and modeling program initially is to assist the permittee in developing appropriate measures to implement the nine minimum controls and, if necessary, to support development of the long-term CSO control plan. The monitoring and modeling data also will be used to evaluate the expected effectiveness of both the nine minimum controls and, if necessary, the long-term CSO controls, to meet WQS.

The major elements of a sewer system characterization are described below.

- a. Rainfall Records--The permittee should examine the complete rainfall record for the geographic area of its existing CSS using sound statistical procedures and best available data. The permittee should evaluate flow variations in the receiving water body to correlate between CSOs and receiving water conditions.
- b. Combined Sewer System Characterization--The permittee should evaluate the nature and extent of its sewer system through evaluation of available sewer system records, field inspections and other activities necessary to understand the number, location and frequency of overflows and their location relative to sensitive areas and to pollution sources in the collection system, such as indirect significant industrial users.

- c. CSO Monitoring--The permittee should develop a comprehensive, representative monitoring program that measures the frequency, duration, flow rate, volume and pollutant concentration of CSO discharges and assesses the impact of the CSOs on the receiving waters. The monitoring program should include necessary CSO effluent and ambient in-stream monitoring and, where appropriate, other monitoring protocols such as biological assessment, toxicity testing and sediment sampling. Monitoring parameters should include, for example, oxygen demanding pollutants, nutrients, toxic pollutants, sediment contaminants, pathogens, bacteriological indicators (e.g., *Enterococcus*, *E. Coli*), and toxicity. A representative sample of overflow points can be selected that is sufficient to allow characterization of CSO discharges and their water quality impacts and to facilitate evaluation of control plan alternatives.
- d. Modeling--Modeling of a sewer system is recognized as a valuable tool for predicting sewer system response to various wet weather events and assessing water quality impacts when evaluating different control strategies and alternatives. EPA supports the proper and effective use of models, where appropriate, in the evaluation of the nine minimum controls and the development of the long-term CSO control plan. It is also recognized that there are many models which may be used to do this. These models range from simple to complex. Having decided to use a model, the permittee should base its choice of a model on the characteristics of its sewer system, the number and location of overflow points, and the sensitivity of the receiving water body to the CSO discharges. Use of models should include appropriate calibration and verification with field measurements. The sophistication of the model should relate to the complexity of the system to be modeled and to the information needs associated with evaluation of CSO control options and water quality impacts. EPA believes that continuous simulation models, using historical rainfall data, may be the best way to model sewer systems, CSOs, and their impacts. Because of the iterative nature of modeling sewer systems, CSOs, and their impacts, monitoring and modeling efforts are complementary and should be coordinated.

2. Public Participation

In developing its long-term CSO control plan, the permittee will employ a public participation process that actively involves the affected public in the decision-making to select the long-term CSO controls. The affected public includes rate payers, industrial users of the sewer system, persons who reside downstream from the CSOs, persons who use and enjoy these downstream waters, and any other interested persons.

3. Consideration of Sensitive Areas

EPA expects a permittee's long-term CSO control plan to give the highest priority to controlling overflows to sensitive areas. Sensitive areas, as determined by the NPDES authority in coordination with State and Federal agencies, as appropriate, include designated Outstanding National Resource Waters, National Marine Sanctuaries, waters with threatened or endangered species and their habitat, waters with primary contact recreation, public drinking water intakes or their designated protection areas, and shellfish beds. For such areas, the long-term CSO control plan should:

- a. Prohibit new or significantly increased overflows;
- b.
 - i. Eliminate or relocate overflows that discharge to sensitive areas wherever physically possible and economically achievable, except where elimination or relocation would provide less environmental protection than additional treatment; or
 - ii. Where elimination or relocation is not physically possible and economically achievable, or would provide less environmental protection than additional treatment, provide the level of treatment for remaining overflows deemed necessary to meet WQS for full protection of existing and designated uses. In any event, the level of control should not be less than those described in Evaluation of Alternatives below; and
- c. Where elimination or relocation has been proven not to be physically possible and economically achievable, permitting authorities should require, for each subsequent permit term, a reassessment based on new or improved techniques to

eliminate or relocate, or on changed circumstances that influence economic achievability.

4. Evaluation of Alternatives

EPA expects the long-term CSO control plan to consider a reasonable range of alternatives. The plan should, for example, evaluate controls that would be necessary to achieve zero overflow events per year, an average of one to three, four to seven, and eight to twelve overflow events per year. Alternatively, the long-term plan could evaluate controls that achieve 100% capture, 90% capture, 85% capture, 80% capture, and 75% capture for treatment. The long-term control plan should also consider expansion of POTW secondary and primary capacity in the CSO abatement alternative analysis. The analysis of alternatives should be sufficient to make a reasonable assessment of cost and performance as described in Section II.C.5. Because the final long-term CSO control plan will become the basis for NPDES permit limits and requirements, the selected controls should be sufficient to meet CWA requirements.

In addition to considering sensitive areas, the long-term CSO control plan should adopt one of the following approaches:

a. "Presumption" Approach

A program that meets any of the criteria listed below would be presumed to provide an adequate level of control to meet the water quality-based requirements of the CWA, provided the permitting authority determines that such presumption is reasonable in light of the data and analysis conducted in the characterization, monitoring, and modeling of the system and the consideration of sensitive areas described above. These criteria are provided because data and modeling of wet weather events often do not give a clear picture of the level of CSO controls necessary to protect WQS.

- i. No more than an average of four overflow events per year, provided that the permitting authority may allow up to two additional overflow events per year. For the purpose of this criterion, an overflow event is one or more overflows from a CSS as the result of a precipitation event that does not receive the minimum treatment specified below; or

- ii. The elimination or the capture for treatment of no less than 85% by volume of the combined sewage collected in the CSS during precipitation events on a system-wide annual average basis; or
- iii. The elimination or removal of no less than the mass of the pollutants, identified as causing water quality impairment through the sewer system characterization, monitoring, and modeling effort, for the volumes that would be eliminated or captured for treatment under paragraph ii. above.

Combined sewer flows remaining after implementation of the nine minimum controls and within the criteria specified at II.C.4.a.i or ii, should receive a minimum of:

Primary clarification (Removal of floatables and settleable solids may be achieved by any combination of treatment technologies or methods that are shown to be equivalent to primary clarification.);

Solids and floatables disposal; and

Disinfection of effluent, if necessary, to meet WQS, protect designated uses and protect human health, including removal of harmful disinfection chemical residuals, where necessary.

b. "Demonstration" Approach

A permittee may demonstrate that a selected control program, though not meeting the criteria specified in II.C.4.a. above is adequate to meet the water quality-based requirements of the CWA. To be a successful demonstration, the permittee should demonstrate each of the following:

- i. The planned control program is adequate to meet WQS and protect designated uses, unless WQS or uses cannot be met as a result of natural background conditions or pollution sources other than CSOs;
- ii. The CSO discharges remaining after implementation of the planned control program will not preclude the attainment of WQS or the receiving waters' designated

uses or contribute to their impairment. Where WQS and designated uses are not met in part because of natural background conditions or pollution sources other than CSOs, a total maximum daily load, including a wasteload allocation and a load allocation, or other means should be used to apportion pollutant loads;

- iii. The planned control program will provide the maximum pollution reduction benefits reasonably attainable; and
- iv. The planned control program is designed to allow cost effective expansion or cost effective retrofitting if additional controls are subsequently determined to be necessary to meet WQS or designated uses.

5. Cost/Performance Considerations

The permittee should develop appropriate cost/performance curves to demonstrate the relationships among a comprehensive set of reasonable control alternatives that correspond to the different ranges specified in Section II.C.4. This should include an analysis to determine where the increment of pollution reduction achieved in the receiving water diminishes compared to the increased costs. This analysis, often known as knee of the curve, should be among the considerations used to help guide selection of controls.

6. Operational Plan

After agreement between the permittee and NPDES authority on the necessary CSO controls to be implemented under the long-term CSO control plan, the permittee should revise the operation and maintenance program developed as part of the nine minimum controls to include the agreed-upon long-term CSO controls. The revised operation and maintenance program should maximize the removal of pollutants during and after each precipitation event using all available facilities within the collection and treatment system. For any flows in excess of the criteria specified at II.C.4.a.i., ii. or iii and not receiving the treatment specified in II.C.4.a, the operational plan should ensure that such flows receive treatment to the greatest extent practicable.

7. Maximizing Treatment at the Existing POTW Treatment Plant

In some communities, POTW treatment plants may have primary treatment capacity in excess of their secondary treatment capacity. One effective strategy to abate pollution resulting from CSOs is to maximize the delivery of flows during wet weather to the POTW treatment plant for treatment. Delivering these flows can have two significant water quality benefits: First, increased flows during wet weather to the POTW treatment plant may enable the permittee to eliminate or minimize overflows to sensitive areas; second, this would maximize the use of available POTW facilities for wet weather flows and would ensure that combined sewer flows receive at least primary treatment prior to discharge.

Under EPA regulations, the intentional diversion of waste streams from any portion of a treatment facility, including secondary treatment, is a bypass. EPA bypass regulations at 40 CFR 122.41(m) allow for a facility to bypass some or all the flow from its treatment process under specified limited circumstances. Under the regulation, the permittee must show that the bypass was unavoidable to prevent loss of life, personal injury or severe property damage, that there was no feasible alternative to the bypass and that the permittee submitted the required notices. In addition, the regulation provides that a bypass may be approved only after consideration of adverse effects.

Normally, it is the responsibility of the permittee to document, on a case-by-base basis, compliance with 40 CFR 122.41(m) in order to bypass flows legally. For some CSO-related permits, the study of feasible alternatives in the control plan may provide sufficient support for the permit record and for approval of a CSO-related bypass in the permit itself, and to define the specific parameters under which a bypass can legally occur. For approval of a CSO-related bypass, the long-term CSO control plan, at a minimum, should provide justification for the cut-off point at which the flow will be diverted from the secondary treatment portion of the treatment plant, and provide a benefit-cost analysis demonstrating that conveyance of wet weather flow to the POTW for primary treatment is more beneficial than other CSO abatement alternatives such as storage and pump back for secondary treatment, sewer separation, or satellite treatment. Such a permit must define under what specific wet weather conditions a CSO-related bypass is allowed and also specify what treatment or what monitoring, and effluent limitations and requirements apply to the bypass flow. The permit should also provide that approval for the CSO-related bypass will be reviewed and may be modified or terminated if there is a

substantial increase in the volume or character of pollutants being introduced to the POTW. The CSO-related bypass provision in the permit should also make it clear that all wet weather flows passing the headworks of the POTW treatment plant will receive at least primary clarification and solids and floatables removal and disposal, and disinfection, where necessary, and any other treatment that can reasonably be provided.

Under this approach, EPA would allow a permit to authorize a CSO-related bypass of the secondary treatment portion of the POTW treatment plant for combined sewer flows in certain identified circumstances. This provision would apply only to those situations where the POTW would ordinarily meet the requirements of 40 CFR 122.41(m) as evaluated on a case-by-case basis. Therefore, there must be sufficient data in the administrative record (reflected in the permit fact sheet or statement of basis) supporting all the requirements in 40 CFR 122.41(m)(4) for approval of an anticipated bypass.

For the purposes of applying this regulation to CSO permittees, "severe property damage" could include situations where flows above a certain level wash out the POTW's secondary treatment system. EPA further believes that the feasible alternatives requirement of the regulation can be met if the record shows that the secondary treatment system is properly operated and maintained, that the system has been designed to meet secondary limits for flows greater than the peak dry weather flow, plus an appropriate quantity of wet weather flow, and that it is either technically or financially infeasible to provide secondary treatment at the existing facilities for greater amounts of wet weather flow. The feasible alternative analysis should include, for example, consideration of enhanced primary treatment (e.g., chemical addition) and non-biological secondary treatment. Other bases supporting a finding of no feasible alternative may also be available on a case-by-case basis. As part of its consideration of possible adverse effects resulting from the bypass, the permitting authority should also ensure that the bypass will not cause exceedances of WQS.

This Policy does not address the appropriateness of approving anticipated bypasses through NPDES permits in advance outside the CSO context.

8. Implementation Schedule

The permittee should include all pertinent information in the long term control plan necessary to develop the construction and

financing schedule for implementation of CSO controls. Schedules for implementation of the CSO controls may be phased based on the relative importance of adverse impacts upon WQS and designated uses, priority projects identified in the long-term plan, and on a permittee's financial capability.

Construction phasing should consider:

- a. Eliminating overflows that discharge to sensitive areas as the highest priority;
- b. Use impairment;
- c. The permittee's financial capability including consideration of such factors as:
 - i. Median household income;
 - ii. Total annual wastewater and CSO control costs per household as a percent of median household income;
 - iii. Overall net debt as a percent of full market property value;
 - iv. Property tax revenues as a percent of full market property value;
 - v. Property tax collection rate;
 - vi. Unemployment; and
 - vii. Bond rating;
- d. Grant and loan availability;
- e. Previous and current residential, commercial and industrial sewer user fees and rate structures; and
- f. Other viable funding mechanisms and sources of financing.

9. Post-Construction Compliance Monitoring Program

The selected CSO controls should include a post-construction water quality monitoring program adequate to verify compliance with water quality standards and protection of designated uses as well as to ascertain the effectiveness of CSO controls. This water quality compliance monitoring program should include a plan to be approved by the NPDES authority that details the monitoring protocols to be followed, including the necessary effluent and ambient monitoring and, where appropriate, other monitoring

protocols such as biological assessments, whole effluent toxicity testing, and sediment sampling.

III. Coordination With State Water Quality Standards

A. Overview

WQS are State adopted, or Federally promulgated rules which serve as the goals for the water body and the legal basis for the water quality-based NPDES permit requirements under the CWA. WQS consist of uses which States designate for their water bodies, criteria to protect the uses, an anti-degradation policy to protect the water quality improvements gained and other policies affecting the implementation of the standards. A primary objective of the long-term CSO control plan is to meet WQS, including the designated uses through reducing risks to human health and the environment by eliminating, relocating or controlling CSOs to the affected waters.

State WQS authorities, NPDES authorities, EPA regional offices, permittees, and the public should meet early and frequently throughout the long-term CSO control planning process. Development of the long-term plan should be coordinated with the review and appropriate revision of WQS and implementation procedures on CSO-impacted waters to ensure that the long-term controls will be sufficient to meet water quality standards. As part of these meetings, participants should agree on the data, information and analyses needed to support the development of the long-term CSO control plan and the review of applicable WQS, and implementation procedures, if appropriate. Agreements should be reached on the monitoring protocols and models that will be used to evaluate the water quality impacts of the overflows, to analyze the attainability of the WQS and to determine the water quality-based requirements for the permit. Many opportunities exist for permittees and States to share information as control programs are developed and as WQS are reviewed. Such information should assist States in determining the need for revisions to WQS and implementation procedures to better reflect the site-specific wet weather impacts of CSOs. Coordinating the development of the long-term CSO control plan and the review of the WQS and implementation procedures provides greater assurance that the long-term control plan selected and the limits and requirements included in the NPDES permit will be sufficient to meet WQS and to comply with sections 301(b)(1)(C) and 402(a)(2) of the CWA.

EPA encourages States and permittees jointly to sponsor workshops for the affected public in the development of the long-term CSO control plan and during the development of appropriate revisions to WQS for CSO-impacted waters. Workshops provide a forum for including the

public in discussions of the implications of the proposed long-term CSO control plan on the water quality and uses for the receiving water.

B. Water Quality Standards Reviews

The CWA requires States to periodically, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. States must provide the public an opportunity to comment on any proposed revision to water quality standards and all revisions must be submitted to EPA for review and approval.

EPA regulations and guidance provide States with the flexibility to adapt their WQS, and implementation procedures to reflect site-specific conditions including those related to CSOs. For example, a State may adopt site-specific criteria for a particular pollutant if the State determines that the site-specific criteria fully protects the designated use (40 CFR 131.11). In addition, the regulations at 40 CFR 131.10(g), (h), and (j) specify when and how a designated use may be modified. A State may remove a designated use from its water quality standards only if the designated use is not an existing use. An existing use is a use actually attained in the water body on or after November 28, 1975. Furthermore, a State may not remove a designated use that will be attained by implementing the technology-based effluent limits required under sections 301(b) and 306 of the CWA and by implementing cost-effective and reasonable best management practices for nonpoint source controls. Thus, if a State has a reasonable basis to determine that the current designated use could be attained after implementation of the technology-based controls of the CWA, then the use could not be removed.

In determining whether a use is attainable and prior to removing a designated use, States must conduct and submit to EPA a use attainability analysis. A use attainability analysis is a structured scientific assessment of the factors affecting the use, including the physical, chemical, biological, and economic factors described in 40 CFR 131.10(g). As part of the analysis, States should evaluate whether the designated use could be attained if CSO controls were implemented. For example, States should examine if sediment loadings from CSOs could be reduced so as not to bury spawning beds, or if biochemical oxygen demanding material in the effluent or the toxicity of the effluent could be corrected so as to reduce the acute or chronic physiological stress on or bioaccumulation potential of aquatic organisms.

In reviewing the attainability of their WQS and the applicability of their implementation procedures to CSO-impacted waters, States are encouraged to define more explicitly their recreational and aquatic life uses and then, if appropriate, modify the criteria accordingly to protect the designated uses.

Another option is for States to adopt partial uses by defining when primary contact recreation such as swimming does not exist, such as during certain seasons of the year in northern climates or during a particular type of storm event. In making such adjustments to their uses, States must ensure that downstream uses are protected, and that during other seasons or after the storm event has passed, the use is fully protected.

In addition to defining recreational uses with greater specificity, States are also encouraged to define the aquatic uses more precisely. Rather than "aquatic life use protection," States should consider defining the type of fishery to be protected such as a cold water fishery (e.g., trout or salmon) or a warm weather fishery (e.g., bluegill or large mouth bass). Explicitly defining the type of fishery to be protected may assist the permittee in enlisting the support of citizens for a CSO control plan.

A water quality standard variance may be appropriate, in limited circumstances on CSO-impacted waters, where the State is uncertain as to whether a standard can be attained and time is needed for the State to conduct additional analyses on the attainability of the standard. Variances are short-term modifications in water quality standards. Subject to EPA approval, States, with their own statutory authority, may grant a variance to a specific discharger for a specific pollutant. The justification for a variance is similar to that required for a permanent change in the standard, although the showings needed are less rigorous. Variances are also subject to public participation requirements of the water quality standards and permits programs and are reviewable generally every three years. A variance allows the CSO permit to be written to meet the "modified" water quality standard as analyses are conducted and as progress is made to improve water quality.

Justifications for variances are the same as those identified in 40 CFR 131.10(g) for modifications in uses. States must provide an opportunity for public review and comment on all variances. If States use the permit as the vehicle to grant the variance, notice of the permit must clearly state that the variance modifies the State's water quality standards. If the variance is approved, the State appends the variance to the State's standards and reviews the variance every three years.

IV. Expectations for Permitting Authorities

A. Overview

CSOs are point sources subject to NPDES permit requirements including both technology-based and water quality-based requirements of the CWA. CSOs are not subject to secondary treatment regulations applicable to publicly owned treatment works (Montgomery Environmental Coalition vs. Costle, 646 F.2d 568 (D.C. Cir. 1980)).

All permits for CSOs should require the nine minimum controls as a minimum best available technology economically achievable and best conventional technology (BAT/BCT) established on a best professional judgment (BPJ) basis by the permitting authority (40 CFR 125.3). Water quality-based requirements are to be established based on applicable water quality standards.

This policy establishes a uniform, nationally consistent approach to developing and issuing NPDES permits to permittees with CSOs. Permits for CSOs should be developed and issued expeditiously. A single, system-wide permit generally should be issued for all discharges, including CSOs, from a CSS operated by a single authority. When different parts of a single CSS are operated by more than one authority, permits issued to each authority should generally require joint preparation and implementation of the elements of this Policy and should specifically define the responsibilities and duties of each authority. Permittees should be required to coordinate system-wide implementation of the nine minimum controls and the development and implementation of the long-term CSO control plan.

The individual authorities are responsible for their own discharges and should cooperate with the permittee for the POTW receiving the flows from the CSS. When a CSO is permitted separately from the POTW, both permits should be cross-referenced for informational purposes.

EPA Regions and States should review the CSO permitting priorities established in the State CSO Permitting Strategies developed in response to the 1989 Strategy. Regions and States may elect to revise these previous priorities. In setting permitting priorities, Regions and States should not just focus on those permittees that have initiated monitoring programs. When setting priorities, Regions and States should consider, for example, the known or potential impact of CSOs on sensitive areas, and the extent of upstream industrial user discharges to the CSS.

During the permittee's development of the long-term CSO control plan, the permit writer should promote coordination between the permittee and State WQS authority in connection with possible WQS revisions. Once the permittee has completed development of the long-term CSO control plan and has coordinated with the permitting authority the selection of the controls necessary to meet the requirements of the CWA, the permitting authority should include in an appropriate enforceable mechanism, requirements for implementation of the long-term CSO control plan, including conditions for water quality monitoring and operation and maintenance.

B. NPDES Permit Requirements

Following are the major elements of NPDES permits to implement this Policy and ensure protection of water quality.

1. Phase I Permits--Requirements for Demonstration of Implementation of the Nine Minimum Controls and Development of the Long-Term CSO Control Plan

In the Phase I permit issued/modified to reflect this Policy, the NPDES authority should at least require permittees to:

- a. Immediately implement BAT/BCT, which at a minimum includes the nine minimum controls, as determined on a BPJ basis by the permitting authority;
- b. Develop and submit a report documenting the implementation of the nine minimum controls within two years of permit issuance/modification;
- c. Comply with applicable WQS, no later than the date allowed under the State's WQS, expressed in the form of a narrative limitation; and
- d. develop and submit, consistent with this Policy and based on a schedule in an appropriate enforceable mechanism, a long-term CSO control plan as soon as practicable, but generally within two years after the effective date of the permit issuance/ modification. However, permitting authorities may establish a longer timetable for completion of the long-term CSO control plan on a case-by-case basis to account for site-specific factors that may influence the complexity of the planning process.

The NPDES authority should include compliance dates on the fastest practicable schedule for each of the nine minimum controls in an appropriate enforceable mechanism issued in

conjunction with the Phase I permit. The use of enforceable orders is necessary unless Congress amends the CWA. All orders should require compliance with the nine minimum controls no later than January 1, 1997.

2. Phase II Permits--Requirements for Implementation of a Long-Term CSO Control Plan

Once the permittee has completed development of the long-term CSO control plan and the selection of the controls necessary to meet CWA requirements has been coordinated with the permitting and WQS authorities, the permitting authority should include, in an appropriate enforceable mechanism, requirements for implementation of the long-term CSO control plan as soon as practicable. Where the permittee has selected controls based on the "presumption" approach described in Section II.C.4, the permitting authority must have determined that the presumption that such level of treatment will achieve water quality standards is reasonable in light of the data and analysis conducted under this Policy. The Phase II permit should contain:

- a. Requirements to implement the technology-based controls including the nine minimum controls determined on a BPJ basis;
- b. Narrative requirements which insure that the selected CSO controls are implemented, operated and maintained as described in the long-term CSO control plan;
- c. Water quality-based effluent limits under 40 CFR 122.44(d)(1) and 122.44(k), requiring, at a minimum, compliance with, no later than the date allowed under the State's WQS, the numeric performance standards for the selected CSO controls, based on average design conditions specifying at least one of the following:
 - i. A maximum number of overflow events per year for specified design conditions consistent with II.C.4.a.i; or
 - ii. A minimum percentage capture of combined sewage by volume for treatment under specified design conditions consistent with II.C.4.a.ii; or
 - iii. A minimum removal of the mass of pollutants discharged for specified design conditions consistent with II.C.4.a.iii; or

- iv. performance standards and requirements that are consistent with II.C.4.b. of the Policy.
- d. A requirement to implement, with an established schedule, the approved post-construction water quality assessment program including requirements to monitor and collect sufficient information to demonstrate compliance with WQS and protection of designated uses as well as to determine the effectiveness of CSO controls.
- e. A requirement to reassess overflows to sensitive areas in those cases where elimination or relocation of the overflows is not physically possible and economically achievable. The reassessment should be based on consideration of new or improved techniques to eliminate or relocate overflows or changed circumstances that influence economic achievability;
- f. Conditions establishing requirements for maximizing the treatment of wet weather flows at the POTW treatment plant, as appropriate, consistent with Section II.C.7. of this Policy;
- g. A reopener clause authorizing the NPDES authority to reopen and modify the permit upon determination that the CSO controls fail to meet WQS or protect designated uses. Upon such determination, the NPDES authority should promptly notify the permittee and proceed to modify or reissue the permit. The permittee should be required to develop, submit and implement, as soon as practicable, a revised CSO control plan which contains additional controls to meet WQS and designated uses. If the initial CSO control plan was approved under the demonstration provision of Section II.C.4.b., the revised plan, at a minimum, should provide for controls that satisfy one of the criteria in Section II.C.4.a. unless the permittee demonstrates that the revised plan is clearly adequate to meet WQS at a lower cost and it is shown that the additional controls resulting from the criteria in Section II.C.4.a. will not result in a greater overall improvement in water quality.

