

DEIS. The supplement will be made available for review at public libraries in select locations throughout New Jersey.

Issued in Washington, DC on Thursday, August 4, 1994.

Jacqueline L. Smith,

Acting Deputy Administrator for Air Traffic.

[FR Doc. 94-19415 Filed 8-5-94; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc.; Special Committee 184; Minimum Performance and Installation Standards for Taxi-Hold Position Lights; Second Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix I), notice is hereby given for the Special Committee 184 meeting to be held September 7-8 1994, starting at 9:30 a.m. The meeting will be held at the Federal Aviation Administration (FAA) Technical Center, Atlantic City International Airport, Atlantic City, N.J.

The agenda is as follows: (1) Administrative announcements; (2) Chairman's introductory remarks; (3) Review and approval of meeting agenda; (4) Overview of on-site visit schedule for day and night visits; (5) On-site observation of L-804 installations (Daylight and darkness); (6) Review draft work plan; (7) Assign tasks; (8) Other business; (9) Set agenda for next meeting; (10) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on August 2, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94-19407 Filed 8-8-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 94-66]

License Cancellations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following Customs broker licenses have been cancelled due to the death of the broker. These licenses were issued in various Customs Districts.

John Serra—license no. 4107

William S. Beame—license no. 1778

William P. Emerson—license no. 2101

Dorothy Lindsey—license no. 3210

Dated: August 3, 1994.

Philip Metzger,

Director, Office of Trade Operations.

[FR Doc. 94-19427 Filed 8-8-94; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Application for Cash Surrender or Policy Loan, VA Form 29-1546

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 273-7011.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 8, 1994.

Dated August 1, 1994

By direction of the Secretary.

Donald L. Neilson,

Director, Records Management Service.

Reinstatement

1. Application for Cash Surrender or Policy Loan, VA Form 29-1546.

2. The form is used by the insured to apply for cash surrender value or policy loan on his/her insurance. The information is used by VA to initiate the processing of the insured's request for a policy loan or cash surrender.

3. Individuals or households.

4. 4,939 hours.

5. 10 minutes.

6. On occasion.

7. 29,636 respondents.

[FR Doc. 94-19308 Filed 8-8-94; 8:45 am]

BILLING CODE 8320-01-M

Child Development Centers at VAMC Sepulveda, CA

AGENCY: Department of Veterans Affairs.

ACTION: Notice of designation.

SUMMARY: The Secretary of the Department of Veterans Affairs is designating the Sepulveda, CA Veterans Affairs Medical Centers for Enhanced-Use development. The Department intends to enter into a long-term lease of real property with the developer whose proposal will provide the best quality child development and care at the greatest economic advantage for children of VAMC employees. The developer will be responsible for all aspects of construction, ownership, maintenance, and operation of the Child Development Center.

FOR FURTHER INFORMATION CONTACT: Brian McDaniel, Office of Asset and Enterprise Development (089), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3307.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 8161 *et seq.* specifically provides that the Secretary may enter into an Enhanced-Use lease, if the Secretary determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property. This project meets these requirements.

Approved: July 15, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 94-19307 Filed 8-8-94; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 152

Tuesday, August 9, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-29; Emergency Notice]

"FEDERAL REGISTER" CITATION OF
PREVIOUS ANNOUNCEMENT: 58 FR?—dated
August 8, 1994.

Notice is given that the Commission has voted to cancel the meeting on August 5, 1994 at 10:00 a.m.

The Commission has determined by circulation of an action jacket that Commission business requires cancellation of this meeting and that no earlier notice of the cancellation was possible, and directed the issuance of this notice at the earliest practicable time.

If you have any questions concerning this matter, please contact the Secretary

of the Commission at (202) 205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205-1810.

By order of the Commission.

Issued: August 4, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-19472 Filed 8-5-94; 10:15 am]

BILLING CODE 7020-02-P

Corrections

Federal Register

Vol. 59, No. 152

Tuesday, August 9, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91-401-000]

Wallkill Generating Company, L.P.; Issuance of Order

Correction

In notice document 94-18475 appearing on page 38601 in the issue of Friday, July 29, 1994, the Docket number should have appeared as set forth above.

BILLING CODE 1505-01-D

FEDERAL ELECTION COMMISSION

11 CFR Part 8

[Notice 1994-8]

National Voter Registration Act of 1993

Correction

In rule document 94-15199 beginning on page 32311 in the issue of Thursday,

June 23, 1994, make the following corrections:

1. On page 32316, in the third column, under *F. Occupation*, in the third line, "vote" should read "voter".

2. On page 32317, in the third column, in the first full paragraph, in the sixth line, "under" should be capitalized.

§ 8.4 [Corrected]

3. On page 32324, in the first column, in § 8.4(a)(2), in the fifth line, the period after "name" should be a semi-colon.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding and Commencement of Status Review for a Petition To List the Southern Rocky Mountain Population of the Boreal Toad as Endangered

Correction

FR Document 94-17866 was published beginning on page 37439 in the issue of July 22, 1994. This document was a notice of petition findings and initiation of status review. It was published in the Rules section of

the Federal Register. It should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

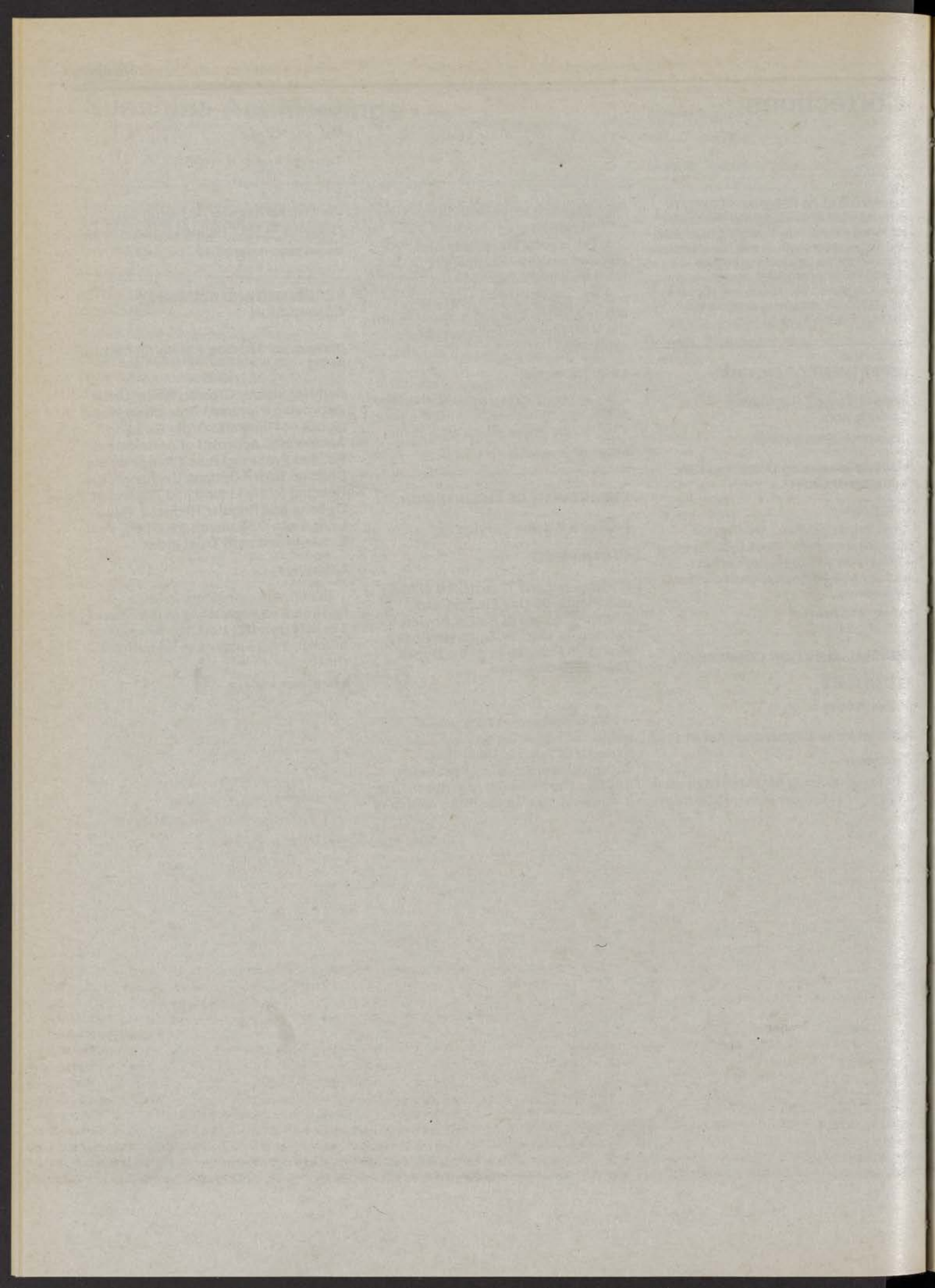
[Release No. 34-34306; File No. SR-CBOE-94-05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Options and Regular Reduced-Value Long-Term Options on the CBOE Real Estate Investment Trust Index

Correction

In notice document 94-16749 beginning on page 35536 in the issue of Tuesday, July 12, 1994, the Release number should appear as set forth above.

BILLING CODE 1505-01-D



Tuesday
August 9, 1994

Part II

**Environmental
Protection Agency**

40 CFR Part 125

**Discharges Into Marine Waters;
Modification of Secondary Treatment
Requirements; Final Rule**

**Environmental
Protection
Agency**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 125

[FRL-5025-7]

Modification of Secondary Treatment Requirements for Discharges Into Marine Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating final amendments to the regulations contained in 40 CFR part 125, subpart G, which implement section 301(h) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. section 1311(h). Section 301(h) provides for modifications of secondary treatment requirements for discharges into marine waters by publicly owned treatment works (POTWs) that demonstrate their compliance with the section 301(h) criteria. These regulatory revisions are being promulgated to respond to the amendments to section 301(h) contained in section 303 of the Water Quality Act of 1987 ("WQA") and to reflect program experience. These amendments revise portions of the existing part 125, subpart G, regulations and simplify and revise the application requirements contained in Appendices A and B of subpart G.

DATES: *Effective Date:* These regulations take effect on September 8, 1994.

Promulgation Date: In accordance with 40 CFR 23.2, the Administrator's promulgation occurs at 1:00 p.m. EDT on August 23, 1994.

ADDRESSES: Copies of comments submitted and the docket for this rulemaking are available for review at EPA's Water Docket; Room L-102, 401 M St., SW., Washington, DC 20460. For access to the Docket materials, call (202) 260-3027 between 9 a.m. and 3:30 p.m. for an appointment.

FOR FURTHER INFORMATION CONTACT: Virginia Fox-Norse, Oceans and Coastal Protection Division (4504F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-8448. An amended Technical Support Document (TSD) has been prepared to provide guidance for preparing applications and complying with provisions of the regulations. This amended TSD completely supersedes the 1982 revised section 301(h) TSD, and will be available soon after these regulations are published in the *Federal Register*. Requests for the amended TSD should be made to Virginia Fox-Norse at the address given in this section.

SUPPLEMENTARY INFORMATION:

Preamble Outline

- I. Background
 - A. History of the section 301(h) Program
 - B. Water Quality Act Amendments of 1987
 - C. Overview of Public Comments
 - D. Summary of Changes Made from the 1991 Proposal
- II. Section by Section Analysis
- III. Supporting Documentation
 - A. Regulatory Flexibility Act Analysis
 - B. Executive Order 12291
 - C. Paperwork Reduction Act

I. Background

A. History of the Section 301(h) Program

Under section 301(b)(1)(B) of the Clean Water Act of 1972 (hereinafter CWA or Act) (33 U.S.C. § 1311(b)(1)(B)), POTWs were required to achieve secondary treatment by July 1, 1977. The secondary treatment requirements establish technology-based effluent limitations for biochemical oxygen demand (BOD), suspended solids (SS), and pH. See 40 CFR part 133. Some municipalities with POTWs that discharged into marine waters argued that secondary treatment might not be necessary to protect certain marine waters where deeper waters with large tides and currents can allow for greater dilution and dispersion than discharges into fresh waters. As a result, Congress amended the CWA in 1977 to add section 301(h), 33 U.S.C. 1311(h), to allow the Administrator, upon application by a POTW and with the concurrence of the State, to issue a National Pollutant Discharge Elimination System (NPDES) permit that modifies the secondary treatment requirements of section 301(b)(1)(B). In order to obtain a section 301(h) waiver, the applicant must demonstrate to the satisfaction of the Administrator that the proposed discharge complies with a set of criteria intended to protect the marine environment. In addition, section 301(j)(1)(A) of the Act established a deadline for filing a section 301(h) application. EPA regulations and an accompanying technical support document (TSD) to implement the section 301(h) program were issued in 1979. (44 FR 34784, June 15, 1979.)

Section 301(h) was later amended by the Municipal Wastewater Treatment Construction Grants Amendments (MWTCGA) of 1981 (Pub. L. 97-117, 95 Stat. 1623). The MWTCGA extended the deadline for filing section 301(h) applications to December 29, 1982, and modified applicant eligibility requirements. In response to the MWTCGA and program experience, the section 301(h) regulations and the TSD

were revised in 1982. (See 47 FR 24918, June 8, 1982, and 47 FR 53666, November 26, 1982.)

B. Water Quality Act Amendments of 1987

On February 4, 1987, Congress passed the Water Quality Act of 1987 (Pub. L. 100-4, hereinafter WQA), further amending section 301(h) of the CWA. Section 303 of the WQA, which contains the amendments to section 301(h), made the following changes to section 301(h) of the CWA:

(1) The discharge of pollutants, in accordance with modified requirements, cannot interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of water quality which assures the protection of the resources and uses listed in CWA section 301(h)(2).

(2) The scope of required monitoring is limited to only those scientific investigations necessary to study the effects of the proposed discharge.

(3) For POTWs serving a population of 50,000 or more, with respect to any toxic pollutant introduced by an industrial source for which pollutant there is no applicable pretreatment requirement in effect, the applicant must demonstrate that sources introducing waste into the POTW are in compliance with all applicable pretreatment requirements, the applicant will enforce those requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from the POTW, removes the same amount of such toxic pollutant as would be removed if the POTW were to apply secondary treatment and had no pretreatment program for such pollutant. (For purposes of this preamble, this requirement will be referred to as the "urban area pretreatment requirement".)

(4) At the time the section 301(h) modification becomes effective, the applicant will be discharging effluent which has received at least primary or equivalent treatment and which meets water quality criteria established under CWA section 304(a)(1) after initial mixing in the waters surrounding or adjacent to the point at which the effluent is discharged. The statutory amendments define primary or equivalent treatment as treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent each of BOD and of SS, and disinfection, where appropriate.

(5) No modification may be issued for a discharge into marine waters unless those waters exhibit characteristics

assuring that water providing dilution does not contain significant amounts of previously discharged effluent from the POTW.

(6) No section 301(h) modified permit may be issued authorizing the discharge of any pollutant into saline estuarine waters which at the time of the application exhibit certain stressed conditions specified in the statute, without regard to the presence or absence of a causal relationship between those conditions and the applicant's current or proposed discharge.