Unless the permittee can comply with all of the requirements of the Phase II permit, the NPDES authority should include, in an enforceable mechanism, compliance dates on the fastest practicable schedule for those activities directly related to meeting the requirements of the CWA. For major permittees, the compliance schedule should be placed in a judicial order. Proper

compliance with the schedule for implementing the controls recommended in the long-term CSO control plan constitutes compliance with the elements of this Policy concerning planning and implementation of a long term CSO remedy.

3. Phasing Considerations

Implementation of CSO controls may be phased based on the relative importance of and adverse impacts upon WQS and designated uses, as well as the permittee's financial capability and its previous efforts to control CSOs. The NPDES authority should evaluate the proposed implementation schedule and construction phasing discussed in Section II.C.8. of this Policy. The permit should require compliance with the controls proposed in the long-term CSO control plan no later than the applicable deadline(s) under the CWA or State law. If compliance with the Phase II permit is not possible, an enforceable schedule, consistent with the Enforcement and Compliance Section of this Policy, should be issued in conjunction with the Phase II permit which specifies the schedule and milestones for implementation of the long-term CSO control plan.

V. Enforcement and Compliance

A. Overview

It is important that permittees act immediately to take the necessary steps to comply with the CWA. The CSO enforcement effort will commence with an initiative to address CSOs that discharge during dry weather, followed by an enforcement effort in conjunction with permitting CSOs discussed earlier in this Policy. Success of the enforcement effort will depend in large part upon expeditious action by NPDES authorities in issuing enforceable permits that include requirements both for the nine minimum controls and for compliance with all other requirements of the CWA. Priority for enforcement actions should be set based on environmental impacts or sensitive areas affected by CSOs.

As a further inducement for permittees to cooperate with this process, EPA is prepared to exercise its enforcement discretion in determining whether or not to seek civil penalties for past CSO violations if permittees meet the objectives and schedules of this Policy and do not have CSOs during dry weather.

B. Enforcement of CSO Dry Weather Discharge Prohibition

EPA intends to commence immediately an enforcement initiative against CSO permittees which have CWA violations due to CSOs during dry weather. Discharges during dry weather have always been

prohibited by the NPDES program. Such discharges can create serious public health and water quality problems. EPA will use its CWA Section 308 monitoring, reporting, and inspection authorities, together with NPDES State authorities, to locate these violations, and to determine their causes. Appropriate remedies and penalties will be sought for CSOs during dry weather. EPA will provide NPDES authorities more specific guidance on this enforcement initiative separately.

C. Enforcement of Wet Weather CSO Requirements

Under the CWA, EPA can use several enforcement options to address permittees with CSOs. Those options directly applicable to this Policy are section 308 Information Requests, section 309(a) Administrative Orders, section 309(g) Administrative Penalty Orders, section 309 (b) and (d) Civil Judicial Actions, and section 504 Emergency Powers. NPDES States should use comparable means.

NPDES authorities should set priorities for enforcement based on environmental impacts or sensitive areas affected by CSOs. Permittees that have voluntarily initiated monitoring and are progressing expeditiously toward appropriate CSO controls should be given due consideration for their efforts.

1. Enforcement for Compliance With Phase I Permits

Enforcement for compliance with Phase I permits will focus on requirements to implement at least the nine minimum controls, and develop the long-term CSO control plan leading to compliance with the requirements of the CWA. Where immediate compliance with the Phase I permit is infeasible, the NPDES authority should issue an enforceable schedule, in concert with the Phase I permit, requiring compliance with the CWA and imposing compliance schedules with dates for each of the nine minimum controls as soon as practicable. All enforcement authorities should require compliance with the nine minimum controls no later than January 1, 1997. Where the NPDES authority is issuing an order with a compliance schedule for the nine minimum controls, this order should also include a schedule for development of the long-term CSO control plan.

If a CSO permittee fails to meet the final compliance date of the schedule, the NPDES authority should initiate appropriate judicial action.

2. Enforcement for Compliance With Phase II Permits

The main focus for enforcing compliance with Phase II permits will be to incorporate the long-term CSO control plan through a civil judicial action, an administrative order, or other enforceable mechanism requiring compliance with the CWA and imposing a compliance schedule with appropriate milestone dates necessary to implement the plan.

In general, a judicial order is the appropriate mechanism for incorporating the above provisions for Phase II. Administrative orders, however, may be appropriate for permittees whose long-term control plans will take less than five years to complete, and for minors that have complied with the final date of the enforceable order for compliance with their Phase I permit. If necessary, any of the nine minimum controls that have not been implemented by this time should be included in the terms of the judicial order.

D. Penalties

EPA is prepared not to seek civil penalties for past CSO violations, if permittees have no discharges during dry weather and meet the objectives and schedules of this Policy. Notwithstanding this, where a permittee has other significant CWA violations for which EPA or the State is taking judicial action, penalties may be considered as part of that action for the following:

1. CSOs during dry weather;
2. Violations of CSO-related requirements in NPDES permits; consent decrees or court orders which predate this policy; or
3. Other CWA violations.

EPA will not seek penalties for past CSO violations from permittees that fully comply with the Phase I permit or enforceable order requiring compliance with the Phase I permit. For permittees that fail to comply, EPA will exercise its enforcement discretion in determining whether to seek penalties for the time period for which the compliance schedule was violated. If the milestone dates of the enforceable schedule are not achieved and penalties are sought, penalties should be calculated from the last milestone date that was met.

At the time of the judicial settlement imposing a compliance schedule implementing the Phase II permit requirements, EPA will not seek penalties for past CSO violations from permittees that fully comply with the enforceable order requiring compliance with the Phase I permit and if the terms of the judicial order are expeditiously agreed

to on consent. However, stipulated penalties for violation of the judicial order generally should be included in the order, consistent with existing Agency policies. Additional guidance on stipulated penalties concerning long-term CSO controls and attainment of WQS will be issued.

Paperwork Reduction Act

The information collection requirements in this policy have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq and have been assigned OMB control number 2040-0170.

This collection of information has an estimated reporting burden averaging 578 hours per response and an estimated annual recordkeeping burden averaging 25 hours per recordkeeper. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M Street SW. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ``Attention: Desk Officer for EPA."`

N.J.A.C. 7:14A-11 UNOFFICIAL VERSION. The Official Version can be obtained from West Publishing, 1-800-808-WEST

SUBCHAPTER 12. EFFLUENT STANDARDS APPLICABLE TO DIRECT DISCHARGES TO SURFACE WATER AND INDIRECT DISCHARGES TO DOMESTIC TREATMENT WORKS

7:14A-12.1 Purpose and Scope

(a) This subchapter specifies Federal and State effluent standards which may be incorporated into a permit as an effluent limitation for direct discharges to surface water including those discharges conveyed to surface water via storm sewers and indirect discharges to DTWs.

(b) The effluent standards contained in this subchapter are applicable as follows:

1. Regarding stormwater discharges:
 - i. Any discharge of stormwater authorized by a general permit is exempt from the requirements of this subchapter unless such general permit provides otherwise;
 - ii. Any stormwater discharge shall be subject to one or more requirements of this subchapter when the effluent standard in question is achievable by stormwater treatment processes using commercially available technology and is not achievable using other practicable BMPs, and the fact sheet or statement of basis for the draft permit provides the basis for the inclusion of such requirement(s).
2. Regarding discharges from combined sewer overflows:
 - i. Any discharge from a combined sewer overflow authorized by a general permit is exempt from the requirements of this subchapter unless such general permit provides otherwise;
 - ii. Any discharge from a combined sewer overflow shall be subject to one or more requirements of this subchapter when the fact sheet for the draft permit for such discharge provides the basis for the inclusion of such requirement(s).
3. Any discharge other than those identified at (b)1. above shall be exempt from one or more of the requirements in this subchapter as specified in the applicable section.
4. Any discharge of a parameter to which this subchapter applies that is also regulated by another regulatory agency shall meet the more stringent standards of such agency or of this subchapter.

7:14A-12.2 Secondary Treatment Effluent Standards

(a) The requirements of this section shall apply to all direct discharges to surface water from publicly or privately owned domestic treatment works included in a NJPDES permit.

(b) The minimum level of effluent quality attainable by secondary treatment in terms of the parameter BOD₅, except as provided for in N.J.A.C. 7:14A-12.3 is as follows:

1. The monthly average value shall not exceed 30 mg/L;
2. The weekly average value shall not exceed 45 mg/L; and
3. The monthly average value for percent removal shall not be less than 85 percent.

(c) In lieu of the parameter BOD₅ and the levels of the effluent quality specified in (b) above, the parameter CBOD₅ may be substituted as follows:

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 1.5 ug/L daily maximum, 7.5 ug/L instantaneous maximum
for formulators: discharge prohibited

1. The monthly average value shall not exceed 25 mg/L;
2. The weekly average value shall not exceed 40 mg/L; and
3. The monthly average value for percent removal shall not be less than 85 percent.

(d) Chemical oxygen demand COD or total organic carbon (TOC) may be substituted for BOD₅ or CBOD₅ when a long-term BOD₅ or CBOD₅:COD or BOD₅ or CBOD₅:TOC correlation is demonstrated whereby a permittee submits data which indicates that a different BOD₅ or CBOD₅:COD or BOD₅ or CBOD₅:TOC ratio would be more appropriate. In the absence of data to establish a long term correlation, the BOD₅:COD ratio shall be assumed to be 1:2 and the BOD₅:TOC ratio shall be assumed to be 1:1.

(e) The minimum level of effluent quality attainable by secondary treatment in terms of the parameter TSS, except as provided in N.J.A.C. 7:14A-12.3 is as follows:

1. The monthly average value shall not exceed 30 mg/L;
2. The weekly average value shall not exceed 45 mg/L; and
3. The monthly average value for percent removal shall not be less than 85 percent.

(f) The pH shall be maintained within the limits of 6.0 to 9.0 standard units unless the facility demonstrates that:

1. Inorganic chemicals are not added to the wastestream as part of the treatment process; and
2. Contributions from industrial sources do not cause the pH of the effluent to be less than 6.0 or greater than 9.0.

7:14A-12.3 Secondary Treatment Special Considerations

(a) This section identifies special considerations applicable to effluent limitations for BOD₅ or CBOD₅ and TSS percentage removal or, for facilities receiving waste from certain industrial categories, relief in terms of less stringent BOD₅ or CBOD₅ and TSS concentration levels when the level of treatment required is more stringent than the minimum treatment requirements specified in N.J.A.C. 7:14A-12.2.

(b) For domestic treatment works receiving less concentrated influent wastewater from combined sewer systems during wet weather, the Department may remove, or impose a less stringent, BOD₅ or CBOD₅ and TSS percent removal requirement than specified in N.J.A.C. 7:14A-12.2(b)3, (c)3 or (e)3. For such treatment works, any attainable percentage removal level shall be defined on a case-by-case basis.

(c) For domestic treatment works receiving less concentrated influent wastewater from combined sewer systems during dry weather, the Department shall remove, or impose a less stringent, BOD₅ or CBOD₅ and TSS percent removal requirement than specified in N.J.A.C. 7:14A-12.2(b)3, (c)3 or (e)3 if the permittee satisfactorily demonstrates that:

1. The treatment works is consistently meeting, or will consistently meet its permit effluent concentration limits, but the percent removal requirements cannot be met due to less concentrated influent wastewater. In such case an applicant shall demonstrate compliance with effluent limitations consistently achievable through proper operations and maintenance, as defined in N.J.A.C. 7:14A-1.2; and
2. To meet the percent removal requirements, the treatment works would have to achieve significantly more stringent effluent limitations, as defined in N.J.A.C. 7:14A-1.2, than would otherwise be required by the concentration-based standards and associated loadings; and
3. The less concentrated influent wastewater does not result from either excessive infiltration or clear water industrial discharges (for example, non-contact cooling water discharges or other discharges which do not contain pollutants in sufficient quantities to otherwise be of concern) during dry weather

all units in ug/L

- 1 -for maufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 1.5 ug/L daily maximum, 7.5 ug/L instantaneous maximum
for formulators: discharge prohibited

periods. If the less concentrated influent wastewater is the result of clear water industrial discharges, then the treatment works must control such discharges in accordance with 40 CFR 403.

(d) For domestic treatment works receiving less concentrated influent wastewater from a separate sewer system, the Department shall remove, or impose a less stringent, BOD₅ or CBOD₅ and TSS percent removal requirement than specified in N.J.A.C. 7:14A-12.2(b)3, (c)3 or (e)3, if the permittee satisfactorily demonstrates that:

1. The treatment works is consistently meeting, or will consistently meet, its permit effluent concentration limits but the percent removal requirements cannot be met due to less concentrated influent wastewater. In such case an applicant shall demonstrate compliance with effluent limitations consistently achievable through proper operations and maintenance as defined in N.J.A.C. 7:14A-1.2; and
2. To meet the percent removal requirements, the treatment works would have to achieve significantly more stringent limitations as defined in N.J.A.C. 7:14A-1.2, than would otherwise be required by the concentration-based standards; and
3. The less concentrated influent wastewater is not the result of excessive inflow/infiltration.

(e) For domestic treatment works receiving industrial waste from certain industrial categories, the average monthly values for BOD₅, or CBOD₅ and TSS specified in N.J.A.C. 7:14A-12.2(b)1, (c)1 or (e)1 shall be made less stringent provided that:

1. The permitted discharge of BOD₅ or CBOD₅ and TSS from the domestic treatment works, attributable to the industrial category, would not be greater than that which would be permitted under sections 301(b)(1)(A)(i), 301(b)(2)(E) or 306 of the Federal Act if such industrial category were to discharge directly to surface water; and
2. The flow or loading for BOD₅ or CBOD₅ and TSS introduced to the domestic treatment works by the industrial category exceeds 10 percent of the design flow or loading of the domestic treatment works. When such an adjustment is made, the weekly average value for BOD₅ or CBOD₅ and TSS specified in N.J.A.C. 7:14A-12.2(b)2, (c)2 or (e)2 shall be adjusted proportionately.

(f) When requesting special consideration for any of the discharges described in (b), (c) and (d) above, an applicant shall submit, as part of the request, all demonstrations specified in the applicable subsection and, in addition, the following:

1. The BOD₅, or CBOD₅, and TSS percent removal requested, as applicable, and whether the request is for seasonal or year round relief;
2. If the discharge is also regulated by another regulatory agency (for example, Delaware River Basin Commission, Interstate Sanitation Commission), a brief written statement from that regulatory agency that the agency has no objection to the request for special consideration;
3. At a minimum, 24 consecutive months of influent and effluent data sampled at monthly intervals for BOD₅ or CBOD₅ and TSS concentration, as well as percentage removal, presented in summary form. Pollutant data for BOD₅ or CBOD₅ and TSS shall be sampled in accordance with the methods and procedures described in the applicable permit. Data collected during periods of upsets, bypasses, operational errors or other unusual conditions shall be excluded. The data shall contain, at a minimum, the following information:
 - i. Parameter value in mg/L for influent (concentration only) and effluent (concentration and percent removal);
 - ii. Date on which each sample was taken;

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 1.5 ug/L daily maximum, 7.5 ug/L instantaneous maximum
for formulators: discharge prohibited

- iii. Effluent flow at time of each sample;
 - iv. Weather conditions at time of each sampling (for example, raining or dry);
 - v. Total population served; and
 - vi. The total amount of flow attributable to major industrial and commercial users contributing greater than 50,000 gallons per day each.
4. All permit limit exceedences;
 5. For combined sewer systems only, the number of combined sewer overflow points and an estimation, with basis, of what percentage of the total collection system is combined; and
 6. Any other data that the Department deems appropriate to make an accurate determination on the merits of the request.

(g) When requesting special consideration for the discharge under (e) above, an applicant shall submit all applicable demonstrations specified in (e) 1 and 2, and, in addition, the following:

1. If the discharge is also regulated by another regulatory agency (for example, Delaware River Basin Commission, Interstate Sanitation Commission,), a brief written statement from that regulatory agency that the agency has no objection to the request for special consideration;
2. The adjustment requested; and
3. Any other data that the Department deems appropriate to make an accurate determination on the merits of the request.

(h) The following domestic treatment works are not eligible to request special consideration under this section:

1. Any domestic treatment works which cannot provide satisfactory demonstrations as required pursuant to (b) through (e) above, as applicable; and
2. Any domestic treatment works subject to the requirements of another regulatory agency (for example, Delaware River Basin Commission, Interstate Sanitation Commission) that has not received a written statement from that agency that it has no objection to the request.

7:14A-12.4 Minimum BOD₅ Effluent Standards

(a) For direct discharges to surface water for which (BOD₅ or CBOD₅) water quality based effluent limitations based upon water quality studies acceptable to the Department have not been developed but are required under N.J.A.C. 7:9B-1.5 or 1.6, the minimum treatment requirements for BOD₅ specified in (b) below shall apply except when more stringent effluent limitations are required by:

1. Section 301 or 306 of the Federal Act;
2. The Delaware River Basin Commission or the Interstate Sanitation Commission, as applicable.

(b) The minimum BOD₅ treatment requirements are as listed in the following table:

WATERSHED TYPE	RECEIVING WATER CLASSIFICATION	BOD ₅ MAXIMUM (MONTHLY/WEEKLY AVG.)	DISCHARGE
Atlantic Coastal Plain	FW2, SE1 SC	15/22.5 mg/L 30/45 mg/l	All Domestic or Domestic combined with industrial

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 1.5 ug/L daily maximum, 7.5 ug/L instantaneous maximum
for formulators: discharge prohibited

Delaware River Basin	Tributaries Classified as FW2, SE1, SE2 Main stem all zones	25/37.5 mg/L	All
		As set forth in the Water Quality Standards for the Delaware River Basin; Resolution 67-7 of the DRBC; April 26, 1967 and subsequent revisions	All
Hackensack River Basin	FW2, SE1, SE2, SE3	30/45 mg/L	All
Passaic River Basin (including Newark Bay)	FW2 SE2, SE3	25/37.5 mg/L	All
		30/45 mg/L	All
Wallkill River Basin	FW2	15/22.5 mg/L	All

(c) In applying the minimum treatment requirements contained in (b) above, the following substitutions may be made:

1. For industrial treatment works, TOC or COD may be substituted for BOD₅ when a long-term BOD₅:COD or BOD₅:TOC correlation has been demonstrated. In the absence of data (to establish a long term correlation), the BOD₅:COD ratio shall be assumed to be 1:2 and the BOD₅:TOC ratio shall be assumed to be 1:1. If subsequent data are submitted which indicate that a different BOD₅:COD or BOD₅:TOC ratio would be more appropriate, a written request shall be submitted to the Department; and
2. For industrial or domestic treatment works, CBOD₅ may be substituted for BOD₅ as follows:
 - i. With prior approval of each regulatory agency with jurisdiction over the discharge, when applicable, if the effluent standard for BOD₅ is 30/45 mg/L, a CBOD₅ effluent standard of 25/40 mg/L, as allowed for in N.J.A.C. 7:14A-12.2(c)1 and 2, may be substituted; or
 - ii. With prior approval of each regulatory agency with jurisdiction over the discharge, when applicable, if the effluent standard for BOD₅ is other than 30/45 mg/L, CBOD₅ may be substituted for BOD₅ when a long term BOD₅:CBOD₅ correlation has been demonstrated. When a request for a substitution of CBOD₅ for BOD₅ is made, the applicant shall submit data demonstrating the appropriate BOD₅:CBOD₅ correlation. The correlation demonstration shall consist of a minimum of 12 BOD₅ and CBOD₅ analyses of split samples obtained at a frequency of twice per month, subject to the following restrictions:
 - (A) For limitations applicable year round, or for limitations applicable during warm weather (for example, May through October), the samples shall be obtained during the months of May through October.
 - (B) For limitations applicable during cold weather (for example, November through April), the samples shall be obtained during the months of November through April.
 - (C) The monthly and weekly BOD₅ effluent limitations shall be recalculated as CBOD₅ monthly and weekly effluent limitations using the approved correlation factor.

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 1.5 ug/L daily maximum, 7.5 ug/L instantaneous maximum
for formulators: discharge prohibited

(d) Direct discharges to surface water from industrial treatment works shall be exempt from the minimum BOD₅ effluent standards in (b) above, when:

- i. Statistically valid data indicate that the maximum projected BOD₅ concentration is consistently below the applicable effluent standard; or
- ii. The Department determines that, based on wastewater generating activities, no potential exists for the discharge to add BOD₅, COD or TOC.

7:14A-12.5 Disinfection

(a) All wastewater that could contain pathogenic organisms such as fecal coliform and/or enterococci organisms shall be subject to continuous year round disinfection prior to discharge into surface waters.

(b) The State effluent standard for fecal coliform organisms is as follows:

1. The monthly geometric mean shall not exceed 200 colonies/100 mL; and
2. The weekly geometric mean shall not exceed 400 colonies/100 mL.

7:14A-12.6 Foam

(a) DSW dischargers are prohibited from discharging foam or causing foaming of the receiving water that:

1. Forms objectionable deposits on the receiving water;
2. Forms floating masses producing a nuisance;
3. Produces objectionable color or odor; or
4. Interferes with a designated use of the waterbody.

(b) Foaming of the receiving waterbody caused by natural conditions shall not be considered a violation of the standard in (a) above.

(c) For discharges with submerged outfalls, the Department may take into consideration the location, depth and the dispersion characteristics of the discharge in deciding whether or not to include the provisions of (a) above in the permit.

7:14A-12.7 Phosphorus effluent standards

(Reserved.)

7:14A-12.8 Oil and grease effluent standards

(a) The requirements of N.J.A.C. 7:14A-12.8 through 12.10 apply to direct discharges of oil and grease to surface water, and indirect discharges of petroleum based oil and grease to a domestic treatment works, except as specifically exempted in N.J.A.C. 7:14A-12.10. Indirect users shall comply with any local agency standards for nonpetroleum based oil and grease.

(b) (Reserved.)

(c) Direct dischargers to surface waters shall limit the oil and grease effluent content so that such effluent does not:

1. Exhibit a visible sheen;
2. Exceed an average monthly discharge limitation of 10 mg/L; and

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 1.5 ug/L daily maximum, 7.5 ug/L instantaneous maximum
for formulators: discharge prohibited

3. Exceed a concentration of 15 mg/L in any single sample.

(d) Indirect users discharging petroleum based oil and grease shall meet the following petroleum hydrocarbon effluent standards except where the control authority has determined that more stringent effluent limitations apply:

1. The average monthly discharge limitation shall not exceed 100 mg/L; and
2. The concentration in any single sample shall not exceed 150 mg/L.

(e) (Reserved.)

(f) If a direct discharger only discharges petroleum based oil and grease, the Department may specify in the permit that compliance with the oil and grease effluent standards in 12.8(c) above may be monitored using the petroleum hydrocarbons analytical method.

7:14A-12.9 (Reserved.)

7:14A-12.10 Petroleum Hydrocarbon Exemptions

(a) Indirect users shall be exempted from the petroleum hydrocarbon standards specified at N.J.A.C. 7:14A-12.8(d), provided the following requirements are met:

1. The DTW into which the indirect user discharges submits a request for the exemption indicating it meets all of the following criteria:
 - i. The discharge from the domestic treatment works has met a 10 mg/L average and 15 mg/L maximum limitation for oil and grease for each of the reporting periods during the preceding 12 months, as determined by the Department;
 - ii. The sludge disposal option currently utilized or planned by the domestic treatment works considers petroleum hydrocarbons a beneficial constituent; and
 - iii. The DTW shows that the costs for oil and grease removal at its plant are in proportion to the other operation and maintenance costs of the plant.
2. The Department shall have 90 days to review the request for the exemption and make a tentative decision to approve or deny the request. If additional information from the applicant is required, the 90 day period may be extended. The Department shall public notice the tentative decision.

7:14A-12.11 Toxic Effluent Standards

(a) (Reserved.)

(b) (Reserved.)

(c) (Reserved.)

(d) For discharges to surface water from site remediation projects, the chemical specific toxic pollutant effluent standards are set forth in N.J.A.C. 7:14A-12 Appendix B.

(e) For new sources, new discharges or expanded direct discharges to surface water, the chemical specific toxic pollutant effluent standards are set forth in N.J.A.C. 7:14A-12 Appendix C.

7:14A-12 Appendix A (Reserved.)