(7) No permits may be issued for section 301(h) modified discharges into the New York Bight Apex.

(8) Any POTW that had a contractual agreement before December 31, 1982, to use an outfall operated by another POTW which has applied for or received a section 301(h) modified permit may apply for a section 301(h) permit in its own right within 30 days of WQA enactment.

(9) Certain provisions of the WQA amendments do not apply to applications which received final or tentative approval before enactment of the WQA. These permits will, however, be subject to the new section 301(h) requirements upon permit renewal.

C. Overview of Public Comments

EPA proposed regulations on January 24, 1991, responding to the requirements of the WQA and program experience (56 FR 2814). The preamble to the proposed regulations explains the proposed changes in the regulations in response to the WQA. On March 7, 1991, EPA held a public hearing in Washington, DC, to receive comment on the proposal. The public comment period was open for 60 days and closed on March 25, 1991. Although some comments were not received until April 8, 1991, EPA has elected to consider all comments received in developing this final rule. EPA received both written comments and comments at the public hearing on the proposed rule from a total of 17 commenters: eight section 301(h) applicants, two State governments, four independent consultants, and three environmental/public interest groups.

Although the comments received addressed many of the proposed changes, the principal areas of concern to commenters focused on primary or equivalent treatment requirements, urban area pretreatment, and the water quality criteria requirements. A brief summary of the comments on these areas is set out below, and a more detailed discussion of all comments received is set out later in the section-by-section analysis of this preamble.

Comments regarding primary treatment raised issues related to the 30 percent removal requirement for BOD, the cost to small communities of complying, and the time limit to meet the primary treatment requirement. Comments on urban area pretreatment raised issues about use of the pilot plant approach to demonstrate secondary removal equivalency for toxics, development of local pretreatment limits, which pollutants are subject to this requirement, the time limit to meet this requirement, and the cost of compliance. Comments regarding the section 304(a)(1) water quality criteria focused on setting risk levels for carcinogens, determining mixing zones for evaluating compliance with State water quality standards, and the role of the section 304(a)(1) water quality criteria in cases where the State has adopted a different water quality standard under CWA section 303.

D. Summary of Changes Made From the 1991 Proposal

For the convenience of the reader, the following discussion provides a brief overview of the sections and subject areas in which today's final rule makes changes from the January 24, 1991, proposal. Table 1 of the preamble also provides a summary of those changes. A full discussion of the changes made in the regulations and proposal is set out later in the section-by-section analysis of today's preamble.

Today's final rule would make a clarifying change from the 1991 proposal in § 125.58(n), which defines the term "ocean waters." This change is intended to clarify the distinction between "saline estuarine waters" and "ocean waters," a distinction important to the application of the WQA provisions prohibiting section 301(h) discharges into stressed saline estuarine waters.

Today's final rule makes a change from the 1991 proposal in § 125.59, which addresses general application requirements. The proposal allowed the granting of tentative approvals if the applicant demonstrated good faith to come into compliance with all the requirements of this subpart, based on a schedule in accordance with § 125.59(f)(3)(ii). EPA received a comment asking that this section be clarified. The commenter stated that because § 125.59(f)(3)(ii) only applies to primary treatment and urban area pretreatment requirements, the section could be interpreted as allowing compliance schedules only for those requirements and not for all requirements. Section 125.59(h) has

been amended to allow compliance schedules for all requirements.

This change merely clarifies EPA's original intent.

Today's final rule makes a change from the 1991 proposal in § 125.60, which addresses the WQA requirements for compliance with primary or equivalent treatment. The proposal specified a monthly averaging period for determining compliance with the 30 percent BOD removal requirement for BOD and SS established by the WQA. In response to comments on this issue, the final rule adds the opportunity under certain special circumstances for applicants unable to meet the 30 percent removal requirement for BOD on the basis of a monthly average to request a longer averaging period (up to annual) in order to provide needed flexibility in calculating compliance. This averaging basis is not available for those POTWs that have already shown a consistent ability to meet the 30-percent removal requirement for BOD on a monthly basis. Because no comments were received indicating a need for flexibility in the monthly averaging period for determining compliance with the 30 percent suspended solids removal requirement, this change applies *only* to the BOD removal requirements.

The final rule makes a change to the proposed regulatory language of § 125.62 with regard to determining compliance with State water quality standards. Comments were received on the issue of mixing zones, and in evaluating these comments, EPA noted that the proposal had inadvertently omitted language contained in the existing 1982 section 301(h) regulations on meeting applicable water quality standards at and beyond the zone of initial dilution. The final rule promulgated today would retain that language so that the original requirement of the 1982 regulations for meeting State water quality standards at the edge of the zone of initial dilution remains in effect.

The final rule also makes a change from the 1991 proposal in § 125.63, which addresses section 301(h) monitoring programs. While implied, the proposal did not include explicit regulatory language requiring monitoring to determine compliance with the primary treatment requirements. It also did not include, under general requirements, an explicit requirement to have a monitoring program to demonstrate compliance with water quality criteria as well as water quality standards, as applicable. The final rule adds these requirements to § 125.63 (a)(1) and (d)(2) in order to ensure that applicants provide data on

their compliance with these requirements over the life of the permit.

In addition, in response to comments, the final rule makes several clarifying changes to § 125.65, which addresses the urban area pretreatment requirements. The changes are intended to provide additional guidance on implementation of this section with

regard to the development of pretreatment requirements and secondary equivalency for toxics removal.

Some conforming and organizational changes were made to the application questionnaire contained in the Appendix to these regulations. These changes address amendments made in

the final rule and simplify its use by applicants and the Agency to determine compliance with the 301(h) requirements.

The remaining sections of the rule (§§ 125.56, 125.57, 125.61, 125.64, 125.66–125.68) remain unchanged from the 1991 proposal.

TABLE 1

Final sub-part G	Contents	Changes from 1991 Proposal
125.56	Scope and Purpose	Unchanged.
125.57	Law governing issuance of a modified permit	Unchanged.
125.58	Definitions	Clarified ocean water definition.
125.59	General	Clarified requirements for compliance schedules.
125.60	Primary or equivalent treatment requirements	Change to BOD removal averaging period under certain circumstances.
125.61	Existence of and compliance with applicable water quality standards	Unchanged.
125.62	Attainment or maintenance of water quality which assures protection of water supplies, and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities.	Change to mixing zone provisions.
125.63	Establishment of a monitoring program	Monitoring provisions regarding primary treatment compliance added.
125.64	Effect of discharge on other point and nonpoint sources	Unchanged.
125.65	Urban area pretreatment program	Clarifying language added.
125.66	Toxics control program	Unchanged.
125.67	Increase in effluent volume or amount of pollutants discharged	Unchanged.
125.68	Special conditions for section 301(h) modified permits	Unchanged.
Appendix	Applicant questionnaire for modification of secondary treatment requirements	Conforming and Organizational changes made.

II. Section-by-Section Analysis

This section provides a description of each section in the regulation and discusses the public comments received. Citations to sections of the part 125, subpart G, regulations in the discussion below refer to the section numbers of the regulations as numbered under today's rule.

Although portions of the section 301(h) regulations that were not proposed for change are being reprinted with today's action, this has been done for the convenience of the reader. EPA did not reconsider those existing portions of the regulations and they are not subject to challenge as part of this final rulemaking.

Section 125.56: This section establishes the general scope and purpose of the regulations. EPA did not propose to revise this section, and no comments were received. This section remains unchanged.

Section 125.57: This section sets forth the statutory language applicable to section 301(h) modified permits. No comments were received, and this section remains unchanged from the proposed rule.