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 1.5 ug/L daily maximum, 7.5 ug/L instantaneous maximum
for formulators: discharge prohibited

7:14A-12: Appendix B Effluent Standards for Site Remediation Projects

PARAMETER	EFFLUENT		STANDARDS	
	FW-2 WATERS		SC, SE WATERS	
	monthly average	daily maximum	monthly average	daily maximum
VOLATILE COMPOUNDS				
Acrolein		100		100
Acrylonitrile		50		50
Benzene		7	37	136
Bromoform		8.6	29	58
Carbon Tetrachloride		6		8.8
Chlorobenzene	15	28	15	28
Chlorodibromomethane		8.2		14
Chloroethane	104	268	104	268
Chloroform		11.4	21	46
Dichlorobromomethane		5		12
1,1-Dichloroethane	22	59	22	59
1,2-Dichloroethane		3	68	211
1,1-Dichloroethylene		6	16	25
1,2-Dichloropropane	153	230	153	230
1,3-Dichloropropylene	10	20	29	44
Ethylbenzene	32	108	32	108
Methyl Bromide	20	40	20	40
Methyl Chloride	86	190	86	190
Methylene Chloride		9.4	40	89
1,1,2,2-Tetrachloroethane		10		10
Tetrachloroethylene		16	22	56
Toluene	26	80	26	80
1,2-Trans-Dichloroethylene	21	54	21	54
1,1,1-Trichloroethane	21	54	21	54
1,1,2-Trichloroethane		12	21	54
Trichloroethylene		5.4	21	54
Vinyl Chloride		10	104	268
ACID COMPOUNDS				
2-Chlorophenol	31	98	31	98
2,4-Dichlorophenol	39	112	39	112

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 1.5 ug/L daily maximum, 7.5 ug/L instantaneous maximum
for formulators: discharge prohibited

2,4-Dimethylphenol	18	36	18	36
4,6-Dinitro-O-Cresol		60	78	277
2,4-Dinitrophenol	71	123	71	123
2-Nitrophenol	41	69	41	69
4-Nitrophenol	72	124	72	124
Pentachlorophenol		30		30
Phenol	15	26	15	26
2,4,6-Trichlorophenol		20		20

all units in ug/L

- 1 -for maufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 1.5 ug/L daily maximum, 7.5 ug/L instantaneous maximum
for formulators: discharge prohibited

PARAMETER	EFFLUENT		STANDARDS	
	FW-2 WATERS		SC, SE WATERS	
	monthly average	daily maximum	monthly average	daily maximum
BASE NEUTRAL COMPOUNDS				
Anthracene	22	59	22	59
Benzidine		50		50
Benzo (a) Anthracene		10		10
Benzo (a) Pyrene		20		20
Benzo(b)fluoranthene		10		10
Benzo (k) Fluoranthene		20		20
Bis (2-Chloroethyl) Ether		10		10
Bis (2-Chloroisopropyl) Ether	301	757	301	757
Bis (2-Ethylhexyl) Phthalate		36	59	118
Butyl Benzyl Phthalate		24		24
Chrysene		20		20
Dibenzo (a,h) Anthracene		20		20
1,2-Dichlorobenzene	77	163	77	163
1,3-Dichlorobenzene	31	44	31	44
1,4-Dichlorobenzene		28		28
3,3'-Dichlorobenzidine		60		60
Diethyl Phthalate	81	203	81	203
Dimethyl Phthalate	19	47	19	47
Di-N-Butyl Phthalate	27	57	27	57
2,4 Dinitrotoluene		10		18.2
2,6-Dinitrotoluene	255	641	255	641
Fluoranthene	25	68	25	68
Fluorene	22	59	22	59
Hexachlorobenzene		10		10
Hexachlorobutadiene		10	20	49
Hexachlorocyclopentadiene	240	480		1800
Hexachloroethane	19	38	21	54
Indeno (1,2,3-cd) Pyrene		20		20
Isophorone		20		20
Naphthalene	22	59	22	59
Nitrobenzene	17	34	27	68

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 1.5 ug/L daily maximum, 7.5 ug/L instantaneous maximum
for formulators: discharge prohibited

N-Nitrosodimethylamine		20		20
N-Nitrosodiphenylamine		20		20
Phenanthrene	22	59	22	59
Pyrene	25	67	25	67
1,2,4-Trichlorobenzene	68	140	68	140

all units in ug/L

- 1 -for maufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 1.5 ug/L daily maximum, 7.5 ug/L instantaneous maximum
for formulators: discharge prohibited

PARAMETER	EFFLUENT		STANDARDS	
	FW-2 WATERS		SC, SE WATERS	
	monthly average	daily maximum	monthly average	daily maximum
PESTICIDES				
Aldrin ²		0.04		0.04
Alpha-BHC		0.02		0.02
Beta-BHC	0.137	0.274	0.46	0.92
Gamma-BHC (Lindane)		0.08		0.03
Chlordane		0.2		0.2
4,4'-DDT ²		0.06		0.06
4,4'-DDE ²		0.04		0.04
4,4'-DDD ²		0.04		0.04
Dieldrin ²		0.03		0.03
Alpha-Endosulfan		0.02		0.02
Beta-Endosulfan		0.04		0.04
Endosulfan Sulfate	0.93	1.86	2	4
Endrin ³		0.04		0.04
Endrin Aldehyde	0.76	1.52	0.81	1.62
Heptachlor		0.02		0.02
Heptachlor Epoxide		0.4		0.4
Toxaphene ³		1		1
METALS AND CYANIDE				
Arsenic	50	100	50	100
Cadmium	50	100	50	100
Chromium	50	100	50	100
Copper	50	100	50	100
Iron	1000	2000	1000	2000
Lead	50	100	50	100
Mercury		1		1
Nickel	72	144	50	100
Selenium	50	100	50	100
Silver	25	50	25	50
Zinc	100	200	100	200
Cyanide	100	200	100	200
DIOXIN				

all units in ug/L

- 1 -for maunufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 1.5 ug/L daily maximum, 7.5 ug/L instantaneous maximum
for formulators: discharge prohibited

2,3,7,8-Tetrachlorodibenzo				
-p-Dioxin		0.01		0.01
PCBs²				
PCBs-1242, 1254, 1221,				
1232, 1248, 1260, 1016		0.5		0.5

all units in ug/L

- 1 -for maufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 1.5 ug/L daily maximum, 7.5 ug/L instantaneous maximum
for formulators: discharge prohibited

7:14A-12: APPENDIX C

EFFLUENT STANDARDS FOR NEW SOURCES, NEW DISCHARGES OR EXPANDED DIRECT DISCHARGES

P A R A M E T E R	FACILITY FLOW < 7Q 10 & LARGE TIDAL				FACILITY FLOW > 7Q 10 & SMALL TIDAL			
	FW2 WATERS		SE, SC WATERS		FW2 WATERS		SE, SC WATERS	
	monthly average	daily maximum	monthly average	daily maximum	monthly average	daily maximum	monthly average	daily maximum
VOLATILE COMPOUNDS								
Acrolein		100		100		100		100
Acrylonitrile		50		50		50		50
Benzene		24	37	136		7	37	136
Bromoform	29	58	29	58		8.6	29	58
Carbon Tetrachloride		6	18	38		6		8.8
Chlorobenzene	15	28	15	28	15	28	15	28
Chlorodibromomethane		14		14		8.2		14
Chloroethane	104	268	104	268	104	268	104	268
Chloroform	21	46	21	46		11.4	21	46
Dichlorobromomethane		5.4		12		5		12
1,1-Dichloroethane	22	59	22	59	22	59	22	59
1,2-Dichloroethane		7.6	68	211		3	68	211
1,1-Dichloroethylene	16	11.4	16	25		6	16	25
1,2-Dichloropropane	153	230	153	230	153	230	153	230
1,3-Dichloropropylene	29	44	29	44		20	29	44
Ethylbenzene	32	108	32	108	32	108	32	108
Methyl Bromide	20	40	20	40	20	40	20	40
Methyl Chloride	86	190	86	190	86	190	86	190
Methylene Chloride	40	89	40	89		9.4	40	89
1,1,2,2-Tetrachloroethane		10		10		10		10
Tetrachloroethylene	22	56	22	56		16	22	56
Toluene	26	80	26	80	26	80	26	80
1,2-Trans-Dichloroethylene	21	54	21	54	21	54	21	54
1,1,1-Trichloroethane	21	54	21	54	21	54	21	54
1,1,2-Trichloroethane	21	54	21	54		12	21	54
Trichloroethylene	21	54	21	54		5.4	21	54
Vinyl Chloride	20	40	104	268		10	104	268
ACID COMPOUNDS								
2-Chlorophenol	31	98	31	98	31	98	31	98

all units in ug/L

- 1 -for maunfacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

2,4-Dichlorophenol	39	112	39	112	39	112	39	112
2,4-Dimethylphenol	18	36	18	36	18	36	18	36
4,6-Dinitro-O-Cresol	78	277	78	277		60	78	277
2,4-Dinitrophenol	71	123	71	123	71	123	71	123
2-Nitrophenol	41	69	41	69	41	69	41	69
4-Nitrophenol	72	124	72	124	72	124	72	124
Pentachlorophenol		30		30		30		30
Phenol	15	26	15	26	15	26	15	26
2,4,6-Trichlorophenol		42	65	130		20		20

all units in ug/L

- 1 -for maunfacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

P A R A M E T E R	FACILITY FLOW < 7Q 10 & LARGE TIDAL				FACILITY FLOW > 7Q 10 & SMALL TIDAL			
	FW2 WATERS		SE, SC WATERS		FW2 WATERS		SE, SC WATERS	
	monthly average	daily maximum	monthly average	daily maximum	monthly average	daily maximum	monthly average	daily maximum
BASE NEUTRAL COMPOUNDS								
Anthracene	22	59	22	59	22	59	22	59
Benzidine ¹		50		50		50		50
Benzo (a) Anthracene		10		10		10		10
Benzo (a) Pyrene		20		20		20		20
Benzo(b)fluoranthene		10		10		10		10
Benzo (k) Fluoranthene		20		20		20		20
Bis (2-Chloroethyl) Ether		10	14	28		10		10
Bis (2-Chloroisopropyl) Ether	301	757	301	757	301	757	301	757
Bis (2-Ethylhexyl) Phthalate	103	279	103	279		36	59	118
Butyl Benzyl Phthalate		24		24		24		24
Chrysene		20		20		20		20
Dibenzo (a,h) Anthracene		20		20		20		20
1,2-Dichlorobenzene	77	163	77	163	77	163	77	163
1,3-Dichlorobenzene	31	44	31	44	31	44	31	44
1,4-Dichlorobenzene		28		28		28		28
3,3'-Dichlorobenzidine		60		60		60		60
Diethyl Phthalate	81	203	81	203	81	203	81	203
Dimethyl Phthalate	19	47	19	47	19	47	19	47
Di-N-Butyl Phthalate	27	57	27	57	27	57	27	57
2,4 Dinitrotoluene		10	91	182		10		18.2
2,6-Dinitrotoluene	255	641	255	641	255	641	255	641
1,2-Diphenylhydrazine	0.4	0.8	5.4	10.8	0.04	0.08	0.54	1.08
(as Azobenzene)								
Fluoranthene	25	68	25	68	25	68	25	68
Fluorene	22	59	22	59	22	59	22	59
Hexachlorobenzene		10		10		10		10
Hexachlorobutadiene	20	49	20	49		10	20	49
Hexachlorocyclopentadiene		1800		1800	240	480		1800
Hexachloroethane	21	54	21	54	19	38	21	54
Indeno (1,2,3-cd) Pyrene		20		20		20		20

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

Isophorone		20		20		20		20
Naphthalene	22	59	22	59	22	59	22	59
Nitrobenzene	27	68	27	68	17	34	27	68
N-Nitrosodimethylamine		20	73	146		20		20
N-Nitrosodiphenylamine		20		20		20		20
Phenanthrene	22	59	22	59	22	59	22	59
Pyrene	25	67	25	67	25	67	25	67
1,2,4-Trichlorobenzene	68	140	68	140	68	140	68	140

all units in ug/L

- 1 -for maufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

PARAMETER	FACILITY FLOW < 7Q 10 & LARGE TIDAL				FACILITY FLOW > 7Q 10 & SMALL TIDAL			
	FW2 WATERS		SE, SC WATERS		FW2 WATERS		SE, SC WATERS	
	monthly average	daily maximum	monthly average	daily maximum	monthly average	daily maximum	monthly average	daily maximum
PESTICIDES								
Aldrin ²		0.04		0.04		0.04		0.04
Alpha-BHC	0.0391	0.0782	0.131	0.262		0.02		0.026
Beta-BHC	1.4	2.8	4.6	9.2		0.28	0.46	0.92
Gamma-BHC (Lindane)		0.38		0.32		0.037		0.125
Chlordane		0.2		0.2		0.2		0.2
4,4'-DDT ²		0.06		0.06		0.06		0.06
4,4'-DDE ²		0.04		0.04		0.04		0.04
4,4'-DDD ²		0.04		0.04		0.04		0.04
Dieldrin ²		0.03		0.03		0.03		0.03
Alpha-Endosulfan	0.22	0.44		0.068		0.092		0.02
Beta-Endosulfan	0.22	0.44		0.068		0.092		0.02
Endosulfan Sulfate	9.3	18.6	20	40	0.93	1.86	2	4
Endrin ³		0.04		0.04		0.04		0.04
Endrin Aldehyde	7.6	15.2	8.1	16.2		1.52		1.62
Heptachlor		0.02		0.02		0.02		0.02
Heptachlor Epoxide		0.4		0.4		0.4		0.4
Toxaphene ³		1		1		1		1
METALS								
Antimony	140	280				28		
Arsenic		8		8		8		8
Cadmium		4	43	86		4		15.2
Chromium, hexavalent	50	100	50	100	50	100	50	100
Chromium, total		32	409	818		16	41	82
Copper		18.4		10		10		10
Iron	1500	3000	1500	3000	1000	2000	1500	3000
Lead		21	69.5	139		10		13.9
Mercury		1		1		1		1
Nickel	720	1440	67.9	136	72	144		13.6
Selenium	20	40	300	600		10		
Silver		2.4		4.6		2		2
Thallium	17	34	62.2	124.4		10		12.4

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

Zinc	65	130	95	190		65	47.5	95
Cyanide		44		40		40		40
Total PCB's ²		0.5		0.5		0.5		0.5
DIOXIN								
2,3,7,8-Tetrachlorodibenzo -p-Dioxin		0.01		0.01		0.01		0.01
WHOLE EFFLUENT								
Chronic IC ₂₅ (% effluent)		>=50		>=50		>=100		>=100

all units in ug/L

- 1 -for maunfacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

SUBCHAPTER 13: EFFLUENT LIMITATIONS FOR DSW PERMITS

7:14A-13.1. Purpose and Scope

This subchapter sets forth the procedures the Department will use in imposing numeric or non-numeric effluent limitations in DSW permits.

7:14A-13.2. Types of Effluent Limitations

(a) Each DSW permit shall include conditions meeting the following requirements, as applicable:

1. Technology based limitations determined in accordance with N.J.A.C. 7:14A-13.3 and 13.4. Technology based limitations include secondary treatment standards for DTWs, effluent limitations guidelines, and case-by-case limitations developed through a best professional judgment analysis. Applicability criteria are at N.J.A.C. 7:14A-13.3(b);
 - i. For DTWs, effluent limitations based on secondary treatment as defined at 40 CFR 133 and incorporated into N.J.A.C. 7:14A-12;
 - ii. For dischargers other than DTWs, effluent limits requiring:
 - (1) Effluent limitations based on the best practicable control technology currently available (BPT);
 - (2) For conventional pollutants, effluent limitations based on the best conventional pollutant control technology (BCT);
 - (3) For all toxic pollutants, effluent limitations based on the best available technology economically achievable (BAT);
 - (4) For pollutants which are neither toxic nor conventional pollutants, effluent limitations based on BAT.
2. Water quality based limitations determined in accordance with N.J.A.C. 7:14A-13.6 when the Department has determined that the discharge causes, has the reasonable potential to cause, or contributes to an excursion above the SWQS. Water quality based limitations include limitations based on a TMDL adopted in accordance with N.J.A.C. 7:15-7. Applicability criteria are at N.J.A.C. 7:14A-13.3(a);
3. Limitations based on a WQM Plan adopted in accordance with N.J.A.C. 7:15. Applicability criteria are at N.J.A.C. 7:14A-13.3(d);
4. Limitations based on State effluent standards in accordance with N.J.A.C. 7:14A-12 and N.J.A.C. 7:9-5.7. Applicability criteria are at N.J.A.C. 7:14A-13.3(c); and

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

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5. Limitations based on existing effluent quality and determined in accordance with N.J.A.C. 7:14A-13.8 when the Department determines that such limitations are necessary. Applicability criteria are at N.J.A.C. 7:14A-13.3(e).

7:14A-13.3 Applicability of Effluent Limitations

(a) DSW permits shall include water quality based effluent limitations or requirements where the Department determines that effluent limitations, guidelines or standards established pursuant to (b) through (e) below are not sufficient to achieve surface water quality standards established pursuant to N.J.A.C. 7:9B, or to attain and maintain a specified water quality through water quality related effluent limitations established pursuant to Section 302 of the Federal Act. In addition:

1. Where the Department determines that a discharge may adversely impact a waterbody with a higher use classification or antidegradation designation downstream of the discharge location, water quality based effluent limitations shall be developed and included in the discharge permit to ensure that the water quality standards applicable to the higher classification or antidegradation designation of the downstream waterbody shall be attained and maintained; and
2. Where the Department determines that a discharge may cause, contribute, or have the reasonable potential to cause an excursion above the surface water quality standards of another state, water quality based effluent limitations shall be developed and included in the discharge permit to ensure that the water quality standards for the affected waters of the other state shall be attained and maintained.

(b) DSW permits issued for direct discharges of industrial wastewater shall include technology based effluent limitations and standards promulgated under Section 301 of the Federal Act, new source performance standards promulgated under Section 306 of the Federal Act, or case-by-case effluent limitations determined under Section 402(a)(1) of the Federal Act or N.J.A.C. 7:14A-13.4, or a combination, in accordance with N.J.A.C. 7:14A-13.4.

1. Technology based treatment requirements under section 301(b) of the Federal Act represent the minimum level of control that shall be imposed in a permit. Where such technology based limitations are more stringent than other applicable limitations listed at N.J.A.C. 7:14A-13.2, the technology based limitations shall be included in the permit.
2. Technology based treatment requirements may be imposed through one of the following methods:
 - i. Application of USEPA promulgated effluent limitations developed under section 304 of the Federal Act to dischargers by category or subcategory. A permittee may seek fundamentally different factors variances from these effluent limitations under N.J.A.C. 7:14A-11.5(a)1.

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

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- ii. On a case-by-case basis under section 402(a)(1) of the Federal Act, to the extent that USEPA promulgated effluent limitations are inapplicable. The Department shall apply the appropriate factors listed in N.J.A.C. 7:14A-13.4 and shall consider:
 - (1) The appropriate technology for the category or class of point sources of which the applicant is a member, based on available information; and
 - (2) Any unique factors relating to the applicant.
 - iii. Through a combination of the methods in (b)2i and ii above. Where promulgated effluent limitations or guidelines apply only to certain aspects of the discharger's operation, or to certain pollutants, other aspects or activities are subject to regulation on a case-by-case basis in order to carry out the provisions of the Federal or State Act.
 - iv. Limitations developed under (b)2ii above may be expressed, where appropriate, in terms of toxicity (that is, LC₅₀ or IC₂₅), provided the fact sheet demonstrates that the limits reflect the appropriate requirements.
3. Technology based limitations for new sources may be imposed through one of the following methods:
- i. Application of USEPA promulgated new source standards developed under section 304 of the Federal Act to dischargers by category or subcategory.
 - ii. On a case-by-case basis to the extent that USEPA promulgated effluent limitations are inapplicable or are not available, the Department shall apply the appropriate factors listed in N.J.A.C. 7:14A-13.4 and shall consider:
 - (1) The appropriate technology for the category or class of point sources of which the applicant is a member, based on available information; and
 - (2) Any unique factors relating to the applicant.

(c) DSW permits shall include State effluent standards at N.J.A.C. 7:14A-12 and N.J.A.C. 7:9-5.7 as follows:

1. Secondary treatment standards at N.J.A.C. 7:14A-12.2 are the minimum treatment standard applicable to DTWs for BOD₅, total suspended solids, and pH;

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

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2. State effluent standards at N.J.A.C. 7:14A-12.5 for disinfection, N.J.A.C. 7:14A-12.6 for foam, N.J.A.C. 7:14A-12.8 for oil and grease, and N.J.A.C. 7:9-5.7 for whole effluent toxicity and phosphorus are the minimum treatment standard;
3. State BOD₅ effluent standards at N.J.A.C. 7:14A-12.4 shall be incorporated into DSW permits for discharges into the named waterbodies where the Department has not adopted a TMDL for the waterbody;
4. The Department shall include effluent limitations for site remediation activities equal to the remediation effluent standards listed in N.J.A.C. 7:14A-12 Appendix B for any pollutant or pollutant parameter which either results from any remedial action or is present on-site at a concentration greater than the applicable Surface Water Quality Standards, unless it has been demonstrated to the Department's satisfaction that the pollutant, upon discharge, will not cause, have the reasonable potential to cause, or contribute to an excursion above any applicable Surface Water Quality Standards. The Department may include limitations for additional pollutants or pollutant parameters provided the statement of basis or the permit fact sheet includes a specific rationale for the requirement.
5. State effluent standards for the toxic effluent standards at N.J.A.C. 7:14A-12 Appendix C will be included in a discharge permit for a new source, a new discharge, or an expanded direct discharge in accordance with (c)5i through v below only if the permittee requests such limitations in accordance with N.J.A.C. 7:14A-4.4. A request shall specifically list each pollutant or pollutant parameter for which a limitation based on N.J.A.C. 7:14A-12 Appendix C is requested. The applicant shall not be required to submit a water quality study for any pollutant or pollutant parameter for which the Department determines that limitations based on N.J.A.C. 7:14A-12 Appendix C, when imposed on the discharge, are anticipated to ensure that the surface water quality standards, including antidegradation requirements, will be attained.
 - i. Limitations based on N.J.A.C. 7:14A-12 Appendix C shall not be used to relax a more stringent existing effluent limitation or standard, including limitations to be applied to the expansion of an existing discharge.
 - ii. Limitations based on N.J.A.C. 7:14A-12 Appendix C shall be used on a site-specific basis and consideration of the factors listed at (c)5ii(1) through (3) below only for discharges to waterbodies with the following classifications and antidegradation designations as defined in the Surface Water Quality Standards: FW2-NT (Category 2); FW2-TM (Category 2); SE1 (Category 2); SE2 (Category 2); SE3 (Category 2); or SC (Category 2). In no case shall N.J.A.C. 7:14A-12 Appendix C limitations be included in a discharge permit for a discharge to waters classified as FW1; FW2-TP; PL; any Category 1 water; any water with existing active shellfish harvesting activities,

all units in ug/L

- 1 -for maunfacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

any intermittent stream, or immediately upstream or directly into any impoundment.

- (1) Limitations based on N.J.A.C. 7:14A-12 Appendix C shall be used for discharges to FW2-TM (Category 2) waters only when the Department determines that all Surface Water Quality Standards, including antidegradation requirements, will be attained;
 - (2) Limitations based on N.J.A.C. 7:14A-12 Appendix C shall be used for new sources or expanded direct discharges discharging to a waterbody only after consideration by the Department of the basis for any effluent limitations in place for existing discharges to the waterbody; and
 - (3) Limitations based on N.J.A.C. 7:14A-12 Appendix C shall be used for new sources or expanded direct discharges discharging to a waterbody only after consideration by the Department of the potential effects of the discharge on downstream high quality waters or rare or endangered species habitat, the effective dilution at the point of discharge, or any other appropriate site specific factors.
- iii. Limitations based on N.J.A.C. 7:14A-12 Appendix C shall not be used where the Department determines that insufficient assimilative capacity is available in the receiving waterbody to allow the proposed discharge and to ensure that the Surface Water Quality Standards will be attained.
- iv. When limitations based on N.J.A.C. 7:14A-12 Appendix C are requested by an applicant, the Department shall evaluate existing data to determine, if possible, whether the receiving waterbody is currently attaining the Surface Water Quality Standards. Where the waterbody is not currently attaining the SWQS, for the pollutants for which the N.J.A.C. 7:14A-12 Appendix C effluent limitations are requested, such, effluent limitations shall not be used.
- v. Effluent limitations developed in accordance with N.J.A.C. 7:14A-13.4 or 13.6 which are more stringent than the limitations based on N.J.A.C. 7:14A-12 Appendix C shall be imposed when such limitations are developed. Limitations based on N.J.A.C. 7:14A-12 Appendix C which have been imposed on each discharge shall be evaluated as a part of the TMDL process for each pollutant or pollutant parameter.

all units in ug/L

- 1 -for maunfacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

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(d) DSW permits shall include effluent limitations based on a WQM Plan adopted in accordance with N.J.A.C. 7:15 unless limitations based on (a), (b), (c)1, or (c)2 above are more stringent.