Section 125.58: This section sets forth the definitions applicable to the subpart G regulations. As a result of section 303 of the WQA, the 1991 proposal added

definitions of "primary or equivalent treatment," "pretreatment," "categorical pretreatment standard," "secondary removal equivalency," "water quality criteria," "permittee," and "New York Bight Apex." In addition, the proposal made changes to existing definitions for "industrial source," "ocean waters," and "stressed waters." EPA received significant comments on two aspects of the primary or equivalent treatment requirements and the definition of saline estuarine waters.

Definition of Primary Treatment

Section 125.58(r) of the proposed rule defined "primary or equivalent treatment" as treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biochemical oxygen demanding (BOD) material and of the suspended solids (SS) in the treatment works influent, and disinfection, where appropriate. This definition was taken directly from the language of section 303(d) of the WQA. The preamble to the proposed rule further explained that the terms "sedimentation" and "skimming" could include a range of treatment techniques such as coagulation and precipitation (physical adjuncts to sedimentation), and flotation and subsequent removal by skimming, in order to achieve the

required 30 percent removal of BOD and SS. (56 FR 2818). Although certain types of treatment are specified in the statutory definition (i.e., screening, sedimentation, and skimming), EPA believes the principal intent of the statutory definition is to ensure compliance with the 30 percent BOD and SS removal requirements, rather than specifying the exact methods used to achieve such removal rates. For example, chemical addition, coagulation, and precipitation might be necessary in addition to the specific treatment processes listed in the definition in order to achieve the mandated 30 percent removal, and this would be allowable.

Several commenters sought a change to the definition due to concerns with the requirement to achieve 30 percent BOD removal. As discussed below in more detail, the commenters' concerns centered on the practical difficulties in achieving 30 percent BOD removal by the physical processes of primary treatment. Some noted that from an engineering standpoint, technologies for primary treatment are aimed at removing solids, rather than soluble BOD.

Some commenters stated that their review of the legislative history of the WQA amendments to section 301(h)

shows that Congress did not articulate any rationale for defining primary treatment as 30 percent removal of BOD. The commenters argued that Congress' intent was to stop the discharge of untreated sewage from waiver recipients. They also pointed out that Congress defined primary treatment as consisting only of skimming, screening, and sedimentation, and did not include more sophisticated technologies, such as coagulation and precipitation. Therefore, they state, EPA must adopt that literal definition and acknowledge that skimming, screening and sedimentation might not be enough to achieve 30 percent removal of BOD. Commenters sought a change to the definition of primary treatment to reflect only the physical processes and not the 30-percent removal requirements.

Another commenter disagreed and argued that the advantages of using clear, uniform 30-percent standards in the statute and regulations are obvious, and that the fact that these advantages and other plausible rationales were not stated explicitly in the legislative history is insufficient grounds for ignoring the plain and unambiguous statutory requirements.

Some commenters noted that primary treatment generally is intended to remove settleable solids and floating materials rather than BOD and therefore inclusion of 30 percent BOD removal as part of the definition of primary treatment is technically inappropriate. In support, several commenters cited the literature of wastewater engineering and stated that BOD reductions achieved by primary treatment are the result of insoluble (solid form) BOD being removed along with the settleable or floatable materials. The commenters pointed out that soluble BOD would not be removed by the physical processes of screening, skimming, and sedimentation, and that the BOD removal rates achievable by primary treatment would therefore vary depending upon the relative amounts of soluble and insoluble BOD. Commenters also cited situations where pretreatment of discharges by industrial dischargers that removes much of the insoluble BOD (e.g., fish processors removing settleable fish wastes) results in a high proportion of soluble to insoluble BOD. One commenter noted that the key statutory term in section 303(d)(2) of the WQA is "material," implying that Congress intended that 30 percent removal refers to insoluble BOD, not total BOD. Section 303(d)(2) states that "primary or equivalent treatment means the removal of at least * * * 30 percent of the biological oxygen demanding material * * *" (emphasis added). The

commenters therefore sought a change to the regulations' definition of primary treatment to require 30 percent removal of insoluble BOD, with soluble BOD being excluded from the 30 percent removal requirement.

Some commenters were concerned that they might have difficulty in achieving 30 percent BOD removal by the physical processes of primary treatment because their influent BOD levels were very dilute, that is, relatively low concentrations of BOD in the raw wastewater would make 30 percent removal hard to achieve. These commenters pointed to a number of factors leading to such dilute wastewater and difficulties in achieving removal efficiencies such as (1) cold climates which result in freeze/thaw problems including inflow and infiltration from snow melt and cracked or broken pipes with attendant dilution of the influent by the resulting influx of fresh water; (2) insufficient industrial or commercial sources with high concentrations of BOD in the wastewater discharges to the municipal sewage system to offset otherwise dilute influents with low BOD concentrations; (3) cold wastewater temperatures resulting in relatively less efficient treatment; and (4) extremely high tides and high precipitation. These commenters recommended that EPA not require 30 percent removal during periods of extremely dilute and clean inflows.

After considering these comments, EPA made no changes to the definition of primary or equivalent treatment in § 125.58(r). However, as discussed below in the section-by-section analysis for § 125.60, the Agency is making changes to how compliance with the 30 percent removal requirement is calculated for BOD. Specifically, EPA is allowing the demonstration of compliance with the 30 percent BOD removal requirement to be averaged over a longer time period than proposed, in some circumstances. This added flexibility should provide some of the relief sought by commenters.

Although EPA recognizes that from a technical or engineering perspective, primary treatment is generally thought of as physical processes to remove solids, the statutory definition of primary treatment adopted by Congress for purposes of section 301(h) is unambiguous in requiring 30 percent BOD removal. In addition, EPA disagrees with the commenters who stated that the statutory definition precludes the use of additional treatment processes such as chemical addition to enhance primary treatment's physical processes (e.g., chemical

addition, coagulation, and precipitation) in order to achieve the required 30 percent removal of BOD.

With regard to the commenters' suggestions that the definition be revised to define BOD as insoluble BOD only, EPA recognizes that removal of BOD in primary treatment normally is associated with the removal of settleable (i.e., insoluble) materials. While the literature cited by the commenters indicates that BOD removals for traditional primary treatment range from about 20 to 40 percent, the reported range is a result of many factors including treatment plant design, subsequent additional treatment and influent qualities such as the presence of soluble versus non-soluble BOD. Furthermore, Congress set the BOD removal standard without incorporating such a distinction. Both soluble and insoluble BOD exert the similar effect of depressing dissolved oxygen levels in the receiving waters. Limiting the required removal to only insoluble BOD ignores this fact and also would be inconsistent with the existing approach of the Agency's secondary treatment regulations, which do not distinguish between removal of soluble and insoluble BOD. EPA disagrees that the use of the term "material" in section 303(d)(2) indicates that Congress intended that 30 percent removal refer only to insoluble BOD. See, e.g., 40 CFR part 133.

The definition in today's regulations comports with the express statutory language, and if an applicant does have difficulty meeting the 30 percent BOD removal requirement with treatment by screening, sedimentation, and skimming, for such reasons as dilute influent, cold temperatures, or soluble-to-insoluble BOD ratios, applicants can increase BOD removal efficiencies through the application of treatment processes which may include physical processes enhanced by chemical processes. Accordingly, given the unambiguous statutory language on percent removal and the ability to use enhanced treatment processes when necessary, EPA believes the definition should not be amended to allow for less than 30 percent removal of BOD or to exclude soluble BOD from the removal requirements established by Congress. Compliance with the 30 percent removal requirement, which may require enhanced or additional technologies, is more appropriate than limiting treatment strictly to the three technologies listed in the statute and not achieving 30 percent in some cases. The term material, EPA believes, does not imply insoluble, and, as explained above, such an interpretation makes

little sense, given that soluble and insoluble BOD exert similar effects in the receiving waters.

Other commenters requested that the definition be changed to require that the combined average of both BOD and SS percent removal be at least 30 percent. EPA considered this option but did not deem it acceptable for two reasons. First, the statute states that primary treatment requires the removal of at least 30 percent of the biological oxygen demanding material and of the suspended solids. Combining the BOD and SS removal requirements into an overall 30 percent average, in EPA's view, would not satisfy the statutory language or intent. Second, after considering both information submitted by commenters and EPA's own assessment of primary treatment removal data from POTWs (See Technical Review of the Influent/Effluent Characteristics of POTWs, June 1994), EPA concludes that most POTWs are removing greater than 30 percent of SS, and some are removing greater than 60 percent of SS. Adopting the suggested change thus would allow for an actual relaxing of both BOD and SS removal even for applicants capable of meeting the 30 percent removal of BOD and 30 percent removal of SS. There is no indication that Congress intended this result. Moreover, properly run primary treatment plants should be able to meet 30 percent SS removal and no comments or data were received that indicate otherwise. EPA believes one objective of the primary treatment provision is to ensure the proper design and operation of treatment plants, and this objective would not be met under the commenters' suggested interpretation.

Similar to the above comments, some commenters requested the definition be changed to require that the combined average of both BOD and SS percent removal be greater than 60 percent. As stated above, EPA does not believe that the statutory language and intent are consistent with combining BOD and SS removals to meet the 30-percent removal requirement. Using a standard of 60 percent would stray even further from the plain meaning of the statute. Moreover, if Congress had intended to provide a 60 percent removal requirement it could easily have so specified in the statute, however, the statute makes no reference to a 60 percent removal of BOD and SS. Finally, as with the previous comment, this interpretation could allow for even greater relaxing of treatment efficiencies for BOD removal (or SS), leading to less efficient plant operations than applicants are currently achieving.

Some commenters suggested that the requirement for 30 percent removal should reflect a "credit system," under which the removal efficiency for BOD would be calculated based on a combination of the BOD removal by industrial dischargers' pretreatment, plus the removal achieved by treatment processes at the POTW. This approach is inconsistent with the plain statutory language and thus cannot be adopted. The statute unambiguously specifies that the 30 percent removal rate is to be achieved with respect to the applicant's influent. Such influent would already have been subject to industrial dischargers' pretreatment, and because the statute requires that the 30 percent removal rate be achieved for the influent to the POTW, credit cannot be given for upstream treatment by industrial dischargers.

In contrast to the above comments seeking a change in the definition of primary treatment, other comments supported the definition of primary treatment as 30 percent removal of BOD and of SS as proposed. These commenters noted that this definition is consistent with the plain, unambiguous definition specified by Congress in the WQA as discussed above, and these commenters agree with EPA that the suggested changes to the definition that EPA has rejected would be inappropriate.

Definitions of Saline Estuarine Waters and Ocean Waters

Under section 303(e) of the WQA, section 301(h) modified discharges are prohibited into saline estuarine waters exhibiting certain signs of stress (i.e., degradation to water quality) specified in the statute. In contrast, this flat prohibition does not apply to "ocean waters." As a result, in the proposed rule, EPA amended the term "ocean waters" in § 125.58(n) to clarify that ocean waters are distinct from saline estuarine waters because discharges to saline estuaries are now subject to additional regulatory criteria not applicable to discharges to oceans.

Although the existing definition of saline estuarine waters was not proposed for amendment, some commenters expressed the view that it is too broad and thus might give the prohibition on section 301(h) discharges to stressed saline estuarine waters greater scope than intended. These commenters sought a definition giving more precise boundaries to saline estuarine waters.

The narrative definition of saline estuarine waters has remained unchanged since its original 1979 promulgation in the section 301(h)

regulations, and the section 301(h) regulations have always placed additional restrictions on discharges to saline estuarine waters compared to ocean waters. Section 125.61(c)(4) (1982) places additional limits on impacts within the zone of initial dilution for saline estuarine discharges. EPA's experience with the use of a general narrative definition of saline estuarine waters for purposes of making regulatory distinctions is that this approach is workable. EPA believes that it is not feasible for the purposes of the section 301(h) regulations to develop a definition establishing fixed boundaries between ocean and estuarine waters, but that all relevant local circumstances should be considered and the distinction should be made on the basis of the site-specific circumstances.

The commenters' concern appears to center on the meaning of the term "semi-enclosed waters" in the definition of saline estuarine waters. In this regard it is important to note that under § 125.58(v), not all semi-enclosed coastal waters are treated as saline estuaries. Under the section 301(h) regulations, while some embayments and other indentations along the coastline lie inside the baseline from which the territorial sea begins, they are treated for purposes of section 301(h) as being ocean waters. See preamble to 1979 section 301(h) regulations (44 FR 34784, 34795, June 15, 1979). As noted in the preamble to the 1979 section 301(h) regulations (44 FR 34795), it is the presence of fresh water inflows that is the distinguishing characteristic of estuaries. EPA notes today that saline estuarine waters typically are waters lying inside the baseline in which the salinity is diluted by fresh water inflows. In contrast, embayments or indentations along the coastline that are not influenced by such fresh water inflows are not estuaries. To further clarify that ocean waters and saline estuarine waters are distinct and mutually exclusive terms for purposes of section 301(h), the final rule, as in the proposal, amends the definition of "ocean waters" to note that this term specifically excludes saline estuarine waters.

Commenters also inquired about situations where an outfall crosses through estuarine waters, but the actual discharge is into offshore waters. Because both the statute and the implementing regulations make clear that the prohibition applies to discharges of pollutants into saline estuarine waters, the statute and implementing regulations already adequately address this case.

Section 125.59: This section describes the general requirements for section 301(h) applications, including filing procedures and deadlines, procedures for revising applications, and procedures for State determinations. EPA proposed to make several changes to this section. In the proposed rule, EPA added procedures for permit renewal, clarified language regarding State determinations, and added provisions for the submission of additional information to demonstrate compliance with the urban area pretreatment program and primary or equivalent treatment requirements. EPA also proposed to amend the regulations in accordance with section 303(g) of the WQA to exclude certain applicants from the water quality criteria provisions of § 125.62(a), primary or equivalent treatment program requirements (§ 125.60) and urban area pretreatment program requirements (§ 125.65) until permit renewal. As provided by the WQA, and explained later on in this preamble, these grandfathering provisions in today's final rule apply only to those section 301(h) applications that received tentative or final section 301(h) modified permit approvals prior to enactment of the WQA.

The new requirements for submitting additional information are found in § 125.59(e) and (f). Under those provisions, permittees and applicants to whom EPA has issued a final or tentative decision, including those that have been grandfathered under WQA section 303(g), must submit a letter of intent explaining how the permittee or applicant will meet the primary treatment and urban area pretreatment requirements. Under § 125.59(f)(3), applicants that are not grandfathered have two years from publication of the regulation to comply with the primary treatment and urban area pretreatment requirements; applicants that are grandfathered have until permit renewal or two years from date of publication of these regulations, whichever is later. Under § 125.59(e), the letters of intent must contain a project plan, including a schedule, to ensure that timely implementation of the requirements is accomplished.

Some commenters expressed the view that two years from the date of promulgation of the regulations is not sufficient time to enable compliance with the primary treatment and urban area pretreatment requirements. One of these commenters expressed concern over the impact of such a deadline on a consent decree schedule it has entered into for development of a pretreatment program. Further, this commenter was concerned that the time would not be

sufficient to develop pretreatment limits for all 126 toxic priority pollutants. Another commenter expressed concern that two years was not sufficient given their short construction season and reliance on obtaining funds from a State legislature whose timing is not in the commenter's control. Other commenters expressed the view that two years is a reasonable timeframe. Another commenter expressed the view that two years is an excessive timeframe and in fact should not apply to requirements which were either (1) in effect prior to the 1987 amendments or (2) clear on the face of the 1987 amendments (e.g., 30 percent BOD/suspended solids removal standards).