(e) DSW permits shall include effluent limitations based on existing effluent quality when the Department determines that an effluent limitation is appropriate for the pollutant or pollutant parameter of interest and a limitation has not been established in accordance with (a) through (d) above.

7:14A-13.4. Establishment of technology based limitations

(a) The discharge permit shall include technology based effluent limitations to control all toxic pollutants which the Department determines are or may be discharged at a level greater than the level which can be achieved by the technology-based requirements appropriate to the permittee under N.J.A.C. 7:14A-13.3(b)2.

(b) The Department may determine that surrogate limitations established in accordance with N.J.A.C. 7:14A-13.10 will provide controls for one or more of the pollutants identified under (a) above.

(c) In setting case-by-case technology based limitations, the following factors shall be considered:

1. For best practicable control technology (BPT) requirements:
 - i. The total cost of application of technology in relation to the effluent reduction benefits to be achieved;
 - ii. The age of the equipment and facilities involved;
 - iii. The process employed;
 - iv. The engineering aspects of the application of various types of control techniques;
 - v. Process changes; and
 - vi. Non-water quality environmental impacts, including energy requirements.
2. For best conventional pollutant control technology (BCT) requirements:
 - i. The reasonableness of the relationship between the costs of attaining a reduction in the pollutant(s) and the benefits derived from the pollutant reduction;
 - ii. Cost and level of treatment comparisons between DTWs and a class or category of industrial sources;
 - iii. The age of the equipment and facilities involved;

all units in ug/L

1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum

2 - for manufacturers and formulators - discharge prohibited

3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

- iv. The process employed;
 - v. The engineering aspects of the application of various types of control techniques;
 - vi. Process changes; and
 - vii. Non-water quality environmental impacts, including energy requirements.
3. For best available technology (BAT) requirements for toxic pollutants and non-conventional pollutants:
- i. The age of the equipment and facilities involved;
 - ii. The process employed;
 - iii. The engineering aspects of the application of various types of control techniques;
 - iv. Process changes; and
 - v. Non-water quality environmental impacts, including energy requirements.

(d) The Department shall set a permit limit for a conventional pollutant at a level more stringent than the best conventional pollutant control technology, or a limit for a nonconventional pollutant which shall not be subject to modification under Section 301(c) or (g) of the Federal Act, where either (d)1 or 2 below apply. The permit fact sheet required by N.J.A.C. 7:14A-15.8 shall set forth the basis for the limitation, including a finding that compliance with the limitation will result in the BAT level of control of the toxic or hazardous pollutant discharges identified, and a finding that it would be economically or technically infeasible to directly limit the toxic or hazardous pollutant(s).

1. Effluent limitations guidelines specify the pollutant as a surrogate for a toxic or hazardous pollutant; or
2. The limitation reflects the BAT level of control of the discharge of one or more toxic or hazardous pollutants which are present in a waste stream, and a specific BAT limitation upon the toxic or hazardous pollutant(s) is not feasible for economic or technical reasons. The permit shall identify which toxic or hazardous pollutants are intended to be controlled by the use of the limitation.

(e) The Department shall set a permit limit for a conventional pollutant at a level more stringent than best conventional pollutant control technology when:

1. Effluent limitations guidelines specify the pollutant as an indicator for a hazardous substance; or

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

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2. The limitation reflects best available technology level of control of the discharge of one or more hazardous substances which are present in a waste stream, and a specific best available technology limitation upon the hazardous substance(s) is not feasible for economic or technical reasons. The permit shall identify which hazardous substances are intended to be controlled by the use of the limitation. The statement of basis under N.J.A.C. 7:14A-15.7 or the permit fact sheet required by N.J.A.C. 7:14A-15.8 and 40 CFR Part 124.56 shall set forth the basis for the limitation, including a finding that compliance with the limitation will result in the best available technology level of control of the hazardous substances identified in the discharge, and a finding that it would be economically or technically infeasible to directly limit the hazardous substance(s).

(f) The Department shall not set a more stringent limit under (d) or (e) above if the method of treatment required to comply with the limit differs from that which would be required if the toxic pollutants or hazardous substances controlled by the limitation were limited directly.

(g) Toxic pollutants identified under (d) above shall be subject to the provisions of N.J.A.C. 7:14A-11.2 concerning establishing permit conditions.

(h) (Reserved)

(i) Technology based treatment requirements shall be applied prior to or at the point of discharge.

(j) Technology based treatment requirements cannot be satisfied through the use of non-treatment techniques such as flow augmentation and instream mechanical aerators. However, these techniques may be considered as an acceptable method of achieving ambient water quality standards on a case-by-case basis when:

1. The technology based treatment requirements applicable to the discharge are not sufficient to meet the ambient water quality standards;
2. The discharger waives any opportunity to request a variance under section 301(c), (g), or (h) of the Federal Act; and
3. The discharger demonstrates that such a technique is the preferred environmental and economic method to achieve the ambient water quality standards after consideration of alternatives such as advanced waste treatment, recycle and reuse, land disposal, changes in operating methods, and other available options.

(k) Except as provided below, technology based effluent limitations imposed in permits shall not be adjusted for pollutants in the intake water.

1. Upon request of the discharger, technology based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:
 - i. The applicable effluent standards specifically provide that they may be applied on a net basis; or

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

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- ii. The discharger demonstrates that the control system it proposes or uses to meet applicable technology based limitations and standards would, if properly installed and operated, meet the effluent limitations and standards in the absence of pollutants in the intake water;
2. The permit includes conditions requiring:
 - i. The permittee to conduct additional monitoring (for example, for flow and concentration of pollutants) as necessary to determine continued eligibility for and compliance with any such adjustments; and
 - ii. The permittee to notify the Department if eligibility for an adjustment under this section may no longer be applicable. In that case, the permit shall be modified accordingly under N.J.A.C. 7:14A-16.4(b)8;
3. Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) shall not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere;
4. Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine continued eligibility for credits and compliance with permit limits;
5. Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. For the purposes of this provision, same body of water means any hydrologically connected waterbody provided chemical characteristics are essentially identical. Chemical characteristics may be evaluated on a parameter by parameter basis; and
6. The discharge of raw water clarifier sludge generated from the treatment of intake water shall not be adjusted for pollutants in the intake water.
 - (l) The development of technology based effluent limitations shall incorporate alternative effluent limitations or standards where warranted by fundamentally different factors under N.J.A.C. 7:14A-11.7(b)1.
 - (m) Technology based effluent limitations shall be established under this section for solids, sludges, filter backwash, and other pollutants removed in the course of treatment or control of wastewaters in the same manner as for other pollutants.

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

7:14A-13.5. Determination of the Reasonable Potential to Cause an Excursion above the SWQS as a Basis for Requiring Inclusion of Water Quality Based Effluent Limitations

(a) Water quality based effluent limitations shall control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants, including whole effluent toxicity) which are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above the Surface Water Quality Standards.

(b) When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an instream excursion above any Surface Water Quality Standard the Department shall evaluate and consider existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the test species to toxicity testing (when evaluating whole effluent toxicity), and, where appropriate, the available dilution of the effluent in the receiving water.

(c) The dilution of the effluent in the receiving water shall be determined in accordance with N.J.A.C. 7:9B-1.5(c)4.

(d) A separate determination of reasonable potential shall be made for each pollutant or pollutant parameter of interest (either conventional, nonconventional, or toxic pollutants, including acute and chronic whole effluent toxicity) that is or may be discharged from the facility. These determinations shall be based on a WLA or site specific allocation.

(e) The discharge shall be determined to cause an excursion above the Surface Water Quality Standards if the maximum reported effluent concentration, considering the criteria averaging period, for the pollutant of interest is greater than the WLA or the site specific allocation for that pollutant.

(f) The discharge shall be determined to contribute to an excursion above the the Surface Water Quality Standards if the maximum reported effluent concentration, considering the criteria averaging period, for the pollutant of interest when considered collectively with other discharges to the receiving water is greater than the WLA determined for that pollutant.

(g) The discharge shall be determined to have the reasonable potential to cause an excursion above the Surface Water Quality Standards if the maximum projected effluent concentration is greater than the WLA or site specific allocation determined for that discharge for that pollutant or pollutant parameter. The maximum projected effluent concentration shall be calculated in accordance with the USEPA TSD, as amended and/or supplemented, unless the permittee demonstrates for a given pollutant of interest that none of the methods in the TSD are applicable and that an alternative statistical method more accurately estimates the maximum projected effluent concentration.

(h) Where an effluent concentration is directly caused by a documented facility upset, or other unusual event which has been identified and appropriately remedied by the permittee, data collected during the period of upset may be eliminated when making a determination of reasonable potential. Data no longer representative of effluent quality because of process modification or pollution prevention activities undertaken shall not be used when making a determination of reasonable potential.

(i) (Reserved)

(j) (Reserved)

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

(k) When the Department determines that a discharge does not cause, have reasonable potential to cause, or contribute to an excursion above the water quality standards for a specific pollutant or pollutant parameter; or that data are insufficient to make such a determination:

1. Except as specified in (k)1i through iii below, water quality based effluent limitations shall not be required for that pollutant or pollutant parameter.
 - i. Where the discharge is in compliance with an existing water quality based effluent limitation and the permittee provides treatment for the limited pollutant or pollutant parameter, the reissued permit shall include a water quality based effluent limitation for the affected pollutant or pollutant parameter unless the permittee demonstrates to the satisfaction of the Department that a water quality based limitation is no longer required and that the existing effluent quality is anticipated to be maintained.
 - ii. When the Department determines in accordance with (k)1i above that a water quality based effluent limitation is not required for the reissued permit, the fact sheet for the reissued permit shall include a summary of effluent data for the pollutant or pollutant parameter, a justification for eliminating the effluent limitation, and a determination that eliminating the effluent limitation is not anticipated to cause or contribute to an exceedance of the surface water quality standards.
 - iii. When the Department determines in accordance with (k)1i above that a water quality based effluent limitation is not required for the reissued permit, the discharge permit shall be reopened and modified to include water quality based effluent limitations if the effluent quality changes so as to cause, contribute, or have the reasonable potential to cause or contribute to an excursion above the Surface Water Quality Standards.
 - iv. The Department shall consider the following factors when making a determination regarding reasonable potential for discharges with existing water quality based effluent limitations:
 - (1) The permit compliance history for the facility, including the compliance history for the specific pollutant or pollutant parameter and any permit conditions related to the pollutant or pollutant parameter;
 - (2) The reliability of the treatment process; and

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

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- (3) The ratio between the permitted or actual effluent flow and the base flow of the receiving water;
2. Effluent limitations other than water quality based limitations may be required for the pollutant or pollutant parameter in accordance with N.J.A.C. 7:14A-13.3; and
3. The Department may determine that monitoring for specific pollutant or pollutant parameters shall be included in the permit.

(l) When the Department is unable to determine for one or more pollutants or pollutant parameters of interest whether the discharge from a particular facility will cause, have the reasonable potential to cause, or contribute to an excursion above a Surface Water Quality Standard, the permit for that facility shall include effluent monitoring requirements for each pollutant or pollutant parameter where such a determination cannot be made. The discharge permit shall be reopened and modified to include water quality based effluent limitations if subsequent monitoring demonstrates that the discharge causes, contributes, or has the reasonable potential to cause or contribute to an excursion above the Surface Water Quality Standards.

(m) For a facility that discharges any pollutant which is present in the process intake water, the Department may, on a site specific basis, determine that the discharge does not cause, have reasonable potential to cause, or contribute to an excursion above the water quality standards in accordance with the following:

1. (Reserved)
2. (Reserved)
3. The discharge shall meet the following conditions:
 - i. The source for all of the intake water shall be the receiving water body. Hydrologically connected waterbodies may be determined to be the same waterbody if the water is completely mixed within a reasonable distance of the outfall location and if the chemical characteristics of the waterbodies are essentially identical. Chemical characteristics may be evaluated on a parameter by parameter basis. For discharges where the intake water is attributed to more than one source, this condition may be applied to the proportion of the intake water attributable to the receiving water or hydrologically connected waterbody;
 - ii. The discharge shall not contribute any additional mass of the pollutant of interest to the process intake water. This determination shall be based on a statistically rigorous analysis of intake water and outfall data that is representative of various operating conditions and influences over time and demonstrates that there is no significant difference at the 99th percent probability level between the intake concentrations and loadings and the outfall concentrations and loadings. For a DTW, this condition shall be deemed to be met if there is no significant difference at the 99th percent probability level

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

between the intake concentrations and loadings of the public drinking water supply in the area served and the effluent concentrations and loadings. Where the source water is attributed to more than one water supply source, this condition may be applied to the proportion of the source water attributable to the receiving water or hydrologically connected waterbody;

- iii. The discharger shall not chemically or physically alter the intake water to cause an adverse impact to the receiving stream for any pollutant of interest in the process intake water;
 - iv. The pollutant shall not accumulate at the outfall location or at the edge of the mixing zone in such a way as to increase the concentration of the pollutant. The Department may require submission of an acceptable mixing zone study to satisfy this requirement; and
 - v. The timing and/or location of the discharge shall not cause adverse impacts in the receiving waterbody that would not have occurred if the pollutant had remained in the waterbody.
4. The permit shall include the necessary monitoring conditions to ensure continuing compliance with the conditions listed in (m)3 above.
 5. The discharge permit shall be reopened and modified to include water quality based effluent limitations if subsequent monitoring demonstrates that the discharge causes, contributes, or has the reasonable potential to cause or contribute to an excursion above the surface water quality standards at N.J.A.C. 7:9B.
 6. The permit fact sheet shall include a description of the treatment process and specific reasons for making the determination that the discharge does not cause, have reasonable potential to cause or contribute to an excursion above the water quality standard for the pollutants or pollutant parameters subject to this subsection.
 7. For any pollutant or pollutant parameter where the conditions listed in (m)3 above cannot be met, reasonable potential shall be determined in accordance with (d) through (k) above.
 8. For site remediation projects, reasonable potential shall be determined in accordance with this subsection only for pollutants not subject to remediation.

7:14A-13.6. Calculation of Water Quality Based Limitations

(a) When the Department determines pursuant to N.J.A.C. 7:14A-13.5 that a discharge causes, has the reasonable potential to cause, or contributes to an excursion above a Surface Water Quality Standard, a water quality based effluent limitation for each pollutant or pollutant parameter including WET, shall be determined in accordance with the USEPA TSD, as

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

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amended and/or supplemented, unless the permittee demonstrates that none of the methods in the TSD are applicable and that an alternative method will result in a water quality based effluent limitation that ensures compliance with the Surface Water Quality Standards.

7:14A-13.7. Determination of Water Quality Based Effluent Limitations Based on Narrative Criteria

(a) Where the Department has not established a numerical water quality criterion for a specific chemical pollutant but has determined that such a pollutant is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion or potential excursion above a narrative criterion in the Surface Water Quality Standards, the Department shall:

1. Establish effluent limitations using a calculated numeric criterion utilizing the best available scientific information and developed in accordance with N.J.A.C. 7:9B-1.6(c)4iii; or
2. Establish effluent limitations on a surrogate parameter (for example, whole effluent toxicity) for the pollutant of interest, in accordance with N.J.A.C. 7:14A-13.10, provided:
 - i. The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;
 - ii. The fact sheet sets forth the basis for the limit, including a finding that compliance with the effluent limit on the surrogate parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable Surface Water Quality Standards;
 - iii. The permit requires the effluent and ambient monitoring necessary to show that during the term of the permit the limit on the surrogate parameter continues to attain and maintain applicable Surface Water Quality Standards; and
 - iv. The permit shall be reopened and limitations on the base parameters included therein if the limits on the surrogate parameter no longer attain and maintain applicable Surface Water Quality Standards.

7:14A-13.8. Calculation of Effluent Limitations using Existing Effluent Quality

(a) Effluent limitations based on existing effluent quality shall be calculated according to the following procedure:

1. The maximum projected effluent concentration shall be calculated in accordance with the statistical method contained in the USEPA TSD, as amended and/or supplemented, unless the permittee demonstrates that the method in the TSD is not applicable and that an alternative statistical method more accurately estimates the maximum projected effluent concentrations.

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

- i. The following conditions apply:
 - (1). If at least 10 data points are available, a site specific coefficient of variation shall be determined.
 - (2). If fewer than 10 data points are available, the permit shall require monitoring and include a reopener clause to include existing effluent quality limitations based on 10 or more data points.
 - (3). The 95 percent confidence interval and the 95 percent probability basis shall be used.
- ii. Effluent data generated during a documented facility upset, or other unusual event which has been identified and appropriately remedied by the permittee, may be eliminated when determining effluent limitations based on existing effluent quality;
2. The maximum daily limitation shall be set equal to the maximum projected effluent concentration; and
3. The average monthly limitation shall be calculated from the maximum daily limitation according to the procedure described in N.J.A.C. 7:14A-13.6, using the sampling frequency required in the discharge permit. If the required sampling frequency is once per month or less, an average monthly limitation may be eliminated for that pollutant or pollutant parameter.

(b) Where an interim effluent limitation is required in accordance with N.J.A.C. 7:14A-13.11 for the time period prior to the effective date of a final effluent limitation, limitations reflecting existing effluent quality shall be calculated in accordance with (a) above.

7:14A-13.9 Seasonal Effluent Limitations

(a) Seasonal water quality based effluent limitations for continuous discharges may be developed in accordance with the following:

1. The permittee shall submit the necessary water quality studies that address any effects or potential effects on nutrient cycling and potential or actual adverse biological impacts in other waterbody segments related to nutrients.
2. The seasonal limitations shall be developed from a seasonal TMDL or a seasonal site specific allocation for the specific pollutant(s) or pollutant parameter(s) which addresses critical conditions applicable to each season for which an effluent limitation is requested.
3. Seasonal water quality based effluent limitations shall be developed only for the following parameters and groups of parameters and only insofar as the warm weather limitations cannot be achieved due to decreases in biological treatment efficiency during cold weather:
 - i. Parameters affecting dissolved oxygen dynamics in the receiving stream;

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

- ii. Nutrients, including phosphorus and nitrogen; and
- iii. Ammonia-N, to protect against toxic effects in the receiving water.
4. Except as specified at (a)5 below , seasonal water quality based effluent limitations shall be developed for two seasons in each year.
5. Seasonal WLAs or site specific allocations may be developed for shorter periods of time including more than two seasons when the United States Geological Survey provides a reliable estimate of applicable stream design flows from a gauging station located in the vicinity of the discharge location.

7:14A-13.10 Surrogate Effluent Limitations

(a) Surrogate limitations may be included in a discharge permit in accordance with the following:

1. The permittee shall submit a written request to the Department which includes the specific parameter(s) to be used as a surrogate and specifically lists the base parameter(s) for which the surrogate parameter is requested;
2. The request shall include a detailed report demonstrating that the requested surrogate parameter is a reliable, precise and accurate surrogate. This report shall include, at a minimum, effluent data demonstrating the relationship, including the value(s) of the surrogate parameter(s) corresponding to the limitation(s) for the base parameter(s), between the proposed surrogate(s) and the parameters for which the surrogate is requested;..
3. Where the Department approves the use of a surrogate, the fact sheet for the draft permit shall set forth the basis for the limit, including a finding that compliance with the effluent limit for the surrogate parameter shall result in controls on the pollutant of interest which are sufficient to attain the applicable effluent limitations. The permit shall identify which pollutants are intended to be controlled by the use of the surrogate limitation;
4. If the permit includes a limitation for the surrogate parameter(s) with a basis separate from the use of the parameter as a surrogate, the surrogate limitation(s) may be included in addition to any limitation for the surrogate parameter based on technology, water quality concerns, or effluent standards;
5. Where an effluent limitation is being imposed on a delegated local agency in accordance with N.J.S.A. 58:10A-7b(3) for categorical or other pollutants, the permittee may request the use of surrogate parameters in accordance with the following additional requirements:
 - i. Where a delegated local agency has requested that whole effluent toxicity be considered as the surrogate parameter for a limitation calculated for a toxic pollutant, the Department may presume that, subsequent to the effective date of the whole effluent toxicity limitation, compliance with the water quality based whole effluent toxicity limitation satisfies the report submittal requirements specified in (a)2 above;

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

- ii. Upon its determination that the requested surrogate parameter is an appropriate and reliable surrogate, the Department shall include in the discharge permit effluent limitations for both the surrogate parameter(s) and the base parameter(s). Compliance with the base parameter(s) shall be determined based on compliance with the surrogate parameter; and
- iii. The permit shall require that, if the surrogate parameter is exceeded, the effluent limitations covered by the surrogate shall become effective upon notification by the Department, unless the permittee demonstrates that the base parameters were not exceeded at the time that the surrogate parameter was exceeded. The permit may also include procedures for re-establishment of the use of a surrogate parameter;
6. The permit shall require the monitoring necessary to demonstrate that during the term of the permit the limit on the surrogate parameter continues to attain and maintain applicable effluent limitations. The permit shall require monitoring of the surrogate parameter and may also require monitoring of the base parameter(s) covered by the surrogate parameter;
7. The permit shall be reopened and modified to include limitations on the base parameter(s) if the Department determines that the surrogate parameter(s) no longer ensure attainment of the applicable effluent limitations for the base parameter(s); and
8. The Department, upon its own initiative, may include a limitation for a surrogate parameter irrespective of a request by the affected permittee provided the fact sheet sets forth the basis for the limit, including a finding that compliance with the effluent limit on the surrogate parameter will result in controls on the pollutant of concern that are sufficient to attain the applicable effluent limitations and the permit conditions in (a)5 and 6 above are satisfied.

7:14A-13.11 Interim Effluent Limitations

(a) Interim limits may be established for any pollutant or pollutant parameter where a final limit is required in accordance with N.J.A.C. 7:14A-13.6 and where a compliance schedule is included in the discharge permit to allow the permittee to come into compliance with the effluent limitation.

(b) If the Department determines that interim limits are appropriate, the limits shall be determined in accordance with N.J.A.C. 7:14A-12, 13.4, or 13.8 so as to ensure that the current effluent quality of the discharge shall be maintained.

7:14A-13.12 Wet Weather Effluent Limitations

(a) An applicant or permittee may request effluent limitations less stringent than those required by N.J.A.C. 7:14A-13.3, 13.4 or 13.6, which are applicable only during periods of

all units in ug/L

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for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

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excessive effluent flow due to precipitation events, provided one or more of the following criteria is met:

1. The facility receives excessive infiltration and inflow. In such cases the permit shall include the following conditions:
 - i. For effluent flows up to and including the hydraulic capacity of the facility, the effluent quality shall comply with applicable effluent limitations determined in accordance with N.J.A.C. 7:14A-13.3, 13.4 or 13.6;
 - ii. For effluent flow in excess of the hydraulic capacity of the facility, the quantity of flow greater than the hydraulic capacity shall receive treatment consisting of, at a minimum, screening and disinfection. Wherever practicable, treatment shall also include settling and, if applicable, dechlorination;
 - iii. A schedule in the permit addressing elimination of the excess inflow and/or infiltration; and
 - iv. The permittee shall consent to the provisions incorporating the permit conditions imposed in accordance with (a)1i through iii above prior to the issuance of the final discharge permit;
2. The facility qualifies for special consideration in accordance with N.J.A.C. 7:14A-12.3. In such cases the modification of effluent limitations and permit conditions shall be limited to that available in accordance with N.J.A.C. 7:14A-12.3; or
3. The facility receives flow from combined sewers. In such cases the permittee shall be required to maximize the flow to the treatment facility and minimize the flow through the combined sewer overflow. The permittee shall evaluate and implement options for eliminating the extraneous flow. The options to be explored shall include, but shall not be limited to, reducing or eliminating one or more overflows, providing a reduced level of treatment for a portion of the flow, and, in some cases, separation of the sanitary and storm sewers. The permit shall include a schedule addressing reduction or elimination of the excess flow as appropriate. Any discharge from combined sewer overflows shall be consistent with the USEPA final policy for combined sewer overflows. See 59 Fed. Reg. 18688 (April 19, 1994), which is incorporated at N.J.A.C. 7:14A-11 Appendix C.

(b) An applicant or permittee may request less stringent effluent limitations than those required by N.J.A.C. 7:14A-13.6, which are applicable only during periods of excessive precipitation, if the applicant or permittee completes a water quality study which demonstrates to the satisfaction of the Department that the effluent limitations will ensure attainment of the Surface Water Quality Standards at N.J.A.C. 7:9B and the discharge permit includes monitoring and/or reporting conditions to verify that modeling assumptions are valid when the wet weather limitations are applicable. At a minimum the water quality study shall be conducted in

all units in ug/L

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for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

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accordance with a QA/QC project work plan approved by the Department and shall include the following:

1. An evaluation of point and nonpoint sources of pollutants with impacts which overlap with the effects of the permittee's discharge, including the fate of pollutants of interest and cumulative or synergistic effects;
2. A statistical analysis of the relationships among hydraulic considerations such as waterbody flow, the quantity and intensity of the storm event, and effluent flow, influent water quality, effluent water quality, and ambient water quality;
3. The magnitude and duration of storm events which statistically correspond to the hydraulic capacity of the facility; and
4. The extent of effluent and receiving water mixing over the range of stream and effluent flows for which wet weather effluent limitations are requested.

7:14A-13.13 Quantity of Flow Used in the Determination of Effluent Limitations

(a) Effluent flows used for the determination of effluent limitations, standards, or prohibitions shall be established as described below:

1. Permit limitations for continuous discharges shall be determined as follows:
 - i. For DTWs, the design flow for the facility shall be used when determining permit effluent limitations.
 - ii. For non-DTWs, a reasonable measure of actual production of the facility, unless otherwise required by an effluent guideline or effluent standard, shall be used when determining effluent limitations. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limits (for example, monthly production shall be used to calculate average monthly discharge limitations).
 - iii. The permit may include interim permitted flows that are less than the final design flow to reflect the anticipated effluent flow for the duration of the permit. The projected fifth year flow may be used for DTWs in the determination of water quality based effluent limitations applicable during periods prior to the facility utilizing the full design flow.
2. Effluent flow restrictions shall be included in discharge permits as permit conditions, rather than as numerical effluent limitations, unless the Department determines on a site specific basis that the quantity of effluent flow is of concern and shall be included as a permit limitation. The Department shall state in the permit fact sheet the reason(s) for such

all units in ug/L

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for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

determination. The Department may incorporate flow-related requirements necessary to implement the capacity assurance or Treatment Works Approvals programs at N.J.A.C. 7:14A-22 and the Statewide Water Quality Management Planning process at N.J.A.C. 7:15.

7:14A-13.14 Expression of Effluent Limitations

- (a) Effluent limitations shall be expressed as described below:
1. Water quality based effluent limitations shall be expressed as both concentration and mass loading, except as listed in (a)1i through iv below:
 - i. For parameters such as pH, temperature, radiation, or other pollutants, which cannot be appropriately expressed in terms of concentration and mass, the effluent limitations shall be expressed in units appropriate to the parameter;
 - ii. Water quality based limitations for whole effluent toxicity shall be expressed as the LC₅₀ or No Observed Adverse Effect Concentration, as appropriate, and equivalent acute toxic units for acute whole effluent toxicity limitations and as the IC₂₅ and equivalent chronic toxic units for chronic whole effluent toxicity limitations;
 - iii. If the ratio of the receiving stream flow within the mixing zone to the total effluent flow is greater than 100:1, the effluent limitations shall be expressed only as mass loading without an effluent limitation for concentration, provided that no specific regulatory requirement is applicable which would require limitations on effluent concentration;
 - iv. Water quality based limitations determined from a TMDL/WLA may be expressed as either concentration or mass loading if:
 - (1) The TMDL has been adopted in accordance with N.J.A.C. 7:15-7; and
 - (2) The TMDL specifically states that the associated water quality based effluent limitations shall be expressed only as either concentration or mass loading.
 2. Limitations which are based on N.J.A.C. 7:14A-13.2(a)1 or (a)5 shall be expressed as concentration and mass loading for DTWs and as mass loading for all other dischargers, except as provided below:
 - i. For parameters such as pH, temperature, radiation, or other pollutants, which cannot be appropriately expressed in terms of concentration and mass, in which case the effluent limitations shall be expressed in units appropriate to the parameter;

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
2 - for manufacturers and formulators - discharge prohibited
3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

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- ii. When applicable standards and limitations are expressed in terms of other units of measurement. For example, limitations for whole effluent toxicity shall be expressed as the LC₅₀ or No Observed Adverse Effect Concentration, as appropriate, and equivalent acute toxic units for acute whole effluent toxicity limitations and as the IC₂₅ and equivalent chronic toxic units for chronic whole effluent toxicity limitations;
- iii. When limitations are developed on a case-by-case basis and expression of the limitation as mass is infeasible because the mass of the pollutant discharged cannot be related to a measure of operation;
3. (Reserved)
4. Limitations based on the effluent standards for site remediation projects at N.J.A.C. 7:14A-12 Appendix B shall be expressed as concentration;
5. Limitations based on the effluent standards for new source and expanded discharges at N.J.A.C. 7:14A-12 Appendix C shall be expressed as mass and concentration, unless the discharge meets the qualifications at (a)1iii above; and
6. Limitations may be expressed as concentration or mass, or as concentration and mass, when such expression is required by authority or rules adopted by another regulatory agency. Other regulatory agencies include the Pinelands Commission, the Delaware River Basin Commission, or the Interstate Sanitation Commission.

(b) All permit effluent limitations, effluent standards, or prohibitions for a metal shall be expressed in terms of total recoverable metal unless:

1. An applicable effluent standard or limitation has been promulgated under the Federal Act and specifies the limitation for the metal in the dissolved, valent or total form;
2. In establishing permit limitations on a case-by-case basis under N.J.A.C. 7:14A-13.4, it is necessary to express the limitation on the metal in the dissolved, valent, or total form to carry out the provisions of the Federal Act; or
3. Approved analytical methods for the metal inherently measure only its dissolved form (for example, hexavalent chromium).

7:14A-13.15 Permit Averaging Periods

(a) Permit averaging periods for continuous discharges shall be determined as follows:

1. Limitations on industrial treatment works for conventional, non-conventional, and toxic pollutants shall, unless impracticable, be stated as maximum daily and average monthly discharge limitations;

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

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2. Limitations for conventional and non-conventional pollutants discharged from a DTW shall, unless impracticable, be stated as average weekly and average monthly discharge limitations. Limitations on toxic pollutants discharged from a DTW shall, unless impracticable, be stated as maximum daily and average monthly discharge limitations;
3. Limitations on any pollutant or pollutant parameter where the monitoring frequency is once per month or less may be stated as a maximum daily limitation. Average monthly limitations may also be included on a site specific basis if the Department determines that such limitations are necessary to adequately regulate the discharge of pollutants from the facility;
4. For whole effluent toxicity where the effluent monitoring frequency is once per month or less, the maximum daily effluent limitation shall be stated as the No Observed Adverse Effect Concentration or minimum LC₅₀ (for acute whole effluent toxicity) or minimum IC₂₅ (for chronic whole effluent toxicity) and as a maximum acute or chronic toxic units. Average monthly limitations may also be included on a site specific basis if the Department determines that such limitations are necessary to adequately regulate the discharge of pollutants from the facility;
5. For limitations other than water quality based limitations which may be imposed on DTWs, where the average weekly limitation is calculated from the average monthly limitation, or the reverse, the Department may use a factor of 1.5 to calculate the average weekly limitation from the average monthly limitation or, alternatively, may, at the request of the applicant, use the statistical procedures at N.J.A.C. 7:14A-13.6 to determine the appropriate average weekly limitation; and
6. For intermittent flows, the maximum limitation shall be applicable during periods of actual discharge.

7:14A-13.16 Point of Compliance for Effluent Limitations

- (a) The point of compliance for each outfall shall be established as follows:
 1. Permit effluent limitations, standards, prohibitions, and monitoring requirements shall be established for each outfall or discharge point of the permitted facility, except as provided under N.J.A.C. 7:14A-6.2(b) (BMPs where limitations are infeasible), (a)2 below (limitations on internal waste streams), (a)6 below (alternate monitoring point for whole effluent toxicity), and (a)7 below (discharges into storm sewers);
 2. Effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams when:
 - i. Permit effluent limitations for the final effluent are impracticable or infeasible to calculate; or

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

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- ii. Monitoring of the final mixed effluent or point of discharge is impracticable or infeasible;
3. Internal monitoring points shall be established in cases where two or more different types of wastewater (for example, process waste, domestic waste, stormwater, non-contact cooling water) mix prior to entering the receiving water, unless such monitoring points are deemed to be unnecessary by the Department;
4. When the point of compliance is an internal waste stream, the monitoring required by N.J.A.C. 7:14A-14.2 shall be applied to the internal waste stream;
5. When the point of compliance is an internal waste stream, the fact sheet under N.J.A.C. 7:14A-15.8 shall set forth the circumstances which make such limitations necessary, such as that the final discharge point is inaccessible, the wastes at the point of discharge are so diluted as to make monitoring impractical, the interferences among pollutants at the point of discharge would make detection or analysis impracticable, or two or more waste streams are mixed prior to discharge;
6. For whole effluent toxicity, an alternate point of compliance may be established prior to chlorination if either of the following applies:
 - i. The whole effluent toxicity limitation is based on N.J.A.C. 7:9-5.7; or
 - ii. The permit includes water quality based limitations for chlorine produced oxidants and the following conditions are met:
 - (1) The discharge is in compliance with the water quality based effluent limitations for chlorine produced oxidants at the point of discharge or such limitations have been determined to be unnecessary;
 - (2) A dechlorination treatment step is not required to attain the water quality based limitations for chlorine produced oxidants;
 - (3) Establishment of a monitoring point after chlorination at the point of discharge is impracticable or infeasible;
 - (4) Samples collected after chlorination are not able to attain the water quality based effluent limitation for whole effluent toxicity; and
 - (5) The permittee demonstrates to the Department's satisfaction that the failure to attain the water quality based limitation in samples collected post-chlorination is due to the presence of chlorine produced oxidants in the effluent sample;

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

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7. For discharges into stormwater conveyances, the point of compliance shall be established prior to the discharge into the stormwater conveyance, unless the Department determines on a site specific basis that an alternate point of compliance is appropriate.

7:14A-13.17 Toxicity Reduction Evaluations

(a) Toxicity reduction requirements shall be included in discharge permits which include a whole effluent toxicity limitations as follows:

1. When a minimum of two tests out of six consecutive whole effluent toxicity tests demonstrate that the effluent does not comply with the effluent limitation, the permittee shall initiate toxicity reduction implementation requirements.
2. Where an exceedance of the permit limit is directly caused by a documented facility upset, or other unusual event which has been identified and appropriately remedied by the permittee, test data collected during the period of upset may be eliminated when determining the necessity of initiating the following toxicity reduction implementation requirements.
3. Toxicity reduction requirements apply to limitations that are in effect or become effective during the term of the permit.
4. The permittee shall conduct a tiered investigation as specified below:
 - i. Within 30 days of the close of the monitoring period which contained the second violation specified in (1) above, the permittee shall initiate the toxicity characterization phase of monitoring consisting of increased monitoring frequency for a total of 12 additional tests, as follows:
 - (1) For major facilities, monthly effluent monitoring; and
 - (2) For minor facilities, semi-monthly effluent monitoring.
 - ii. Upon the third exceedance of the toxicity limit for a major facility or upon the fourth exceedance of the toxicity limit for a minor facility of the tests conducted during the characterization phase, a preliminary toxicity identification shall be conducted, which includes (a)4ii(1) through (5) below as applicable to a specific facility. This preliminary toxicity identification shall be completed within 15 months of completing the toxicity characterization phase:
 - (1) Treatment plant performance evaluation;
 - (2) Pretreatment program information;

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

- (3) Evaluation of levels of ammonia-N and chlorine produced oxidants and their effect on the toxicity of the discharge;
 - (4) Evaluation of chemical use and processes at the facility; and
 - (5) Evaluation of incidental facility procedures (such as washing of floors and chemical spill disposal) which may contribute to effluent toxicity.
5. Where the data collected during the Toxicity characterization phase indicate consistent compliance with the whole effluent toxicity limit for four (4) consecutive tests, the toxicity reduction implementation requirements are deemed complete and the permittee may return to the monitoring frequency for WET specified in the discharge permit.
 6. Where a preliminary toxicity identification has not resulted in compliance with the final effluent limitation, the permittee shall initiate a comprehensive toxicity investigation phase within six months of the completion of the preliminary investigation.
 7. Within three months of the demonstration that a comprehensive toxicity investigation is necessary, the permittee shall submit a project study plan. The project study plan shall identify the party or parties responsible for the conduct of the comprehensive evaluation, establish a schedule for completion of the study, and identify and describe the technical approach which the study will utilize. The schedule for completion of the toxicity reduction evaluation is subject to Departmental approval.
 - i. Quarterly progress reports shall be submitted during the term of the toxicity reduction implementation requirements. The reports shall include a summary of data collected and actions taken during the applicable quarter. A copy of the transmittal letter for each quarterly report shall be forwarded to the applicable regional Enforcement Bureau; and
 - ii. A final report shall be submitted which identifies the specific actions taken by the permittee to achieve compliance, describes and identifies the pollutants or groups of pollutants contributing to or causing the whole effluent toxicity exceedances, and describes the final corrective actions taken to achieve compliance and the outcome of the study.
 8. The permittee may elect to complete an instream verification study prior to the initiation of the comprehensive toxicity identification/reduction phase specified in (a)6 above. If the permittee selects this option, a project work plan approved by the Department shall be submitted in lieu of the project work plan specified in (a)7 above. This option shall be limited to permittees with discharges to non-tidal, freshwater receiving waters where a regulatory mixing zone of a defined size and shape has been established for the

all units in ug/L

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for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

discharge. The study shall be completed and submitted to the Department for evaluation within two years of selecting this alternative.

- i. Where the results of an instream verification study definitively demonstrate that there are no existing or potential adverse impacts from the discharge, the Department shall determine that the permittee is exempt from the requirements of (a)6 above.
- ii. If the data submitted for this study are deemed insufficient by the Department to make a determination that there are no existing or potential adverse impacts from the discharge, the permittee shall initiate the comprehensive toxicity identification and reduction evaluation requirements of (a)6 above within 90 days of notification by the Department that the instream verification study was insufficient to make a determination.
- iii. The instream verification study shall be completed in accordance with the approved project work plan. Evaluation of the instream data may also require completion of a mixing zone study.

7:14A-13.18. Inclusion of Action Levels for Water Quality Based Effluent Limitations

(a) Where the Department has developed water quality based effluent limitations utilizing a chemical equilibrium which includes non-limited pollutants or pollutant parameters which control the chemical equilibrium, action levels for the controlling pollutants or pollutant parameters equal to the values used in the chemical equilibrium calculation shall be included in the permit as permit monitoring conditions.

(b) For ammonia-N limitations, action levels shall be determined and included for pH and may be included for temperature, alkalinity or hardness.

(c) For those metals where the applicable criterion is dependent on hardness, an action level shall be included for hardness.

(d) If the discharge is not in conformance with the applicable action level for a period of time not to exceed the duration of the applicable criterion, the permittee shall take the specific actions stipulated in the discharge permit. These actions may require the permittee to:

1. Collect the necessary instream data during the period of the non-conformance to determine if the instream criteria were exceeded during the period of non-conformance; and
2. Prepare and submit with the monthly DMR, a report which details the frequency and duration of any non-conformance with the action levels as set forth in the permit and includes all instream and effluent data collected during periods of non-conformance.

(e) If the action levels set forth in the permit are exceeded more frequently than once in any monthly monitoring period, the action levels shall be re-evaluated and, if necessary, the effluent limitations associated with those action levels shall be recalculated. The permit shall be

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

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reopened and modified to include the updated effluent limitations and the associated action levels. The permit shall be reopened and modified to adjust the action levels and/or the effluent limitations if monitoring data demonstrate that the discharge causes, contributes, or has the reasonable potential to cause or contribute to an exceedance of the surface water quality standards at N.J.A.C. 7:9B.

7:14A-13.19. Antibacksliding

(a) Except as provided for under Section 402(o) of the Federal Act (33 U.S.C. §1342(o)), when a permit is modified, renewed or reissued, all effluent limitations or standards shall be at least as stringent as the final and effective effluent limitations or standards in the previous permit.

7:14A-13.20 Limitations for Non-Continuous Discharges

(a) In addition to applicable requirements specified in N.J.A.C. 7:14A-13.2 through 13.19, discharges which are not continuous shall be specifically described and limited by one or more of the following measures, as appropriate:

1. Frequency (for example, a discharge shall not occur more often than once every three weeks);
2. Total mass (for example, a discharge shall not exceed 100 kilograms of zinc and 200 kilograms of copper per batch discharge);
3. Maximum rate of discharge of pollutants during the discharge event (for example, the discharge shall not exceed two kilograms of zinc per minute);
4. Maximum concentration of pollutants (for example, the concentration shall not exceed one milligram per liter of zinc); and
5. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, a discharge shall not contain more than 0.1 mg/L of zinc at any time or more than 250 grams of zinc in any batch discharge).

7:14A-13.21. Implementation of Water Quality Based Effluent Limitations

(a) The implementation procedures in (b) through (e) below shall be utilized by the Department as a process to incorporate water quality based effluent limitations in discharge permits to ensure compliance with the Surface Water Quality Standards.

(b) Whole effluent toxicity shall be incorporated in discharge permits where a water quality based whole effluent toxicity limitation is required in accordance with N.J.A.C. 7:14A-13.5, water quality based whole effluent toxicity limitations shall be determined and incorporated into the discharge permit in accordance with N.J.A.C. 7:14A-13.6. The permit may include a schedule to achieve compliance with the water quality based limit.

2. Where a water quality based whole effluent toxicity limitation is not required, the discharge permit shall include an acute whole effluent toxicity limitation in accordance with N.J.A.C. 7:9-5.7.

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

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(c) Limitations for new sources, new discharges, or expanded direct discharges shall be established as follows:

1. Water quality based limitations for chemical specific parameters shall be incorporated into the discharge permit as required by N.J.A.C. 7:14A-13.5. Chemical specific limitations shall become effective on the effective date of the permit.
2. If a permittee/applicant qualifies in accordance with N.J.A.C. 7:14A-13.3 for limitations based on N.J.A.C. 7:14A-12 Appendix C for a specific pollutant, limitations for that pollutant may be incorporated into the discharge permit. The limitations shall become effective on the effective date of the permit. The effluent limitations shall be re-evaluated when a TMDL is adopted for the affected waterbody.
3. Where a water quality based whole effluent toxicity limitation is required in accordance with N.J.A.C. 7:14A-13.6, the water quality based limitation shall be incorporated into the discharge permit. The Department may include a compliance schedule not to exceed three years for water quality based whole effluent toxicity limitations.
4. Where a water quality based whole effluent toxicity limitation is not required, the discharge permit shall include an acute whole effluent toxicity limitation in accordance with N.J.A.C. 7:9-5.7.

(d) For site remediation discharges, the site remediation effluent standards at N.J.A.C. 7:14A-12 Appendix B shall be incorporated into the discharge permit unless a water quality based effluent limit is determined in accordance with N.J.A.C. 7:14A-13.5 and 13.6 or the discharge qualifies in accordance with N.J.A.C. 7:14A-13.3(c)5 for limitations based on N.J.A.C. 7:14A-12 Appendix C. The limitations shall become effective on the effective date of the permit unless the Department determines that a compliance schedule is appropriate and is included in the permit. The site remediation limitations may be re-evaluated in conjunction with the TMDL process for the affected waterbody.

(e) For existing discharges, water quality based effluent limitations shall be incorporated into discharge permits in accordance with the following schedule:

1. All water quality based effluent limitations that have been previously included in the discharge permit shall be included in the renewal or reissuance of the discharge permit, unless the Department makes a determination that the discharge does not have the reasonable potential to cause or contribute to an excursion above the Surface Water Quality Standards, or that modification of the limitation is consistent with N.J.A.C. 7:14A-13.16 and 13.19.
2. Whenever appropriate, water quality based effluent limitations for conventional and non-conventional pollutants, including, but not limited to biochemical oxygen demand (BOD) (or any parameter serving as a surrogate for BOD), nitrogen compounds including ammonia-N, chlorine produced oxidants, total dissolved solids, and dissolved oxygen, shall be included in the discharge permit upon renewal or reissuance.

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

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- i. When a water quality based limitation is required to control dissolved oxygen dynamics in the receiving stream, the effluent limitations shall control both the carbonaceous and nitrogenous forms of BOD as necessary based on an evaluation of the reasonable potential of the discharge to cause or contribute to an exceedance of the water quality standards.
 - ii. Whenever possible, carbonaceous BOD (CBOD) shall be controlled through effluent limitations on CBOD₅ or CBOD₂₀. Limitations on both CBOD₅ and CBOD₂₀ may be imposed to ensure consistency with water quality management plans and/or the requirements of other agencies.
 - iii. Nitrogenous BOD (NBOD) shall be controlled through effluent limitations on NBOD, ammonia-N, total N, or a combination of these measures.
3. When insufficient data are available to determine water quality based limitations for any conventional or non-conventional pollutant at the time of permit renewal or issuance, the permittee may be required to complete a water quality study to determine appropriate water quality based effluent limitations. In certain cases, the permittee may elect to participate in a watershed-based TMDL study, if the time frame for such study is determined to be acceptable by the Department.

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

SUBCHAPTER 14. MONITORING FREQUENCY REQUIREMENTS APPLICABLE TO DSW AND SIU PERMITS

7:14A-14.1 Purpose and Scope

(a) This subchapter sets forth the monitoring frequency requirements for parameters included in DSW and SIU permits that are either monitored and limited, or monitored only.

(b) The Department shall specify alternative monitoring requirements in a permit, other than specified in this subchapter, for cause, provided the Department justifies such alternative monitoring requirements in the fact sheet for the draft permit.

(c) All monitoring shall be performed in accordance with the monitoring requirements contained in N.J.A.C. 7:14A-6.5 and monitoring results submitted to the Department on forms as specified by and available from the Department.

7:14A-14.2 Monitoring Frequency Requirements for Direct Surface Water Discharges

(a) A monitoring schedule for parameters included in a DSW permit shall be established as provided in Tables 14-1 through 14-4 below. Tables 14-2 and 14-4 establish monitoring frequencies for parameters in DSW permits that are either monitored and limited, or monitored only. Tables 14-1 and 14-3 establish monitoring frequencies in DSW permits that are monitored and limited.

Table 14-1. Toxic Metals and Organic Compounds and Whole Effluent Toxicity Monitoring Frequency Requirements Applicable to Industrial Facilities

Parameter	All Major Facilities	All Minor Facilities
Toxic Metals ⁽²⁾ and Cyanide	1/Month ((G) for cyanide) ((C) for toxic metals) ⁽¹⁾	1/Month ((G) for cyanide) ((C) for toxic metals) ⁽¹⁾
Toxic Organic Compounds ⁽³⁾	1/Month ((G) for volatile organic compounds) ((C) for all other compounds) ⁽¹⁾	1/Quarter ((G) for volatile organic compounds) ((C) for all other compounds) ⁽¹⁾
Whole Effluent Toxicity	1/Quarter	1/Quarter

Footnotes:

C = Composite sample.

G = Grab sample.

(1) For composite sampling, the applicable composite time period will be specified in the permit.

(2) A full listing of all toxic metals can be found in N.J.A.C. 7:14A-4, Appendix A, Table III.

(3) A full listing of all toxic organic compounds can be found in N.J.A.C. 7:14A-4, Appendix A, Table II.

all units in ug/L

1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum

2 - for manufacturers and formulators - discharge prohibited

3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

Table 14-2. Conventional and Non-conventional Parameters Monitoring Frequency Requirements Applicable To Industrial Facilities

Parameter	All Major Facilities	All Minor Facilities
COD, DOC, TOC, BOD, CBOD, NBOD, Dissolved Oxygen, TSS, TDS, FSOD, Settleable Solids	1/Month (G) ⁽¹⁾	1/Month (G) ⁽¹⁾
Phosphorus, Nitrogen (all forms), Oil and Grease and/or Petroleum Hydrocarbons, Alkalinity, Hardness	2/Month (C or G) ^(1, 2)	1/Month (G) ^(1, 2)
pH, Temperature	2/Month (G)	1/Month (G)
CPO: (if used or added) (if not used or added)	1/Week (G) 1/Month (G)	1/Month (G) 1/Quarter (G)
Bacterial Indicators	1/Month (G)	1/Month (G)

Footnotes:

C = Composite sample.

G = Grab sample.