With regard to requirements in effect prior to the 1987 WQA, the two-year time frame is not applicable. The two-year time frame applies only to the urban area pretreatment program and primary or equivalent treatment requirements, both of which were added by the WQA.

EPA recognizes that for some applicants, compliance with a two-year deadline from the date of promulgation of the regulations may be more difficult than for others, for example, those who may have to obtain funding to design and build an upgraded facility to meet the primary treatment requirements. However, none of the commenters opposing the two-year deadline provided persuasive information demonstrating why this deadline could not be met. One commenter subject to court-ordered deadlines and consent decree time-lines asked how to reconcile these deadlines with the consent decree time-lines. That commenter also noted that there are a number of different activities that need to be performed to establish a local limit, such as gathering data, developing computer models, and obtaining government approvals. That commenter, however, provided no information supporting why these activities cannot be accomplished within the time established in the regulation. EPA notes that several of these activities can be performed simultaneously. In response, the commenter will have to comply with the deadlines included in the consent decree. This comment is moot because of the time that has elapsed between the proposed rule and today. The deadlines in the rule should not affect the dates in consent decree. In addition, the commenter has been on notice for several years. EPA continues to believe that the two-year time frame for compliance provides sufficient time to achieve compliance. It should also be noted that the requirement to develop local pretreatment limits does not

necessarily apply to all 126 priority pollutants, but only those that are known or suspected to be introduced to the plant by industry, as discussed later in this preamble. The Agency notes that the statutory provisions giving rise to these requirements were enacted in 1987, and that the proposed regulations and draft technical support document were issued in 1991. In addition, the Agency has had other final guidance on the development of pretreatment programs in place for several years. Even in cases where commenters claim they have large numbers of dischargers and large numbers of pollutants will need to be addressed, EPA continues to believe that sufficient time and notice has been given to achieve compliance. EPA agrees with the commenter who noted that applicants have been on notice of the need to comply with the primary treatment and urban area pretreatment requirements for quite some time, and could have already initiated work on the planning and development of measures to achieve compliance. The Agency also recognizes that in the absence of final regulations on these issues, applicants should not be expected to have completely developed and implemented final plans. Given this situation, and in the absence of supporting information to show that the two-year time frame of the proposal is inappropriate, the Agency is retaining the proposal's two-year time frame from the date of publication of the final regulations in the *Federal Register* to achieve compliance. This date, August 9, 1996, is inserted in the regulatory text of this rule.

One commenter asked for additional time to comply with the urban area pretreatment and primary treatment equivalency requirements for a plant that has not yet been constructed. In response, these applicants will have to demonstrate compliance with these requirements based on a predictive analysis of their flows. The applicant must base their prediction on potential industrial sources and pollutants, and, to the best of their ability, support such predictions within the two-year time frame.

In proposed § 125.59(h), EPA added language to clarify that the Agency may tentatively approve a section 301(h) permit modification where an applicant has demonstrated a good faith effort to come into compliance with all requirements of the section 301(h) regulations, based upon a schedule approved by the Agency for meeting any outstanding section 301(h) requirements. This provision is consistent with the existing regulations and practice and was proposed for

addition only as a clarifying change. In addition, the proposal made no changes to the existing requirement that in order to receive a final section 301(h) modification, applicants must demonstrate actual compliance with all of the part 125, subpart G, requirements before EPA will issue a final section 301(h) modified permit. See 40 CFR § 125.59(g)(1) (1982).

One commenter supported the approach taken by EPA on tentatively approving an application based on a schedule with respect to outstanding requirements if an applicant has demonstrated a good faith effort to come into compliance. However, the commenter is concerned that § 125.59(h) creates an ambiguity regarding the permissible scope of the schedules for meeting 301(h) requirements. Section § 125.59(h) allows EPA to tentatively approve an application if the applicant is making a good faith effort to comply with "all requirements of this subpart." (emphasis added) The section continues on, however, to require that the schedule for meeting these requirements must be "approved by the Administrator in accordance with § 125.59(f)(3)(ii), which refers only to schedules of compliance with § 125.60 (primary or equivalent treatment) and § 125.65 (urban area pretreatment).

EPA agrees with the commenter and is clarifying § 125.59(h) to allow schedules for satisfying the 301(h) requirements for all requirements. It was not the Agency's intent to limit compliance schedules to the requirements of §§ 125.60 and 125.65. The Agency's intent was that the limitations of § 125.59(f)(3)(ii) apply only to compliance schedules for meeting the §§ 125.60 and 125.65 requirements. Therefore, we are adding a phrase to § 125.59(f)(3)(ii) that reflects the Agency's intent.

Some commenters expressed the view that EPA should not grant tentative approvals before all the section 301(h) requirements are met. Additionally, one of these commenters felt that if a tentative approval is granted prior to such compliance, the applicant may be encouraged to relax its effort to comply.

Based on its past experience with this approach, EPA believes that the provisions of the proposed regulation are appropriate and contain adequate safeguards to prevent abuse. The regulatory provision specifically requires that applicants must be making a good faith effort to achieve compliance and requires that EPA establish a schedule for achieving compliance. In addition, this approach provides an opportunity for EPA, through the tentative decision document, to put the

public and applicants on notice of specific deficiencies and the steps and time frame required to correct such deficiencies. Rather than creating a disincentive to timely compliance, the regulatory provision requires that a schedule for compliance be established. In addition, EPA believes that by advising applicants that they may receive a final section 301(h) waiver if the identified deficiencies are corrected as required, the provision provides an added incentive for applicants to achieve timely compliance. Finally, by addressing such deficiencies through the tentative approval, the more lengthy process of tentative denial followed by application revision is avoided. For these reasons, EPA believes that the regulatory provision is reasonable and is promulgating that provision today as proposed with the clarification noted above.

One commenter recommended that the EPA regional office issue a letter to the applicant stating that its permit has been administratively extended in accordance with § 122.6. In response, EPA notes that this is a procedural issue governed by the NPDES regulations. It is not a subject of this rulemaking.

EPA notes in reviewing this section that § 125.59(d)(5) might be misinterpreted to mean there is no opportunity to present new information on applications for permit renewal. Paragraph (d)(5) is referring to the one-time revisions allowed in § 125.59(d)(1) and (d)(2). Applicants who are authorized or requested to submit additional information under § 125.59(g) may still do so.

Section 125.60: The proposal added § 125.60 to the regulations to implement the primary or equivalent treatment provision in section 303(d) of the WQA. Issues related to the definition of primary treatment have been previously dealt with in the discussion of § 125.58.

Proposed § 125.60 required an applicant's discharge, at the time the waiver becomes effective, to have received at least primary or equivalent treatment. Additionally, under the proposal, applicants were to comply with this treatment requirement based on the monthly average results of the monitoring for SS and BOD.

A number of commenters recommended that EPA consider lengthening the period of time over which monitoring data are averaged to determine compliance with the 30 percent BOD removal requirement. These commenters presented information on the difficulties with achieving the 30 percent removal because of such factors as dilute wastewaters, cold climates that impact

treatment design parameters (e.g., settling rates), and proportionately low amounts of insoluble BOD. One of the options identified by these commenters was to change from monthly averaging of monitoring data to annual averaging (or some period in between). Commenters pointed out that this was a reasonable approach which was necessary to account for variations in influent quality or other factors affecting removal rates that might occur over a year's time. Other commenters supported meeting the primary treatment removal requirements on a monthly average basis.