- (1) Grab samples shall be collected for the parameters listed below except that composite samples shall be collected when the frequency of monitoring is greater than 1/month. When composite samples are required, the composite time period will be specified in the permit.
 - i. Chemical oxygen demand (COD);
 - ii. Biochemical oxygen demand (BOD), including CBOD, NBOD, and FSOD;
 - iii. Total or dissolved organic carbon (TOC or DOC);
 - iv. Solids, including total suspended solids (TSS) and total dissolved solids (TDS);
 - v. All nutrients, including ammonia-N, total kjeldhal nitrogen, nitrite, nitrate, and phosphorus fractions; and
 - vi. Alkalinity or hardness.
- (2) Grab samples shall be collected for the following parameters:
 - i. Temperature;
 - ii. pH;
 - iii. Chlorine produced oxidants (CPO);
 - iv. Dissolved oxygen;
 - v. Settleable solids;
 - vi. Oil and grease and/or petroleum hydrocarbons; and
 - vii. Bacterial indicators, including fecal coliform, total coliform, streptococci, or enterococci.

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

Table 14-3. Toxic Metals and Organic Compounds and Whole Effluent Toxicity Monitoring Frequency Requirements Applicable to Domestic Treatment Works

Parameter	All Major Facilities	All Minor Facilities
Toxic Metals ⁽¹⁾ and Cyanide	1/Month ((G) for cyanide) (24 hr (C) for Toxic Metals)	1/Month ⁽³⁾
Toxic Organic Compounds ⁽²⁾	1/Month ((G) for volatile organic compounds) (24 hr (C) for all other compounds)	1/Quarter ((G) for volatile organic compounds) ⁽³⁾
Whole Effluent Toxicity	1/Quarter	1/Quarter

Footnotes:

C = Composite sample.

G = Grab sample.

- (1) A full listing of all toxic metals can be found in N.J.A.C. 7:14A-4, Appendix A, Table III.
- (2) A full listing of all organic toxic compounds can be found in N.J.A.C. 7:14A-4, Appendix A, Table II.
- (3) For cyanide sampling, grab samples shall be taken. The required sample type(based on flow in MGD) for toxic metals and all toxic organic compounds, except volatile organic compounds, for minor facilities is:
 - i. Grab sample for a flow less than 0.05 MGD;
 - ii. Four-hour composite sample for a flow of 0.05 up to and including 0.1 MGD;
 - iii. Six-hour composite sample for a flow greater than 0.1 up to and including 1.0 MGD.

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

Table 14-4. Conventional And Nonconventional Parameters Monitoring Frequency Requirements Applicable To Domestic Treatment Works

Parameter	Effluent Flow (MGD)							
	<0.05	0.05 - 0.1	>0.1 - 0.5	>0.5 - 1.0	>1.0 - 5.0	>5.0 - 10	>10 - 15	> 15.00
BOD, CBOD, NBOD, FSOD, TOC, COD, TSS, TDS, Phosphorus, Nitrogen (all forms), Alkalinity, Hardness, Color, and any other parameter that can be composite sampled	1 / month (G)	2 / month 4hr (C)	2 / month 6 hr (C)	3 / month 6 hr (C)	1 / week 24 hr (C)	2 / week 24 hr (C)	3 / week 24 hr (C)	1 / day 24 hr (C)
Dissolved Oxygen	1 / month (G)	2 / month (G)	2 / month (G)	3 / month (G)	1 / week (G)	2 / week (G)	3 / week (G)	1 / day (G)
pH, CPO, Settleable solids, Temperature	1 / day (G)	1 / day (G)	1 / day (G)	1 / day (G)	2 / day (G)	3 / day (G)	3 / day (G)	6 / day (G)
Bacterial Indicator (limit imposed)	1 / month (G)	1 / month (G)	2 / month (G)	2 / month (G)	4 / month (G)	8 / month (G)	8 / month (G)	1 / day (G)
Bacterial Indicator (no limit imposed)	1 / month (G)	1 / month (G)	1 month (G)	1 month (G)	1 month (G)	1 month (G)	1 month (G)	1 month (G)
Oil and Grease (any petroleum based component)	1 / month (G)	1 / month (G)	2 / month (G)	2 / month (G)	1 / week (G)	2 / week (G)	2 / week (G)	2 / week (G)
Oil and Grease (no petroleum based component)	1 / quarter (G)	1 / quarter (G)	1 / quarter (G)	1 / quarter (G)	1 / month (G)	1 / month (G)	2 / month (G)	2 / month (G)

Footnotes: C = Composite sample. G = Grab sample.

(b) The monitoring frequency for any parameter or group of parameters will be increased for a specific discharger if the Department determines that increased monitoring frequency is appropriate based on factors such as effluent variability, non-compliance history, or other site specific factors. The Department shall describe the reasons for the increased monitoring in the draft permit fact sheet.

(c) The monitoring frequency for any parameter or group of parameters will be decreased when:

1. An existing discharge permit specifies less frequent monitoring than is specified in this section, the reduced monitoring frequency will be continued in the renewed permit provided the discharger has demonstrated consistent compliance with the specified parameters;
2. A permit specifies conditions for monitoring frequency reduction and the permittee complies with all conditions; or
3. A permittee requests a reduction in compliance monitoring frequency during the time that the permittee is engaged in a watershed TMDL study in cooperation with the Department and/or other dischargers and the Department considers the change warranted. The monitoring frequency reduction will be effected as a major modification of the discharge permit in accordance with N.J.A.C. 7:14A-16.4(b)20. This provision does not affect the Department's authority to require ambient monitoring as part of the permit application or as a permit condition.

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

(d) Notwithstanding any reduction in monitoring frequency established pursuant to (c) above, whenever a Discharge Monitoring Report shows that an effluent limitation has been exceeded, the applicable monitoring frequency shall be adjusted as follows:

1. A permittee shall adjust monitoring to monthly for serious violations in accordance with N.J.A.C. 7:14A-6.5(d).
2. For violations which are not serious violations the permittee shall, upon written notice from the Department, resume the monitoring frequency established immediately preceding the frequency reduction and reporting schedule unless the permittee can demonstrate to the satisfaction of the Department that the exceedence was caused by an upset, bypass or laboratory error as provided for in N.J.A.C. 7:14A-6.11.

(e) General permits and individual stormwater discharge permits are exempt from the requirements of this section unless the fact sheet for the draft general or stormwater discharge permit contains a summary of the basis for imposing monitoring in accordance with N.J.A.C. 7:14A-15.8(c)4.

7:14A-14.3. Monitoring Frequency Requirements for NJPDES-SIU Permits

(a) This section establishes monitoring requirements for SIU permits issued by the Department. Monitoring frequency for each parameter shall be determined based on the following factors:

1. The permittee's compliance history;
2. The impact of the discharge on the receiving local agency's treatment process, discharge and/or sludge quality or potential for endangerment to public health or to the local agency employee's health or safety;
3. The volume (or mass) of the discharge(s);
4. Production variations (variability of the discharge); and
5. Any Federal or local requirements regarding significant indirect users.

(b) Monitoring frequency shall be reduced if a permittee submits a written request to the Department demonstrating that compliance for the affected parameter(s) has been achieved for a minimum period of one year. Monitoring frequency shall be reduced as follows:

1. From weekly to monthly;
2. From twice monthly to monthly;
3. From monthly to quarterly; or
4. From quarterly to semi-annually.

(c) Notwithstanding (b) above, in accordance with 40 CFR 403.12(g), whenever a permittee becomes aware of a permit violation, the permittee shall resample within one month unless the monitoring schedule established in the permit requires sampling sooner, in which case the permittee shall resample in accordance with such monitoring schedule. Upon written notice from the Department, the permittee shall resume the former, more frequent monitoring and reporting schedule unless the permittee demonstrates that the exceedence was caused by an upset, bypass or laboratory error as provided for in N.J.A.C. 7:14A-6.11.

all units in ug/L

- 1 -for manufacturers: 10 ug/L daily maximum and 50 ug/L instantaneous maximum
for applicators: 10 ug/L daily maximum and 25 ug/L instantaneous maximum
- 2 - for manufacturers and formulators - discharge prohibited
- 3 - for manufacturers: 0.1 ug/L daily maximum, 0.5 ug/L instantaneous maximum
for formulators: discharge prohibited

SUBCHAPTER 19. PRETREATMENT PROGRAM REQUIREMENTS FOR LOCAL AGENCIES

7:14A-19.1 Purpose and scope

- (a) This subchapter establishes requirements to:
1. Prevent the introduction of pollutants into a local agency's treatment works which may:
 - i. Interfere with the operation of the local agency's treatment works;
 - ii. Pass through or would otherwise be incompatible with the local agency's treatment works; or
 - iii. Interfere with the local agency's chosen method of sludge management;
 2. Set forth the minimum requirements for all local agencies to control the discharge of pollutants by indirect users of the agencies' treatment works; and
 3. Set forth the minimum requirements for the establishment and implementation of an approvable industrial pretreatment program (IPP) by local agencies. Such a program shall require the local agency to establish a regulatory program with adequate legal authority contained in IPP regulations which allows that agency to deny or permit contributions of pollutants to the treatment works, as well as enforce the applicable pretreatment program requirements.

(b) The Department adopts and incorporates herein by reference the General Pretreatment Regulations for Existing and New Sources of Pollution, 40 CFR Part 403, and the National Pretreatment Standards in 40 CFR chapter I, subchapter N, as amended and supplemented.

(c) Nothing in this subchapter shall preclude or deny the right of a local agency to independently implement an IPP or adopt any pretreatment requirements or standards which are more stringent than the requirements in 40 CFR Part 403, 40 CFR chapter I, subchapter N, or the requirements in this subchapter.

7:14A-19.2 Industrial pretreatment program development by local agencies

(a) Any local agency, or combination of treatment works operated by the same local agency, which meets the following criteria shall establish an IPP unless the Department exercises its option to implement the IPP:

1. The treatment works total design flow is greater than five million gallons per day (MGD); and

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2. The treatment works receives pollutants from indirect users which pass through or interfere with the operation of the treatment works or are otherwise subject to pretreatment standards.

(b) The Department shall require a local agency, or combination of treatment works operated by the same local agency, with a design flow of five MGD or less to establish an IPP if the nature or volume of industrial influent, treatment process upsets, violations of effluent limitations, contamination of municipal sludge, or other circumstances warrant the establishment of an IPP in order to prevent interference with the treatment works or pass through.

(c) Any local agency required to establish an IPP pursuant to (a) or (b) above shall develop and submit to the Department for approval an IPP in accordance with the requirements of 40 CFR Part 403 and the additional requirements of this subchapter. The local agency required to develop an IPP shall have a pretreatment program compliance schedule incorporated into the NJPDES permit at the time of issuance, re-issuance, or modification of the permit. The compliance schedule shall require the development and submission of an IPP which addresses the requirements of this subchapter no later than one year after receipt of written notification from the Department that such an IPP is required.

7:14A-19.3 Industrial pretreatment program requirements for all local agencies

(a) As specified at N.J.A.C. 7:14A-16.3 and 16.4, the Department may reissue or modify a local agency's NJPDES permit to include IPP requirements as set forth in this subchapter.

(b) All local agencies, including those not required by N.J.A.C. 7:14A-19.2(a) and (b) to establish an IPP, shall comply with the following IPP requirements:

1. All local agencies shall submit a copy of the local sewer use ordinance or rules and regulations, including any amendments, to the Bureau of Pretreatment and Residuals in the Department at 401 East State Street, CN-029, Trenton, N.J. 08625;
2. All local agencies shall identify and locate indirect users as specified below:
 - i. All delegated local agencies shall update their inventory of indirect users at a frequency and diligence adequate to ensure proper identification of indirect users subject to pretreatment standards, appropriate characterization of the nature of their discharges, and correct designation of indirect users as categorical, significant/major, or other regulated. This update shall be completed at a minimum frequency of once per year, and shall be included in the 40 CFR 403 Annual Report required under N.J.A.C. 7:14A-19.6(f).
 - ii. Non-delegated local agencies shall submit an annual report, which consists of a listing of all indirect users which meet the significant indirect user definition in N.J.A.C. 7:14A-1.2;
3. All local agencies shall develop local limits or demonstrate that such limits are not necessary in accordance with N.J.A.C. 7:14A-19.7;

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4. Of the amount of any penalty assessed and collected pursuant to an action brought by a local agency in accordance with N.J.S.A. 58:10A-10, 10 percent shall be deposited in the Wastewater Treatment Operators' Training Account established in accordance with N.J.S.A. 58:10A-14.5 and used to finance the cost of training operators of municipal treatment works. The remainder shall be used by the local agency solely for enforcement purposes and for upgrading municipal treatment works; and
5. Except as otherwise provided in N.J.S.A. 47:1A-3, any records, reports, or other information obtained by a local agency pursuant to this paragraph or N.J.S.A. 58:11-53, including any correspondence relating thereto, shall be available to the public. However, upon a showing satisfactory to the local agency by any person that the making public of any record, report, or information, or a part thereof, other than effluent data, would divulge methods or processes entitled to protection as trade secrets, the local agency shall consider such record, report, or information, or part thereof, to be confidential and access thereto shall be limited to authorized officers or employees of the Department, local agency, and the Federal government.

(c) All delegated local agencies (DLAs) shall comply with the following IPP requirements:

1. All DLAs shall notify indirect users of the responsibilities required in the DLA's rules and regulations or sewer use ordinance as soon as possible but no later than 30 days from the determination that such indirect users are subject to regulation under the IPP. This notice shall not preclude the DLA from taking any enforcement action against an indirect user;
2. All DLAs shall issue an IPP permit to indirect users, as required by the DLA's NJPDES permit;
3. All DLAs shall perform compliance monitoring and inspections of indirect users, as required by the DLA's NJPDES permit;
4. All DLAs shall review and respond to violations of an IPP permit or the sewer use ordinance/rules and regulations, within 60 days of receipt of the compliance information generated by indirect users or the DLA;
5. All DLAs shall take enforcement actions based upon indirect users' noncompliance in accordance with the approved Enforcement Response Plan (ERP). In the absence of an approved ERP, the enforcement action shall be taken in accordance with the IPP as approved;
6. All DLAs shall develop and maintain a data management system which includes an indirect user inventory, characterization of the nature of indirect user discharges, compliance status, permit status, and enforcement actions. The DLA shall retain for a minimum of five years records of its monitoring activities and results (whether or not such activities are required by the DLA's NJPDES permit) and shall make such records available to EPA and the Department upon request;
7. All DLAs shall sample their treatment works and sludges as specified below:
 - i. Perform, at least once per year, an analysis for those priority pollutants listed in N.J.A.C. 7:14A-4, Appendix A, Tables II and III,

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of the discharge from, and inflow to, the municipal treatment works;
and

- ii. Perform, at least once per year, a priority pollutant scan on the sludge produced at the municipal treatment works. This analysis must be completed on those parameters listed in the Sludge Quality Assurance Regulations, N.J.A.C. 7:14C. The sludge samples shall be collected to coincide with the influent and effluent monitoring for priority pollutants required in (c)7i above;
8. All DLAs shall comply with the public participation and notification requirements in N.J.A.C. 7:14A-19.10;
9. All DLAs shall notify their significant indirect users (SIUs) in writing, in accordance with 40 CFR 403.8(f)(2)(iii), of the SIUs' obligation to comply with applicable requirements under Subtitles C and D of the Resource Conservation and Recovery Act (RCRA);
10. All DLAs shall secure and maintain sufficient resources and qualified personnel, in accordance with 40 CFR 403.8(f)(3), to carry out the program implementation procedures described in this subchapter;
11. All DLAs shall submit annual reports required by N.J.A.C. 7:14A-19.6(c) and (f); and
12. Of the penalty amount collected through the issuance of a summons pursuant to N.J.S.A. 58:10A-10.4, 10 percent shall be paid to the municipality or municipalities in which the municipal court retains jurisdiction for use for court purposes, with the remainder to be retained by the DLA.

7:14A-19.4 Enforcement response plan

(a) A delegated local agency shall develop and implement an enforcement response plan in accordance with this section. The plan shall contain detailed procedures describing how a delegated local agency shall investigate and respond to instances of indirect user noncompliance. The plan shall, at a minimum:

1. Describe how the delegated local agency shall investigate instances of noncompliance;
2. Describe the types of escalating enforcement responses the delegated local agency shall take in response to all anticipated types of indirect user violations and the time frames within which responses shall take place;
3. Identify (by title) the official(s) responsible for each type of response;
4. Adequately reflect the delegated local agency's primary responsibility to enforce all applicable pretreatment requirements and standards as detailed in 40 CFR 403.8(f)(1) and (f)(2), and the delegated local agency's approved pretreatment program and amendments; and
5. Contain noncompliance and nature of violation criteria and responses as set forth in the plan contained in Appendix A of this subchapter, incorporated hereby by reference, which denotes the minimum requirements.

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(b) A delegated local agency may develop an enforcement response plan in tabular format for easy reference, such as the enforcement response plan set forth in Appendix A.

(c) The enforcement response plan shall be included within the rules and regulations or sewer use ordinance of a delegated local agency.

(d) The enforcement response plan shall include or shall incorporate by reference all mandatory penalties, settlement restrictions, uniform penalty policies and other requirements applicable to the Department in accordance with N.J.A.C. 7:14-8.1(f), including, without limitation, the civil administrative penalty determination procedure specified in N.J.A.C. 7:14-8.16.

(e) The development of the ERP in accordance with this section shall not preclude a DLA from initiating other available enforcement responses where violations are not specifically identified in the ERP.

(f) All delegated local agencies shall submit to the Department an ERP in accordance with (a) above no later than March 20, 1999.

(g) Notwithstanding the time frame provided by (f) above for submissions, this subchapter as amended effective January 19, 1999 shall apply to any violation occurring on or after January 19, 1999.

7:14A-19.5 Enforcement requirements in an industrial pretreatment program

(a) All delegated local agencies shall, at a minimum, include in their sewer use ordinance or rules and regulations the following enforcement and penalty provisions:

1. The ability to issue an order in accordance with N.J.S.A. 58:10A-10a(1);
2. The ability to bring a civil action, including injunctive relief, in accordance with N.J.S.A. 58:10A-10a(2) and 58:11-55(b);
3. The ability to petition the county prosecutor or Attorney General to bring a criminal action in accordance with N.J.S.A. 58:10A-6.i. and 58:10A-10a(5);
4. The ability to issue a civil administrative penalty in accordance with N.J.S.A. 58:10A-10.5;
5. The ability to bring an action for a civil penalty in accordance with N.J.S.A. 58:10A-10a(4);
6. The ability to issue a summons in accordance with N.J.S.A. 58:10A-10.4;
7. The ability to assess a penalty for each violation that causes a violator to be, or continue to be, a significant noncomplier as defined at N.J.A.C. 7:14-8.2;
8. The ability to assess a penalty for each serious violation as defined at N.J.A.C. 7:14-8.2;
9. The ability to assess a penalty in accordance with N.J.A.C. 7:14-8.16;
10. The ability to assess a penalty for submitting inaccurate or false information in accordance with N.J.A.C. 7:14-8.6; and
11. The ability to assess a penalty for failure to properly conduct monitoring or sampling activities or to submit discharge monitoring reports/self-monitoring

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reports, or other pretreatment monitoring reports in accordance with N.J.A.C. 7:14-8.9(c), (d) and (e).

(b) All delegated local agencies shall include in their sewer use ordinance or rules and regulations procedural and substantive requirements regarding:

1. Notice of a penalty assessment and notice of the opportunity to request an administrative hearing on the assessment of a civil administrative penalty in accordance with N.J.S.A. 58:10A-10.5 and N.J.A.C. 7:14-8.4;
2. Opportunity to file exceptions, objections, and replies to the head of the delegated local agency in accordance with N.J.S.A. 58:10A-10.6;
3. Issuance of a final decision or order in accordance with N.J.S.A. 58:10A-10.6 and 10.7;
4. Appeal of a civil administrative penalty, the payment of interest, the collection of the civil administrative penalty and other procedures in accordance with N.J.S.A. 58:10A-10.8; and
5. Civil administrative penalty settlement restrictions in accordance with N.J.A.C. 7:14-8.3(e).

(c) All delegated local agencies shall, by March 20, 1999, submit to the Department a sewer use ordinance or rules and regulations which include those provisions specified in (a) and (b) above, as well as the provisions of the enforcement response plan required by N.J.A.C. 7:14A-19.4(a) through (e).

(d) Notwithstanding the time frame provided by (c) above for submissions, this subchapter as amended effective January 19, 1999 shall apply to any violation occurring on or after January 19, 1999.

7:14A-19.6 Additional requirements for delegated local agencies

(a) Each permitted facility discharging into the municipal treatment works of a delegated local agency, other than a facility discharging only stormwater or non-contact cooling water, shall be inspected by the delegated local agency at least once a year. The Department may also inspect a facility required to be inspected by a delegated local agency. Exemption of stormwater facilities from the provisions of this subsection shall not apply to any permitted facility discharging or receiving stormwater runoff having come into contact with a hazardous discharge site on the Federal National Priorities List adopted by the EPA pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or any other hazardous discharge site included by the Department on the master list for hazardous discharge site cleanups adopted pursuant to N.J.S.A. 58:10-23.16. An inspection required under this subsection shall be conducted within six months following a permittee's submission of an application for a permit, permit renewal or issuance of a permit for a new facility, except that if for any reason, a scheduled inspection cannot be made, the inspection shall be rescheduled to be performed within 30 days of the originally scheduled inspection or in the case of a temporary shutdown, of resumed operation. Inspections shall include:

1. A representative sampling of the effluent for each permitted facility, except that in the case of facilities that are not major facilities or significant indirect users, sampling pursuant to this paragraph shall be conducted at least once every three years. Collection of a representative sampling is required to

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complete an inspection but does not necessarily have to be conducted concurrently with the inspection;

2. An analysis of all collected samples by a laboratory certified by the Department;
3. An evaluation of the maintenance record of the permittee's treatment equipment;
4. An evaluation of the permittee's sampling techniques;
5. A random check of written summaries of test results, prepared by the certified laboratory, providing the test results for the immediately preceding 12-month period, signed by a responsible official of the certified laboratory, certifying the accuracy of the test results. This random check can be completed by reviewing the test results at the permitted facility, and/or through review of test results previously submitted by the permitted facility to the delegated local agency;
6. An inspection of the permittee's sample storage facilities and techniques if the sampling is normally performed by the permittee; and
7. An evaluation, at least once every two years, of each significant indirect user (as defined by the delegated local agency) in order to determine the need for a plan to control slug discharges. For purposes of this paragraph, a slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge. If the delegated local agency decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:
 - i. A description of discharge practices, including non-routine batch discharges;
 - ii. A description of stored chemicals;
 - iii. Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition at N.J.A.C. 7:14A-21.2, with procedures for follow-up written notification within five days; and
 - iv. If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

(b) In addition to the inspection requirements of (a) above, all delegated local agencies shall inspect any permittee which meets the significant noncomplier definition at N.J.A.C. 7:14A-1.2. The inspection under this subsection shall be conducted within 60 days of receipt of the discharge monitoring report or self-monitoring report that initially results in the permittee's being identified as a significant noncomplier. The inspection shall include a random

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check of written summaries of test results, prepared by the certified laboratory providing the test results for the immediately preceding 12-month period signed by a responsible official of the certified laboratory, certifying the accuracy of the test results. A copy of each summary shall be maintained by the permittee. The inspection shall be for the purpose of determining compliance and shall only be performed once each calendar year. A delegated local agency is not required to make an inspection hereunder if an inspection has been made pursuant to (a) above within six months of the period within which an inspection is required to be conducted under this subsection.

(c) A delegated local agency shall submit a "Clean Water Enforcement Act" (CWEA) annual report to the Department by February 1 of each year. The CWEA annual report shall include, at a minimum, the information under N.J.S.A. 58:10A-14.2, including all supplements and amendments thereto.

(d) In addition to the information required in the CWEA annual report under (c) above, delegated local agencies shall also include the following information in the CWEA annual report:

1. The number of indirect users which met the significant non-compliance definition during the calendar year and, by the close of the calendar year, had achieved compliance; and
2. The number of indirect users which had met the significant non-compliance criteria during the prior reporting year which have achieved compliance in the reporting period for which the annual report is being prepared.

(e) The information required in (c) and (d) above shall be submitted on forms provided by the Department.

(f) All delegated local agencies shall submit to the Department a "40 CFR Part 403" annual report which describes their pretreatment program activities. This report must contain, at a minimum, the information required under 40 CFR 403.12(i), including all supplements and amendments thereto. This report shall be submitted by the date specified in the delegated local agency's NJPDES permit.

7:14A-19.7 Development of local limits by local agencies

(a) All local agencies shall perform a headworks analysis in order to develop local limits or demonstrate that local limits are not necessary. The headworks analysis and, if necessary, development of local limits shall:

1. Be conducted in accordance with the Guidance Manual on the Development and Implementation of Local Discharge Limitations under the Pretreatment Program (December 1987, USEPA Office of Water Enforcement), including all supplements and amendments thereto; and
2. Ensure compliance with the following minimum environmental protection criteria:
 - i. The numerical effluent limitations in the local agency's NJPDES permit;
 - ii. The local agency's process inhibition and upset criteria;
 - iii. The local agency's worker health and safety protection criteria;

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- iv. The sludge quality criteria for a chosen method(s) of sludge management; and
- v. The limitations in the local agency's Air Pollution Control permit, where applicable.

(b) Prior to initiation of any headworks analysis and development of local limits under (a) above, all delegated local agencies shall submit a work plan to the Department, for review and approval with conditions if necessary, which outlines the tasks and time frames in the development of a headworks analysis and local limits. At a minimum, this plan shall include the parameters to be sampled, the sampling locations within the treatment plant and the collection system, and a schematic diagram of the treatment plant showing sampling locations.

(c) When proposing and adopting local limits, all delegated local agencies shall comply with the public notice and hearing requirements of N.J.A.C. 7:14A-19.10(a).

(d) All delegated local agencies shall submit a written technical evaluation of the need to revise local limits whenever:

- 1. There are any changes in the applicable sludge quality criteria or effluent limitations, or there is a significant change in the nature of indirect user contributions to the local agency's influent; or
- 2. The local agency's NJPDES permit renewal application is due.

(e) The written technical evaluation required under (d) above shall include the following:

- 1. A listing of all existing local limits and the limiting factor by which each local limit was established;
- 2. The date that the existing local limits were established;
- 3. A description of any changes in Federal or State regulations, environmental protection criteria, plant design, operational criteria, or any significant change in the nature of industrial contributions which may require the reevaluation of local limits through the completion of a headworks analysis;
- 4. A description of the local agency's compliance history over the previous five years, with respect to compliance with effluent limitations, sludge quality, plant inhibition or upset, and worker health and safety; and
- 5. A statement from the local agency as to whether or not local limits need to be revised based on the information gathered under (e)1 through 4 above.

(f) The Department shall review the written technical evaluation submitted under (d) above and, if necessary, require the local agency to revise the local limits in accordance with (a) above.

7:14A-19.8 Requirements for issuance of IPP permits by delegated local agencies

- (a) All delegated local agencies shall issue an IPP permit to:
 - 1. Any SIU as defined in N.J.A.C. 7:14A-1.2 or as defined in the delegated local agency's sewer use ordinance or rules and regulations; and

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2. Any other indirect user when effluent limitations and other conditions are to be imposed on that user, at the discretion of the local agency.
- (b) The delegated local agency shall include the following requirements in all IPP permits:
1. All permit requirements established in N.J.S.A. 58:10A-6f; and
 2. All permit requirements for IPP/SIU permits established in 40 CFR 403.8(f)(1)(iii)(A) through (E).
- (c) Prior to approving any proposed new indirect user IPP permits, proposed renewed indirect user IPP permits, or proposed major modifications to any existing indirect user IPP permit, all delegated local agencies shall comply with the public notice and hearing requirement of N.J.A.C. 7:14A-19.10(e).
- (d) All delegated local agencies shall include in their sewer use ordinance or rules and regulations the following permit issuance requirements:
1. Procedural and substantive requirements regarding written applications for IPP permits and indirect user authorizations to discharge. The application form must require the submission of full information as to the quantity, character, and composition of the proposed discharge;
 2. Procedural requirements for the issuance, renewal, modification, suspension, revocation of IPP permits or indirect user authorizations. The procedures must include notice, opportunity to comment, and opportunity to request a public hearing on all draft IPP permits. The DLA shall issue a response-to-comments document at the time that a final permit is issued. The response-to-comments document shall:
 - i. State the action the DLA has taken on the final permit;
 - ii. Specify which provisions, if any, of the draft permit have been changed in the final permit, and the reasons for any such change; and
 - iii. Briefly describe and respond to all relevant comments on the draft permit raised during the public comment period, or during the public hearing, if any;
 3. The requirement that no IPP permit shall be issued, renewed, or modified by a delegated local agency so as to relax any effluent limitation unless the IPP permittee or applicant has complied with the requirements of N.J.S.A. 58:10A-6k.

7:14A-19.9 Modifications of an industrial pretreatment program

- (a) All delegated local agencies shall provide written notice to the Department regarding all substantial and non-substantial IPP modifications, as defined under 40 CFR 403.18.
- (b) For non-substantial modifications, the delegated local agencies shall include a statement of the basis for the modification, and a copy of the elements of the IPP to be modified.
- (c) For substantial modifications, the delegated local agency shall submit:
1. A statement of basis for the proposed modifications;

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2. A statement of legal authority in accordance with 40 CFR 403.9(b)(1);
3. Documentation which will allow the Department to identify those parts of the sewer use ordinance or rules and regulations, NJPDES permit, and/or the original program submission, or amendments thereto, which are being modified; and
4. Any other documentation the Department requests during the review of the proposed modifications.

(d) While awaiting a decision from the Department on a request for a substantial modification the delegated local agency shall:

1. Adopt the proposed modifications with the written condition that the modifications shall not become effective and shall not be implemented until the Department has given written approval of the modifications; or
2. Await Departmental approval prior to adopting the modifications.

(e) The Department shall approve or disapprove any proposed modification(s) based on the requirements of 40 CFR 403.8(f), following the procedures in 40 CFR 403.11(b) through (f).

(f) For industrial pretreatment program modifications, all delegated local agencies shall comply with the public notice and hearing requirement of N.J.A.C. 7:14A-19.10(a).

(g) All approved modifications to an IPP shall be incorporated, where applicable, into the delegated local agency's NJPDES permit as a minor modification in accordance with **N.J.A.C. 7:14A-16.5.**

7:14A-19.10 *Public notice requirements for delegated local agencies*

(a) All delegated local agencies shall provide public notice and an opportunity for a public hearing for all requests for substantial modification of an industrial pretreatment program following the procedures under 40 CFR 403.11(b). The delegated local agency shall submit to the Department copies of the public notice, all written comments submitted in response to the public notice and public hearing, if conducted, and responses to comments. The Department shall approve or disapprove the modifications following the procedures noted in N.J.A.C. 7:14A-19.9(e).

(b) All delegated local agencies shall provide public notice identifying those indirect users which met the significant noncompliance criteria under 40 CFR 403.8(f)(2)(vii) at any time during the period covered by the delegated local agency's 40 CFR Part 403 Annual Report submitted to the Department pursuant to N.J.A.C. 7:14A-19.6(f). This public notice shall be published in the official daily newspaper designated by the local agency no later than 60 days after the 40 CFR 403 Annual Report due date.

(c) A delegated local agency shall afford an opportunity to the public to comment on a proposed administrative consent order prior to final adoption if the administrative consent order would establish interim enforcement limits that would relax effluent limitations established in a permit or a prior administrative order. The delegated local agency shall provide public notice of the proposed administrative consent order, announce the length of the comment period, which shall be not less than 30 days, commencing from the date of publication of the notice. A notice shall also include a summary statement describing the nature of the violation necessitating the administrative consent order and its terms and conditions; shall specify how additional information on the administrative consent order may be obtained; and shall identify to whom

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written comments are to be submitted. At least three days prior to publication of the notice, a written notice containing the same information to be provided in the public notice shall be mailed to the mayor and governing body of the municipality and county in which the violation occurred, and to any other persons who have expressed an interest in the public notice, including any other governmental agencies. The delegated local agency shall consider the written comments received during the comment period prior to final adoption of the administrative consent order. Not later than the date that final action is taken on the proposed order, the delegated local agency shall notify each person or group having submitted written comments on the main provisions of the approved administrative consent order and respond to the comments received therefrom.

(d) The delegated local agency, on its own initiative or at the request of any person submitting written comments pursuant to (c) above, may hold a public hearing on the proposed administrative order or administrative consent order, prior to final adoption if the order would establish interim enforcement limits that would relax for more than 24 months effluent limitations established in a permit or a prior administrative order or administrative consent order. Public notice for the public hearing to be held pursuant to this subsection shall be published not more than 30 and not less than 15 days prior to the holding of the hearing. The hearing shall be held in the municipality in which the violation necessitating the order occurred.

(e) All delegated local agencies shall provide public notice and may hold a public hearing for any proposed new indirect user IPP permits, proposed renewed indirect user IPP permits, proposed revocations of any indirect user IPP permits, or proposed major modifications to any existing indirect user IPP permits.

7:14A-19.11 *Enforcement action for failure to implement or enforce an approved industrial pretreatment program*

(a) The Department may take enforcement action against a delegated local agency pursuant to N.J.A.C. 7:14-8.17 for failure to implement the conditions of an approved industrial pretreatment program and any subsequent amendments thereto or enforce the conditions of an approved industrial pretreatment program, including the approved enforcement response plan, and any subsequent amendments thereto in accordance with N.J.A.C. 7:14-8.

N.J.A.C. 7:14A-19: APPENDIX A ENFORCEMENT RESPONSE PLAN

UNAUTHORIZED DISCHARGES

NONCOMPLIANCE	NATURE OF THE VIOLATION	ENFORCEMENT RESPONSES	TIME FRAME	PERSONNEL
1. Discharge without a permit (Permit required)	No harm to POTW environment	NOV with application form, if needed	60 days	
	Harm to POTW/environment (IU meets SNC criteria under 40 CFR Part 403.8(f)(2)(vii))	Take action to halt activity	2 days	
	Noncompliance with order to submit application	Seek penalty	6 months	
2. Failure to renew	Failure to submit application prior to 180 days of expiration of current permit	NOV	60 days	
	Failure to apply continues after notice by the POTW	Seek penalty	6 months	
3. Discharge outside scope of application/permit	Failure to notify in advance of new introductions of pollutants or significant change in existing pollutants	NOV with permit application to be modified	60 days	

DISCHARGE LIMIT VIOLATION

NONCOMPLIANCE	NATURE OF THE VIOLATION	ENFORCEMENT RESPONSES	TIME FRAME	PERSONNEL
1. Exceedance of local or Federal standard (permit limit)	Individual or monthly non-serious violation	NOV; compliance response/corrective action plan, if needed	60 days from receipt	
	Serious violation (individual or monthly)	Seek at least a mandatory minimum penalty in accordance with N.J.A.C. 7:14-8.16	6 months	
2. Exceedance of local or Federal standard (permit limit) (continued)	Significant Noncompliance (IU meets SNC criteria under 40 CFR Part 403)	Public notice	Annually, but no later than 60 days after 403 annual report submitted to NJDEP.	
	Significant noncompliance (IU meets SNC criteria in NJWPCA, under N.J.S.A. 58:10A-3.w.)	Seek at least a mandatory minimum penalty in accordance with N.J.A.C. 7:14-8.16	6 months	

MONITORING AND REPORTING VIOLATIONS

NONCOMPLIANCE	NATURE OF THE VIOLATION	ENFORCEMENT RESPONSES	TIME FRAME	PERSONNEL
1. Reporting violation	Late, 5 or more days after due date (but complete)	NOV, seek penalty, including at least mandatory minimum penalty for overdue effluent parameter information, if any, in accordance with N.J.A.C. 7:14-8.9 (note: Penalty waived if complete report is received within 10 days of receipt of the NOV)	6 months	
	Late 31 days or more after due date (but complete)	Public notice, NOV, and seek penalty, including at least mandatory minimum penalty for overdue effluent parameter information, if any, in accordance with N.J.A.C. 7:14-8.9 (note: Penalty waived if complete report is received within 10 days of receipt of the NOV)	Public notice in accordance with approved program Penalty within 6 months	
	Incomplete for effluent parameter omission	Seek at least a mandatory minimum penalty in accordance with N.J.A.C. 7:14-8.9	6 months	

MONITORING AND REPORTING VIOLATIONS (CONTINUED)

NONCOMPLIANCE	NATURE OF THE VIOLATION	ENFORCEMENT RESPONSES	TIME FRAME	PERSONNEL
	Incomplete for data omission (IU meets SNC criteria under 40 CFR Part 403)	Public notice	Annually	
	Incomplete for effluent parameter omission (IU meets SNC criteria under NJWPCA)	Public notice and seek at least a mandatory minimum penalty in accordance with N.J.A.C. 7:14-8.9 and N.J.A.C. 7:14-8.16(a)	Public notice in accordance with approved program Penalty within 6 months	
	Incomplete for other omissions (IU meets SNC criteria under NJWPCA)	Public notice and seek at least a mandatory minimum penalty in accordance with N.J.A.C. 7:14-8.16	Public notice in accordance with approved program Penalty within 6 months	
	Incomplete for other omissions	NOV	60 days	
	Falsification	Seek penalty or refer to county prosecutor	60 days	
2. Failure to adhere to compliance schedules (in control document, permit, AO/ACO, letter of agreement)	Missed milestone by less than 30 days	NOV, seek penalty (note: penalty may be waived if final compliance is met by due date)	6 months	
	Missed milestone by more than 30 days (IU meets SNC criteria under 40 CFR Part 403)	NOV, seek penalty, public notice (note: penalty may be waived if final compliance is met by due date)	6 months	
	Failure to meet final compliance date	NOV, seek penalty	6 months	

MONITORING AND REPORTING VIOLATIONS (CONTINUED)

NONCOMPLIANCE	NATURE OF THE VIOLATION	ENFORCEMENT RESPONSES	TIME FRAME	PERSONNEL
3. Failure to notify	Failure to report spill or changed discharge	NOV; seek penalty where necessary	NOV w/in 60 days of discovery; penalty no later than 6 months of discovery	
4. Failure to monitor correctly	Incorrect sample location, incorrect sample type, incorrect sample collection techniques, or incorrect sample analysis	NOV, with proper resampling, including sample analysis	60 days	
5. Failure to report additional monitoring	POTW inspection finds additional files	NOV with request to submit additional monitoring data	60 days	

OTHER PERMIT VIOLATIONS

NONCOMPLIANCE	NATURE OF THE VIOLATION	ENFORCEMENT RESPONSES	TIME FRAME	PERSONNEL
1. Wastestreams are diluted to achieve discharge limits	Dilution	NOV, seek penalty	NOV-60 days; penalty-6 months	
2. Continuing failure to halt or prevent a discharge which caused or causes imminent endangerment to human health, welfare, or the environment or has resulted in the POTW's exercise of its emergency authority under 40 CFR 403.8(f)(1)(vi)(B)	Refusal to discontinue activity upon notification	Take physical (effective) action or seek court order to halt discharge	2 days max.	
3. Failure to maintain in good working order and properly operate, any facilities or systems of control installed to achieve compliance with the terms and conditions of the permit	Violation of operating requirements	NOV	60 days	
4. Entry denial	Entry denied or consent withdrawn. Copies of records denied	NOV, seek penalty	6 months	
5. Inadequate record keeping	POTW inspector finds files incomplete or missing	NOV	60 days	

SUBCHAPTER 21. REQUIREMENTS FOR INDIRECT USERS

7:14A-21.1 Purpose and scope

- (a) This subchapter establishes requirements to:
1. Establishes requirements to prevent the introduction of pollutants into a local agency's treatment works which may:
 - i. Interfere with the operation of the local agency's treatment works;
 - ii. Pass through or would otherwise be incompatible with the local agency's treatment works; or

- iii. Interfere with the local agency's chosen method of sludge management;
2. Sets forth the minimum discharge criteria and reporting requirements for all indirect users; and
3. Sets forth the specific requirements for an individual NJPDES-SIU permit for a significant indirect user as defined in N.J.A.C. 7:14A-1.2 discharging into a non-delegated local agency's treatment works.

(b) The Department adopts and incorporates herein by reference the General Pretreatment Regulations for Existing and New Sources of Pollution, 40 CFR 403, and National Pretreatment Standards in 40 CFR chapter I, subchapter N, as amended and supplemented.

7:14A-21.2 Minimum requirements for all indirect users

- (a) The following conditions apply to all indirect users:
1. The prohibitions, as set forth in 40 CFR Part 403.5, against the introduction into a local agency's treatment works any of the following:
 - i. Any pollutant(s) which causes pass through or interference;
 - ii. Any pollutants which create a fire or explosion hazard in the local agency's treatment works including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21;
 - iii. Any pollutants which will cause corrosive structural damage to the local agency's treatment works, but in no case a discharge with pH lower than 5.0, unless the treatment works is specifically designed to accommodate such discharges;
 - iv. Any solid or viscous pollutants in amounts which will cause obstruction to the flow in the local agency's treatment works resulting in interference;
 - v. Any pollutant, including oxygen demanding pollutants (for example, BOD) released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the local agency's treatment works;
 - vi. Heat in amounts which will inhibit biological activity at the local agency's treatment works resulting in interference, but in no case heat in such quantities that the temperature at the local agency's treatment works exceeds 40 degrees Celsius (104 degrees Fahrenheit) unless the Department, upon request of the local agency, approves alternative temperature limits;

- vii. Petroleum oil, nonbiodegradable cutting oil, or any product of mineral oil origin in amounts that will cause interference or pass through;
 - viii. Any pollutants which result in the presence of toxic gases, vapors, or fumes within the local agency's treatment works in a quantity that could cause acute worker health and safety problems; or
 - ix. Any trucked or hauled pollutant, except at discharge points designated by the local agency.
2. The State pretreatment standards for petroleum hydrocarbons pursuant to N.J.A.C. 7:14A-12; and
 3. Local limits developed by the local agency pursuant to N.J.A.C. 7:14A-19.7.

(b) All indirect users shall notify the local agency immediately of all discharges that could cause problems to the local agency's treatment works, including any slug discharge loading.

(c) The penalties, including mandatory minimum penalties, and the settlement restrictions applicable to any civil administrative penalty assessment, as specified under N.J.A.C. 7:14-8, are fully applicable to violations by indirect users occurring on or after January 19, 1999.

7:14A-21.3 Additional requirements for all significant indirect users

(a) Within 60 days after the effective date of a pretreatment standard for a subcategory under which an indirect user may be included, the indirect user may request that the control authority provide written determination on whether the indirect user falls within that particular subcategory. If an existing indirect user adds or changes a process or operation which may be included in a subcategory, the existing indirect user shall request this determination prior to commencing discharge from the added or changed process or operation. A new source shall request this determination prior to commencing discharge. Each request shall include:

1. A description of which subcategories might be applicable;
2. Evidence and reasons why a particular subcategory is applicable and why others are not applicable; and
3. The following certification over the signature of the person submitting the request:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

(b) Within 180 days after the effective date of a categorical pretreatment standard or 180 days after the final decision by the control authority on the categorical determination request

submitted under (a) above, whichever is later, each existing indirect user subject to a categorical pretreatment standard and currently discharging or scheduled to discharge to a local agency shall submit to the control authority a baseline report. The baseline report shall contain the information specified in (b)1 through 7 below. New sources and sources that became users subsequent to the promulgation of an applicable categorical standard shall submit the information specified in (b)1 through 5 below.

1. Identifying information, specifically the name and address of the facility and including the name of the operator and owners;
2. A list of any environmental control permits held by or for the facility;
3. A brief description of the nature, average rate of production, and Standard Industrial Classification of the operation(s) carried out by such indirect user. This description shall include a schematic process diagram which indicates points of discharge to the local agency from the regulated processes;
4. Information showing the measured average daily and maximum daily flow, in gallons per day, to the local agency's treatment works from each of the following:
 - i. Regulated process streams; and
 - ii. Other streams as necessary to allow use of the combined wastestream formula of N.J.A.C. 7:14A-21.4(c). The control authority may accept verifiable estimates of these flows instead of measured flows where justified by cost or feasibility considerations;
5. Pollutant levels measured as follows:
 - i. The indirect user shall identify the pretreatment standards applicable to each regulated process;
 - ii. The indirect user shall submit the results of sampling and analysis identifying the nature and concentration (or mass, where required by the standard or control authority) of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentration (or mass, where required) shall be reported. The sample shall be representative of daily operations;
 - iii. A minimum of four grab samples shall be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. For all other pollutants, 24-hour composite samples shall be obtained through flow-proportional composite sampling techniques where feasible. The control authority shall waive flow-proportional composite sampling for any indirect user that demonstrates that flow-proportional sampling is infeasible. In such cases, samples shall be obtained through time-proportional composite sampling techniques or through a minimum of four grab samples where the indirect user demonstrates that this shall provide a representative sample of the effluent being discharged;

- iv. The indirect user shall take a minimum of one representative sample to compile data necessary to comply with the requirements of this paragraph;
- v. Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the indirect user shall measure the flows and concentrations necessary to allow use of the combined wastestream formula of N.J.A.C. 7:14A-21.4(c) in order to evaluate compliance with the pretreatment standards. Where an alternative concentration or mass limit has been calculated in accordance with N.J.A.C. 7:14A-21.4(c) this adjusted limit along with supporting data shall be submitted to the control authority;
- vi. Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto. Where 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Department determines that the 40 CFR Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the local agency or other parties, approved by the Department;
- vii. The control authority may allow the submission of a baseline report which utilizes only historical data so long as the data are sufficient to determine the need for industrial pretreatment measures; and
- viii. The baseline report shall indicate the time, date and place, of sampling, and methods of analysis, and shall contain a certification from an authorized representative that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the local agency's treatment works;
- 6. A statement, reviewed by an authorized representative of the indirect user and certified to by a qualified professional, as to whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance and/or additional pretreatment is required for the indirect user to meet the pretreatment standards and requirements; and
- 7. If additional pretreatment and/or operation and maintenance shall be required to meet the pretreatment standards, the shortest compliance schedule under which the indirect user shall provide such additional pretreatment and/or operation and maintenance shall be submitted. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

- i. Where the indirect user's categorical pretreatment standard has been modified by the combined wastestream formula pursuant to N.J.A.C. 7:14A-21.4(c) and/or a fundamentally different factors variance pursuant to N.J.A.C. 7:14A-21.5 at the time the indirect user submits the baseline report required under this subsection, the information required under (b)6 above and this paragraph shall pertain to the modified limits;
- ii. If the categorical pretreatment standard is modified by the combined wastestream formula pursuant to N.J.A.C. 7:14A-21.4(c) and/or a fundamentally different factors variance pursuant to N.J.A.C. 7:14A-21.5 after the indirect user submits the baseline report required under this subsection, any necessary amendments to the information required under (b)6 above and this paragraph shall be submitted by the indirect user to the control authority within 60 days after the modified limit is approved.

(c) Existing sources shall comply with categorical pretreatment standards within three years of the date the standard is effective unless a sooner compliance deadline is specified in the applicable subpart of 40 CFR chapter I, subchapter N. Existing sources which become indirect users subsequent to promulgation of an applicable categorical pretreatment standard shall be considered existing indirect users except where such sources meet the definition of a "new source" under N.J.A.C. 7:14A-1.2. New sources shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet applicable pretreatment standards, before beginning to discharge. Within the shortest feasible time, not to exceed 90 days from commencement of discharge, new sources shall meet all applicable pretreatment standards.

(d) As conditions to any compliance schedule for meeting categorical pretreatment standards pursuant to (b)7 above, the indirect user shall:

1. Incorporate in the compliance schedule increments of progress described as dates for the commencement and completion of milestones in the construction and operation of additional pretreatment as required for the indirect user to meet the applicable categorical pretreatment standards (for example, hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction). No such increment shall exceed nine months; and
2. Not later than 14 days following each date in the compliance schedule and the final date for compliance, submit a progress report to the control authority including, at a minimum, whether or not the indirect user met the increment of progress on such date and, if not, the anticipated date of compliance with such increment of progress, the reason for delay, and the steps being taken by the indirect user to resume the construction schedule established. In no event shall more than nine months elapse between such progress reports to the control authority.

(e) Within 90 days following the date for final compliance with applicable categorical pretreatment standards or, in the case of a new source, within 90 days following commencement of the introduction of wastewater into the local agency's treatment works, any indirect user subject to pretreatment standards and requirements shall submit to the control authority a report containing the information described in (b)4 through 6 above. For indirect users

subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in N.J.A.C. 7:14A-21.4(c), this report shall contain a reasonable measure of the indirect user's long term production rate. For all other indirect users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the indirect user's actual production during the appropriate sampling period.

(f) Periodic reports on continued compliance shall be submitted as follows:

1. Any indirect user subject to a categorical pretreatment standard, after the compliance date of such pretreatment standard, or, in the case of a new source, after commencement of the discharge into the local agency, shall submit to the control authority during the months of June and December, unless required more frequently in the pretreatment standard or by the control authority or the Department, a report indicating the nature and concentration of pollutants in the effluent which are limited by such categorical pretreatment standards. This report shall include a record of measured or estimated average and maximum daily flows for the reporting period for the discharge reported in (b)4 above except that the control authority may require more detailed reporting of flows. At the discretion of the control authority and in consideration of such factors as local high or low flow rates, holidays, and budget cycles, the control authority may approve the designation of months other than June and December during which the above reports are to be submitted.
2. Where the control authority has imposed mass limitations on indirect users as provided for by N.J.A.C. 7:14A-21.4(c), the report required under (f)1 above shall indicate the mass of pollutants regulated by pretreatment standards in the discharge from the indirect user.
3. For indirect users subject to equivalent mass or concentration limits established by the control authority in accordance with the procedures in N.J.A.C. 7:14A-21.4(a), the report required under (f)1 above shall contain a reasonable measure of the indirect user's long term production rate. For all other indirect users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required under (f)1 above shall include the indirect user's actual average production rate for the reporting period.