The Agency believes that the proposed period for averaging monitoring results (i.e., monthly) to determine compliance with the 30 percent BOD removal requirement will be appropriate for most applicants. However, as noted in the discussion for the primary treatment definition in § 125.58, the Agency also recognizes that the 30 percent removal rate for BOD may be difficult to achieve on a monthly average basis in certain cases, e.g., dilute wastewater or proportionately low concentrations of insoluble BOD. Because of this, the final rule has been modified to provide flexibility in certain instances by allowing compliance monitoring to be averaged for a period longer than monthly, up to annually.

EPA anticipates that compliance monitoring requirements established for longer than monthly average periods will be the exception, not the general practice. An applicant who has demonstrated a consistent ability to achieve 30 percent removal of BOD on a monthly average basis over one year prior to the publication date of these regulations will not be eligible for the longer than monthly averaging period. The longer period will be available only to those applicants who have some historical data on BOD removal, and not for newly constructed facilities. Eligibility for the longer period is limited to those who, based on circumstances listed below, and subject to the qualifications listed below, truly cannot achieve 30 percent removal on a monthly average.

It is the Regional Administrator's decision whether to allow the longer averaging period. The Regional Administrator will judge each eligible case on its individual circumstances, taking into account climatic, seasonal, or other factors beyond the applicant's control which cause significant fluctuations in influent characteristics that could impact BOD removal efficiencies. Appropriate circumstances may include:

- Seasonally dilute influent BOD concentrations due to relatively high (although nonexcessive) inflow and infiltration;
- Relatively high soluble to insoluble BOD ratios on a fluctuating basis; or
- Cold climates resulting in cold influent.

The longer period must be requested by the applicant, and the burden of justifying a longer averaging period will be on the applicant. In addition to justifying the application on conditions listed above, to qualify for the longer averaging period the applicant will have to demonstrate to the satisfaction of the Regional Administrator that the treatment facility is properly designed and operated; that the applicant will be able to meet all section 301(h) requirements with the longer averaging basis; and because of circumstances beyond the applicant's control (examples listed above), the applicant cannot achieve the 30 percent removal requirement for BOD on a monthly averaging basis. The final rule also requires that inflow and infiltration (I/I) is nonexcessive in order to ensure that applicants have corrected, as feasible, deficiencies in their collection system that result in extremely dilute wastewater. The definition of excessive I/I in 40 CFR 35.2005(b)(16) will be used to determine whether the I/I is excessive, plus the additional criterion that inflow is nonexcessive if the total flow to the primary treatment plant is less than 275 gallons per capita per day, consistent with 40 CFR 133.103(d) of the secondary treatment regulations.

It should be noted that permit writers can still incorporate interim limits into the permit. When compliance determinations with interim limits indicate that the ability to achieve 30 percent removal of BOD for the designated period is compromised, action to determine and, if possible, fix the problem should be taken. Monitoring frequencies for BOD should remain the same as they would be if the compliance determination for BOD removal was on a monthly average basis. For enforcement purposes, there is the potential that allowing longer averaging periods may prove more costly to the POTW in violation. POTWs should note that if a longer period is granted, they should be aware of the risk that a violation of an annual average limit may result in 365 days of violation.

Other commenters requested that EPA set a baseline level of BOD in the treatment works influent above which 30 percent removal would be required, with 30 percent removal not required for influent cleaner than that threshold

level. This option relies on a level of BOD in the influent that hypothetically represents a typical BOD influent concentration. The statute specifies 30 percent removal and does not tie this requirement to some specific concentration in the influent. The Agency believes that making the statutory 30 percent removal requirement dependent on a hypothetical influent baseline concentration would not meet the statute's intent.

One commenter stated that the approach to section 301(h) waivers should be based on water quality effects and not on any "equivalencies," e.g., primary treatment and secondary removal equivalency. In response to this general comment, EPA reiterates that it is promulgating these regulations to implement the new provisions of the WQA which mandate primary or equivalent treatment. Today's regulatory scheme is fully consistent with the new WQA amendments.

Some commenters raised concerns about the financial impact on some individual dischargers if additional capital improvements are needed to meet the 30 percent BOD removal requirement. They see the costs of meeting the new primary treatment requirements as having a disproportionate impact on small communities. For example, one commenter stated that this requirement would result in a 20 percent rate increase; that polymers alone would cost \$100,000. Others commented that cost should not be a factor in justifying a lower removal efficiency and that EPA should not guarantee a cap on sewage treatment costs.

As part of this rulemaking EPA has prepared an economic analysis of the impacts of the regulations. Although some communities may need to make improvements to their plants to meet the primary treatment requirements, the statute does not authorize any waiver of those requirements on the basis of financial hardship. In addition, EPA believes that as shown in the economic analysis, the final regulations' requirements do not unduly impact small communities in terms of overall cost of compliance. Specifically, none of the small communities, including the community that indicated in its comments a 20 percent increase in rates, will end up spending more than 1 percent of median household income on wastewater treatment. Municipal financial impact models used by EPA assume that ratios of wastewater treatment costs to median household income of less than 1 are not expected to create economic hardship for

households. Moreover, although current treatment costs may increase, small communities will still realize an overall cost savings if less-than-secondary treatment is approved through the section 301(h) process. Finally, as discussed above, the Agency in today's rule has provided the opportunity for adjusting the averaging period for calculating compliance with the primary treatment requirement for BOD under certain circumstances. This added flexibility should further serve to reduce any potential adverse financial impacts. The new flexibility may allow POTWs with dilute influent, provided it is not excessive I&I to qualify with less cost to achieve compliance. The cost of improving collection systems to fix excessive I&I would impact small communities, but is not a cost of this rule. In response to a comment that the need for this flexibility results from future increases in treatment capacity due to population growth, EPA agrees that this is not an appropriate reason, and has not based its decision to allow flexibility on costs of additional treatment due to future growth. There are other more appropriate and legitimate reasons, as spelled out earlier in this preamble, for some measure of flexibility.

Section 125.61: No changes to this section were proposed or are promulgated today. This section addresses the existence of, and compliance with, water quality standards for the pollutant for which the modification is requested. No comments were received.

Section 125.62: This section contains requirements for the attainment or maintenance of water quality which assures protection of public water supplies, the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities. In response to the requirement of WQA section 303(d) for discharges to meet CWA section 304(a)(1) water quality criteria, EPA proposed language at § 125.62(a)(1)(i)-(iii) and 125.62(a)(2) and (3) to implement that additional requirement. The proposal also amended § 125.62(f) to implement requirements of WQA section 303(a) regarding combined impacts of section 301(h) discharges and made a conforming change in light of the WQA prohibition on section 301(h) discharges to stressed estuaries to clarify that the regulations' stressed waters test applies only to ocean waters. Comments on this section addressed issues related to water quality criteria, including human health carcinogenic risk levels, mixing zones, combined impacts, and stressed waters.

Water Quality Criteria

Under the proposal to implement the WQA requirement that discharges meet EPA section 304(a)(1) water quality criteria, EPA would first determine whether there is an EPA-approved State water quality standard that directly corresponds to the EPA section 304(a)(1) water quality criterion for the specific pollutant. If there is, EPA would apply this directly corresponding State standard. In the absence of such a State standard, the section 304(a)(1) water quality criterion would be applied instead. Under the proposal, an EPA-approved State water quality standard would be deemed to "directly correspond" if (a) the State water quality standard addresses the same pollutant as EPA's water quality criterion; and (b) the State water quality standard specifies a numeric criterion for that pollutant, or an objective methodology for deriving such a pollutant-specific criterion. The preamble to the proposed rule discusses this subject in more detail (56 FR 2818-2819).