(g) Monitoring and analysis to demonstrate continued compliance shall be conducted as follows:

1. The reports required under (b), (e) and (f) above shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the control authority, of pollutants contained therein which are limited by the applicable pretreatment standards. This sampling and analysis may be performed by the control authority in lieu of the indirect user. Where the control authority performs the required sampling and analysis in lieu of the indirect user, the indirect user will not be required to submit the compliance certification required under (b)6 and (e) above. In addition, where the control authority itself collects all the information required for the report, including flow data,

the indirect user will not be required to submit the report required under (b), (e) and (f) above.

2. If sampling performed by an indirect user indicates a violation of pretreatment standards, the indirect user shall notify the control authority within 24 hours of becoming aware of the violation. The indirect user shall repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within 30 days after becoming aware of the violation, except the indirect user is not required to resample if:
 - i. The control authority conducts sampling of the indirect user's discharge at a frequency of at least once per month; or
 - ii. The control authority conducts sampling of the indirect user's discharge between the time when the indirect user performs its initial sampling and the time when the indirect user receives the results of this sampling.
3. The reports required under (f) above shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data are representative of conditions occurring during the reporting period. The control authority shall require that frequency of monitoring necessary to assess and ensure compliance by indirect users with applicable pretreatment standards and requirements.
4. All analyses shall be performed in accordance with procedures contained in 40 CFR Part 136, as amended, or with any other test procedures approved by the Department. Sampling shall be performed in accordance with the techniques approved by the Department. Where 40 CFR Part 136 does not include sampling or analytical techniques for the pollutants in question, or where the Department determines that the 40 CFR Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the control authority, local agency or the indirect user, approved by the Department.
5. If an indirect user subject to the reporting requirement in (f) above monitors any pollutant more frequently than required by the control authority, using the procedures prescribed in (g)4 above, the results of this monitoring shall be included in the report.

(h) Significant indirect users as defined in N.J.A.C. 7:14A-1.2 shall submit to the control authority at least once each month (on dates specified by the control authority) a description of the nature, concentration, and flow of the pollutants required by the control authority to be reported. These reports shall be based on sampling and analysis performed in the period covered by the report, and in accordance with the techniques described in 40 CFR Part 136, as amended. Where 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the Department determines that the 40 CFR Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the control authority, local agency or the indirect user, approved by the Department. This sampling and analysis may be performed by

the control authority in lieu of the significant indirect user. Where the control authority itself collects all the information required for the report, the indirect user will not be required to submit the report.

- (i) Requirements for notification regarding hazardous waste are as follows:
 1. The indirect user shall notify the local agency, the USEPA Regional Waste Management Division Director, and the Department's Division of Solid and Hazardous Waste in writing of any discharge into the local agency's treatment works of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification shall include the name of the hazardous waste as set forth in 40 CFR Part 261, the USEPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the indirect user discharges more than 100 kilograms of such waste per calendar month to the local agency's treatment works, the notification shall also contain the following information to the extent such information is known and readily available to the indirect user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. Indirect users who commence discharging after the effective date of this chapter shall provide the notification no later than 180 days after the discharge of the listed or characteristic hazardous waste. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notification of changed discharges must be submitted under (j) below. The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of (b), (e) and (f) above.
 2. Dischargers are exempt from the requirements of (i)1 above during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than 15 kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Additional notification is not required in subsequent months during which the indirect user discharges more than such quantities of any hazardous waste.
 3. In the case of any new promulgated regulation under section 3001 of RCRA or the State's Solid Waste Management Act identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the indirect user shall notify the local agency, the USEPA Regional Waste Management Waste Division Director, and the Division of Solid and Hazardous Waste of the discharge of such substance within 90 days of the effective date of such regulation.
 4. In the case of any notification made under this subsection, the indirect user shall certify that it has a program in place to reduce the volume and toxicity of hazardous waste generated to the degree it has determined to be economically practical.

(j) All indirect users shall promptly notify the local agency in advance of any substantial change in the volume or character of pollutants in their discharge, including the listed or characteristic hazardous wastes for which the indirect user has submitted initial notification (i) above.

7:14A-21.4 Categorical standards, calculation of equivalent and/or alternative limits

(a) When the categorical pretreatment standards are expressed in terms of production, equivalent effluent limitations shall be calculated as follows:

1. When the limits in a categorical pretreatment standard are expressed only in terms of mass of pollutant per unit of production, the control authority may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual indirect users.
2. A control authority calculating equivalent mass-per-day limitations under (a)1 above shall calculate such limitations by multiplying the limits in the categorical pretreatment standard by the indirect user's average rate of production. This average rate of production shall be based not upon the designed production capacity but rather upon a reasonable measure of the indirect user's actual long-term daily production, such as the average daily production during a representative year. For new sources, actual production shall be estimated using projected production.
3. A control authority calculating equivalent concentration limitations under (a)1 above shall calculate such limitations by dividing the mass limitations derived under (a)2 above by the average daily flow rate of the indirect user's regulated process wastewater. This average daily flow rate shall be based upon a reasonable measure of the indirect user's actual long-term average flow rate, such as the average daily flow rate during the representative year. For new sources, flow rate shall be estimated using projected flow rate.
4. Equivalent limitations calculated in accordance with (a)2 and 3 above shall be deemed pretreatment standards for the purposes of section 307(d) of the Federal Act and this subchapter. Indirect users will be required to comply with the equivalent limitations in lieu of the promulgated categorical standards from which the equivalent limitations were derived.
5. When a categorical pretreatment standard that specifies one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum monthly average, or four-day average, limitations are applied, the same production or flow figure shall be used in calculating both types of equivalent limitations.
6. Any indirect user operating under a control mechanism incorporating equivalent mass or concentration limits calculated from a production based standard shall notify the control authority within two business days after the indirect user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any indirect user that does not notify the control authority of such anticipated change shall be required to meet the mass or concentration limits in its IPP permit that were based on the original estimate of the long term average production rate.

(b) Except where expressly authorized to do so by an applicable pretreatment standard or requirement, no indirect user shall increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement. The control authority may impose mass limitations on indirect users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass limitations is appropriate.

(c) Where process effluent is mixed prior to treatment with wastewaters other than those generated by the regulated process, fixed alternative categorical limits shall be derived by the control authority or by the indirect user with the written concurrence of the control authority. These alternative categorical limits shall be applied to the mixed effluent. When deriving alternative categorical limits, the control authority or indirect user shall calculate both an alternative daily maximum value using the daily maximum value(s) specified in the appropriate categorical pretreatment standard(s) and an alternate monthly or consecutive sampling day average value using the monthly or consecutive sampling day average value(s) specified in the appropriate categorical pretreatment standard(s). The indirect user shall comply with the alternative categorical daily maximum and monthly average or consecutive sampling day limits fixed by the control authority, in the indirect user's permit. Modification is authorized whenever there is a material or significant change in the values used in the calculation to fix alternative categorical limits for the regulated pollutant. An indirect user shall immediately report any such material or significant change to the control authority. Where appropriate, alternative categorical limits shall be re-calculated within 30 days of being informed of changes by the indirect user.

1. For purposes of these formulas, the average daily flow means a reasonable measure of the average daily flow for a 30-day period. For new sources, flows shall be estimated using projected values. The alternative limit for a specified pollutant shall be derived by the use of either of the following formulas:

- i. Alternative concentration limit.

$$C_T = \frac{\sum_{i=1}^N C_i F_i}{\sum_{i=1}^N F_i} * \frac{F_T - F_D}{F_T}$$

where

C_T = the alternative concentration limit for the combined wastestream.

C_i = the categorical pretreatment standard concentration limit for a pollutant in the regulated stream i .

F_i = the average daily flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D = the average daily flow (at least a 30-day average) from:

- (1) Boiler blowdown streams, non-contact cooling streams, stormwater streams, and demineralizer backwash streams, provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an indirect user's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the control authority, upon application of the indirect user, may exercise its discretion to determine whether such stream(s) shall be classified as diluted or unregulated. In its permit application to the control authority, the indirect user shall provide engineering, production, sampling and analysis and such other information so that the control authority can make its determination; or
- (2) Sanitary wastestreams where such streams are not regulated by a categorical pretreatment standard; or
- (3) From any process wastestreams which were or could have been entirely exempted from categorical pretreatment standards pursuant to paragraph 8 of the NRDC v. Costle Consent Decree (12 ERC 1833) for one or more of the following reasons :
 - (A) The pollutants of concern are not detectable in the effluent from the indirect user (paragraph (8)(a)(iii)) and/or as specified in the appropriate categorical standards;
 - (B) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects (paragraph (8)(a)(iii)) and/or as specified in the appropriate categorical pretreatment standards;
 - (C) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or
 - (D) The wastestream contains only pollutants which are compatible with the local agency's treatment works (paragraph (8)(b)(i)) and/or as specified in the appropriate categorical standards.

F_T = The average daily flow (at least a 30-day average) through the indirect user's treatment works (includes F_p , F_D and unregulated streams).

N = The total number of regulated streams.

ii. Alternative mass limit.

$$M_T = \sum_{i=1}^N M_i * \frac{F_T - F_D}{\sum_{i=1}^N F_i}$$

where

M_T = the alternative mass limit for a pollutant in the combined wastestream.

M_i = the categorical pretreatment standard mass limit for a pollutant in the regulated stream i (the categorical pretreatment mass limit multiplied by the appropriate measure of production).

F_i = the average flow (at least a 30-day average) of stream i to the extent that it is regulated for such pollutant.

F_D = the average daily flow (at least a 30-day average) from:

- (1) Boiler blowdown streams, non-contact cooling streams, stormwater streams, and demineralizer backwash streams, provided, however, that where such streams contain a significant amount of a pollutant, and the combination of such streams, prior to treatment, with an indirect user's regulated process wastestream(s) will result in a substantial reduction of that pollutant, the control authority, upon application of the indirect user, may exercise its discretion to determine whether such stream(s) shall be classified as diluted or unregulated. In its permit application to the control authority, the indirect user shall provide engineering, production, sampling and analysis and such other information so that the control authority can make its determination; or
- (2) Sanitary wastestreams where such streams are not regulated by a categorical pretreatment standard; or
- (3) From any process wastestreams which were or could have been entirely exempted from categorical pretreatment standards pursuant to paragraph 8 of the NRDC v. Costle Consent Decree (12 ERC 1833) for one or more of the following reasons:
 - (A) The pollutants of concern are not detectable in the effluent from the indirect user (paragraph (8)(a)(iii)) and/or as specified in the appropriate categorical standards;
 - (B) The pollutants of concern are present only in trace amounts and are neither causing nor likely to cause toxic effects

(paragraph (8)(a)(iii)) and/or as specified in the appropriate categorical standards;

(C) The pollutants of concern are present in amounts too small to be effectively reduced by technologies known to the Administrator (paragraph (8)(a)(iii)); or

(D) The wastestream contains only pollutants which are compatible with the local agency's treatment works (paragraph 8(b)(i)) and/or as specified in the appropriate categorical standards.

F_T = The average flow (at least a 30-day average) through the indirect user's treatment works (includes F_p , F_D and unregulated streams).

N = The total number of regulated streams.

2. An alternative pretreatment limit shall not be used if such alternative limit is below the analytical detection limit for any of the regulated pollutants.
3. The indirect user shall monitor, to ensure compliance with the alternative categorical limits, in accordance with the requirements of N.J.A.C. 7:14A-21.3(g).
4. Where a treated regulated process wastestream is combined prior to treatment with wastewaters other than those generated by the regulated process, the indirect user may monitor either the segregated process wastestream or the combined wastestream for the purpose of determining compliance with applicable pretreatment standards. If the indirect user monitors the segregated process wastestream, it shall apply the applicable categorical pretreatment standard. If the indirect user chooses to monitor the combined wastestream, it shall apply an alternative discharge limit calculated using the combined wastestream formula as provided in this section. The indirect user may change monitoring points only after receiving approval from the control authority. The control authority shall ensure that any change in an indirect user's monitoring point(s) will not allow the indirect user to substitute dilution for adequate treatment to achieve compliance with applicable standards.

(d) Categorical pretreatment standards may be adjusted to reflect the presence of pollutants in the indirect user's intake water as follows:

1. Any indirect user wishing to obtain credit for intake pollutants must submit a written request to the control authority. Upon such request, the applicable standard will be calculated on a "net" basis (that is, adjusted to reflect credit for pollutants in the intake water) if the requirements of (d)2 and 3 below are met.
2. Criteria adjusting categorical pretreatment standards to reflect the presence of pollutants in the indirect user's intake water are as follows:

- i. The indirect user shall demonstrate that the control system it proposes or uses to meet applicable categorical pretreatment standards would, if properly installed and operated, meet the standards in the absence of pollutants in the intake waters.
 - ii. Credit for generic pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and oil and grease shall not be granted unless the indirect user demonstrates that the constituents of the generic measure in the indirect user's effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.
 - iii. Credit shall be granted only to the extent necessary to meet the applicable categorical pretreatment standard(s), up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credit and compliance with standard(s) adjusted under this section.
 - iv. Credit shall be granted only if the indirect user demonstrates that the intake water is drawn from the same body of water as that into which the local agency's treatment works discharges. The control authority may waive this requirement if it finds that no environmental degradation will result.
3. The applicable categorical pretreatment standards contained in 40 CFR subchapter N specifically provide that they shall be applied on a net basis.

7:14A-21.5 Variance from categorical pretreatment standards for fundamentally different factors

(a) Any interested person believing that factors relating to an indirect user are fundamentally different from the factors considered during development of a categorical pretreatment standard applicable to that indirect user and that the existence of those factors justifies a different discharge limit than specified in the applicable categorical pretreatment standard may request a fundamentally different factors variance under this section.

1. A request for a variance based upon fundamentally different factors shall be approved only if:
 - i. There is an applicable categorical pretreatment standard which specifically controls the pollutant for which alternative limits have been requested;
 - ii. Factors relating to the discharge controlled by the categorical pretreatment standard are fundamentally different from the factors considered by USEPA in establishing the standards; and

- iii. The request for a variance is made in accordance with the procedural requirements of (e) and (f) below.
 - 2. A variance request for the establishment of limits less stringent than required by the standard shall be approved only if:
 - i. The alternative limit requested is no less stringent than justified by the fundamental difference;
 - ii. The alternative limit will not result in a violation of any prohibition established under N.J.A.C. 7:14A-21.2(a)1;
 - iii. The alternative limit will not result in a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the pretreatment standards; and
 - iv. Compliance with the standards (either by using the technologies upon which the standards are based or by using other control alternatives) would result in either:
 - (1) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the standards; or
 - (2) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the standards.
 - 3. A variance request for the establishment of limits more stringent than required by the standards shall be approved only if:
 - i. The alternative limit request is no more stringent than justified by the fundamental difference; and
 - ii. Compliance with the alternative limit would not result in either:
 - (1) A removal cost (adjusted for inflation) wholly out of proportion to the removal cost considered during development of the standards; or
 - (2) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the standards.
- (b) Factors which may be considered fundamentally different are:
- 1. The nature or quality of pollutants contained in the raw waste load of the indirect user's process wastewater:

2. The volume of the indirect user's process wastewater and effluent discharged;
3. The non-water quality environmental impact of control and treatment of the indirect user's raw waste load;
4. The energy requirements of the application of control and treatment technology;
5. The age, size, land availability, and configuration as they relate to the indirect user's equipment or facilities, processes employed, process changes, and engineering aspects of the application of control technology; and
6. The cost of compliance with required control technology.

(c) A variance request or portion of such a request under this section shall not be granted on any of the following grounds:

1. The feasibility of installing the required waste treatment equipment within the time the Act allows;
2. The assertion that the standards cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factors listed in (b) above;
3. The indirect user's ability to pay for the required waste treatment; or
4. The impact of a discharge on the quality of the local agency's receiving waters.

(d) Nothing in this section shall be construed to impair the right of any local agency to impose more stringent limitations than required by Federal law.

(e) Requests for a variance and supporting information shall be submitted in writing to the Department no later than 180 days after the date on which a categorical pretreatment standard is published in the Federal Register for a request based on a categorical pretreatment standard promulgated on or after February 4, 1987.

1. Where the indirect user has requested a categorical determination pursuant to N.J.A.C. 7:14A-21.3(a), the indirect user may elect to await the results of the categorical determination before submitting a variance request under this section. Where the indirect user so elects, he or she must submit the variance request within 30 days after a final decision has been made on the categorical determination.

(f) Written variance requests shall include:

1. The name and address of the person making the request;
2. Identification of the interest of the requester which is affected by the categorical pretreatment standard for which the variance is requested;
3. Identification of the local agency currently receiving the waste from the indirect user for which alternative discharge limits are requested;
4. Identification of the categorical pretreatment standards which are applicable to the indirect user;
5. A list of each pollutant or pollutant parameter for which an alternative discharge limit is sought;

6. The alternative discharge limits proposed by the requester for each pollutant or pollutant parameter identified pursuant to (f)5 above;
7. A description of the indirect user's existing water pollution control facilities;
8. A schematic flow representation of the indirect user's water system including water supply, process wastewater systems, and points of discharge; and
9. A statement of facts clearly establishing why the variance request should be approved, including detailed support data, documentation, and evidence necessary to fully evaluate the merits of the request, e.g., technical and economic data collected by the USEPA and used in developing each pollutant discharge limit in the pretreatment standard.

(g) The Department shall act only on written requests for variances that contain all of the information required pursuant to (f) above. Persons who have made incomplete submissions will be notified by the Department that their requests are deficient and unless the time period is extended, will be given up to 30 days to remedy the deficiency. If the deficiency is not corrected within the time period allowed by the Department, the request for a variance shall be denied.

(h) Upon receipt of a complete request, the Department shall provide public notice of receipt, opportunity to review the submission, and opportunity to comment.

1. The public notice shall be published in a manner designed to inform interested and potentially interested persons of the request, and shall include mailing notices to:
 - i. The local agency into whose treatment works the indirect user requesting the variance discharges;
 - ii. Adjoining states whose waters may be affected;
 - iii. Agencies responsible for areawide Water Quality Management Plan, Federal and State fish, shellfish and wildlife resource agencies; and
 - iv. Any other person or group who has requested individual notice, including those on appropriate mailing lists.
2. The public notice shall provide for a period not less than 30 days following the date of the public notice during which time interested persons may review the request and submit written comments on the request.
3. Following the comment period, the Department will make a determination on the request, taking into consideration any comments received. Notice of this final decision shall be provided to the requester and the indirect user for which the variance is requested, if different, the local agency into whose treatment works the indirect user discharges and all persons who submitted comments on the request.

(i) Review of requests by the Department is as follows:

1. Where the Department finds that fundamentally different factors do not exist, it shall deny the request and notify the requester (and indirect user where they are not the same) and the local agency of the denial.

2. Where the Department finds that fundamentally different factors do exist, it shall forward the request, with a recommendation that the request be approved, to the USEPA Administrator. (Review of the variance request by USEPA is governed by 40 CFR Part 403.13(l)).
- (j) Requests for an adjudicatory hearing shall be as follows:
1. If the Department denies the variance request, the requester may request an adjudicatory hearing pursuant to N.J.A.C. 7:14A-17.
 2. If USEPA denies the variance request, the requester may seek relief pursuant to 40 CFR Part 403.13(m).

7:14A-21.6 Bypass

(a) An indirect user may allow any bypass to occur which does not cause pretreatment standards to be violated, but only if such bypass is for essential maintenance to ensure efficient operation. Such bypasses are not subject to (b) and (c) below.

(b) Notice of bypass shall be as follows:

1. If an indirect user knows in advance of the need for a bypass, it shall submit prior notice to the control authority, if possible at least 10 days before the date of the bypass.
2. An indirect user shall inform the control authority by telephone or in person of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time the indirect user becomes aware of the bypass. A written submission shall also be provided within five days of the time the indirect user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The control authority may waive the written report on a case-by-case basis if the information of the bypass by telephone or in person was received within 24 hours of the indirect user's becoming aware of the bypass.

(c) Bypass is prohibited, and the control authority may take enforcement action against an indirect user for a bypass, unless:

1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
2. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
3. The indirect user notified the control authority as required under (b) above.

(d) The control authority may approve an anticipated bypass, after considering its adverse effects, if the control authority determines that it will meet the conditions in (c)1 through 3 above.

7:14A-21.7 Additional requirements for facilities which meet the SIU definition and discharge to a delegated local agency's treatment works

Any indirect user which meets the SIU definition in N.J.A.C. 7:14A-1.2 and discharges or plans to discharge to a delegated local agency's treatment works shall obtain an IPP permit from that delegated local agency. Delegated local agencies are required pursuant to N.J.A.C. 7:14A-19.3(c)2 to issue IPP permits to such indirect users.

7:14A-21.8 Additional requirements for facilities which meet the SIU definition and discharge to a non-delegated local agency's treatment works

An indirect user which meets the SIU definition in N.J.A.C. 7:14A-1.2 and discharges or plans to discharge to a local agency which is not a delegated local agency as defined at N.J.A.C. 7:14A-1.2 shall obtain an individual NJPDES-SIU permit from the Department pursuant to N.J.A.C. 7:14A-2.4 and 7:14A-4.

7:14A-21.9 Exemptions from the requirements for an individual NJPDES-SIU permit from the Department

(a) An indirect user authorized to discharge by the local agency is exempt from the requirement to obtain an individual NJPDES-SIU permit from the Department if:

1. The indirect user does not meet the SIU definition; or
2. The indirect user discharges to a delegated local agency's treatment works.

(b) The Department may, at its discretion, revoke a NJPDES-SIU permit if the permittee meets the exemption criteria of (a) above.

(c) A permittee may request revocation of an individual NJPDES-SIU permit by submitting to the Department a certification by an authorized representative of the permittee stating the date and describing in detail when and why the permittee became eligible for an exemption pursuant to (a) above.

(d) The Department shall revoke the NJPDES-SIU permit if the permittee establishes pursuant to (c) above that the permittee qualifies for an exemption under (a) above.

(e) The terms and conditions of the individual NJPDES-SIU permit, including, but not limited to, the requirement to file a timely application for permit renewal, remain in full force and effect unless and until such permit is revoked consistent with the procedures in N.J.A.C. 7:14A-16.

(f) If an individual NJPDES-SIU permit is revoked pursuant to this section, the user may continue to discharge and shall comply with any pretreatment requirements of the local agency and this subchapter.

7:14A-21.10 Establishing conditions and effluent limitations for an individual NJPDES-SIU permit issued by the Department

(a) Effluent limitations for NJPDES-SIU permits shall be developed for the applicable pollutants based on one or more of the following:

1. Applicable or relevant categorical pretreatment standards under 40 CFR Chapter I, Subchapter N, calculated and/or adjusted if applicable in accordance with N.J.A.C. 7:14A-21.4;

2. Local limits developed in accordance with N.J.A.C. 7:14A-19.7;
3. In the absence of local limits developed by the local agency in accordance with N.J.A.C. 7:14A-19.7, limitations will be calculated by the Department to prevent pass through or interference at the receiving local agency's treatment works using the Guidance Manual on the Development and Implementation of Local Discharge Limitations Under the Pretreatment Program, USEPA, (December 1987);
4. Limitations based upon performance of existing and proposed wastewater pretreatment units; and
5. Minimum requirements for all indirect users of local agencies specified in N.J.A.C. 7:14A-21.2.

(b) In addition to effluent limitations, the individual NJPDES-SIU permit shall contain the following conditions, requirements and/or provisions, as applicable:

1. Reporting and filing requirements in accordance with N.J.A.C. 7:14A-21.3;
2. Slug discharge control plan requirements as specified in N.J.A.C. 7:14A-19.6(a)7.
3. Residuals management requirements pursuant to N.J.A.C. 7:14A-6.15;
4. Treatment Works Approval requirements such as proper maintenance and operation of the pretreatment system and, licensed operator requirements in accordance with N.J.A.C. 7:14A-22;
5. Compliance schedule pursuant to N.J.A.C. 7:14A-6.4(a); and
6. Bypass provisions pursuant to N.J.A.C. 7:14A-21.6.

7:14A-21.11 Violations; closing off of use of sewerage connections

(a) The Department or the local agency may, in instances of indirect user non-compliance, take such steps as may be necessary to seal or close off connections from the local agency to the indirect user until it is satisfied that adequate measures have been taken to prevent the recurrence of non-compliance in accordance with N.J.S.A. 58:11-56.