A commenter felt that the regulations should require compliance with the CWA section 304(a)(1) criteria at a minimum, and that compliance with a directly corresponding State standard that may be less stringent instead was unacceptable. The commenter argued that Congress was aware of State water quality standards, and had Congress intended that an applicant's discharge meet State water quality standards, then Congress would have provided language so mandating. The commenter also asserted that 301(h) waiver requirements should be strictly construed in favor of water quality because 301(h) waivers represent an exception to the general requirement to meet secondary treatment. Other commenters supported the proposal to defer to EPA-approved State water quality standards. The commenters believed that this approach appropriately recognizes the State's discretion to set its own standards.

EPA continues to believe that compliance with the EPA-approved, directly corresponding State water quality standard in lieu of the EPA section 304(a)(1) water quality criterion is appropriate. EPA water quality criteria are national criteria, primarily issued to serve as guidance for the States to use in establishing their water quality standards under CWA section 303.

Under the CWA, States may develop water quality standards based on the section 304(a)(1) criteria, as modified to reflect site-specific conditions, or they

may use other scientifically defensible methods for developing water quality standards. State standards are subject to EPA review and approval. They are developed by the States to protect the types of biota in, and beneficial uses of, their local waters, and thus represent scientifically appropriate standards for each State's specific situation. EPA does not believe that, in amending section 301(h), Congress intended to interfere with this statutory scheme, nor require compliance with the national guidance contained in the section 304(a)(1) criteria when the CWA section 303 standard-setting process results in adoption of different standards to reflect local conditions and those standards have been subject to EPA review and approval. Rather, EPA believes that the intent of this provision was to ensure compliance with the national section 304(a)(1) criteria in those cases where the States have not adopted a directly corresponding State standard and EPA has not itself promulgated a standard in light of such State inaction. Today's final rule therefore retains the proposal's approach. In the absence of an EPA-approved State water quality standard that directly corresponds to the section 304(a)(1) water quality criteria, the final rule requires compliance with the section 304(a)(1) water quality criteria.

For carcinogens, the EPA section 304(a)(1) criteria provide a range of risk levels and corresponding criterion for each specific risk level. In the proposal, EPA did not establish a specific risk level for use in the section 301(h) program. As explained in the preamble (56 FR 2819, 2820), EPA instead would consider all relevant information in determining the pollutant concentration that represents an appropriate risk level for a specific carcinogen. This information would include evidence that the State has consistently used a particular risk level when establishing its water quality standards for other carcinogens. In the absence of such a consistent State policy, EPA would consider a State recommendation of a particular risk level if the State demonstrates to the satisfaction of EPA that the particular risk level is justified. The State demonstration would need to account for the relevant exposure and uncertainty factors, show adequate public participation in the selection of the risk level, and show that use of the selected risk level is adequately protective of human health. In cases where there is no consistent State policy or satisfactory State demonstration on which to base a risk level, under the proposal, EPA would set a specific risk

level (for example, 10^{-6}) based on the circumstances of each case. See preamble to the proposed rule, 56 FR 2818-2820, for a detailed explanation of a satisfactory State demonstration of a recommended risk level and EPA's approach to setting risk levels.

EPA received a number of comments addressing the issue of whether to set a specific risk level by regulation as opposed to allowing it to be set on a case-by-case basis. A commenter stated that rather than assuming that a zero discharge level is unattainable for any known carcinogen, EPA should require the discharger to prove that, in fact, zero discharge in a particular situation either would create severe economic hardship or is not technologically feasible. These commenters also stated that under no circumstances involving carcinogenic pollutants should the allowable discharge exceed a 10^{-6} risk level or the applicable State standard, whichever is more stringent. Other public comments received on the issue of water quality criteria for carcinogens also said the regulations should specify a human health risk level that is no less protective than the 10^{-6} incremental cancer risk and asserted that EPA had done so in other national programs. One commenter stated that there should not be a flexible, case-by-case approach toward establishing risk levels for carcinogens. Instead, the commenter suggested that EPA establish a minimum risk level, the least protective risk level that is acceptable, (and corresponding maximum permissible discharge concentration) but allow for flexibility to choose a more stringent risk level based upon a given State's past practice.

With regard to the zero-risk level, as mentioned in the preamble to the proposed rule, EPA believes that a zero effluent concentration is essentially unattainable. Therefore, EPA has approved numeric State water quality standards for carcinogens under CWA section 303 that correspond to risk levels above zero. The approach adopted in the proposed rule provides consideration of the State's views on an appropriate risk level, or in the absence of such State input, provides for EPA to consider all relevant information in setting a risk level. EPA believes that establishing a presumption in favor of a zero risk level would be inappropriate because even apart from questions of achievability, compliance could not be demonstrated due to limitations in analytical methods. Further, the commenter provided no basis to refute EPA's belief that zero risk levels are not achievable. EPA thus is not amending

the regulations to establish a presumptive zero risk level.

With regard to whether the section 301(h) regulations should establish a single uniform risk level for use in the section 301(h) program, the establishment of risk levels is a national issue which is not limited to the section 301(h) program. As noted in the preamble to the proposed rule (56 FR 2819), EPA expected that many or most coastal States already had established or soon would establish one or more EPA-approved water quality standards for toxic carcinogenic pollutants, pursuant to section 303(c)(2)(B) of the CWA.

Subsequent to the proposal of these revised section 301(h) regulations, EPA applied risk levels in the National Toxics Rule, which sets water quality standards for priority pollutants in States that did not have approved standards, pursuant to Sections 303(c)(2)(B) and 303(c)(4) of the CWA (57 FR 60848, December 22, 1992). More specifically, the National Toxics Rule establishes water quality standards pollutant-by-pollutant for fourteen States that did not have an EPA-approved standard for the toxic pollutant in question where section 304(a)(1) water quality criteria have been developed. EPA set legally enforceable water quality standards with incremental cancer risk levels for carcinogens and corresponding numeric values based on specific exposure and other modeling assumptions. It should be noted that EPA did not adopt a uniform nationwide 10^{-6} risk level in other contexts, e.g., the National Toxics Rule, as suggested by a commenter, who advocated that as a minimum level of protection.

In each State covered by the National Toxics Rule, the carcinogenic risk level used to set the State's standard(s) was based on the best information available to the Agency regarding that State's policy or practice for risk levels used or that should be used in regulating carcinogens in surface waters. For most of the affected States, the risk level is based on a State-adopted or formally proposed risk level. For some, the risk level is based on an expressed State policy preference. With the National Toxics Rule, all States are now in compliance with section 303(c)(2)(B). Hence, for purposes of implementing § 125.62, EPA will now look to the guidance contained in the preamble and regulations of the National Toxics Rule to establish the appropriate human health risk level and numeric value in the absence of a directly corresponding State standard for any section 304(a)(1) criterion later established.

EPA believes that the carcinogenic risk provisions of proposed § 125.62(a)(2)(ii) are consistent with the National Toxics Rule, 40 CFR § 131.36, and the guidance provided in the preamble to the rule (57 FR 60848). Accordingly, today's rule at § 125.62(a)(ii) is promulgated as proposed, with a minor editorial change. In the absence of an EPA-approved State water quality standard for a carcinogenic pollutant, the Administrator will consider a consistently used, or State-adopted or formally proposed risk level recommendation with a satisfactory demonstration that the level is adequately protective of human health in light of exposure and uncertainty factors and population exposed. Exposure factors would include, for example, local patterns of fish consumption, cumulative effects of multiple contaminants and local population sensitivities. Factors related to uncertainty would include, for example, the weight of scientific evidence concerning exposures and health effects and the reliability of exposure data.

One commenter noted that determinations of compliance with water quality criteria will be dependent on the frequency and types of sampling methods used and the effects industrial users' pretreatment programs have on effluent quality. The commenter urged a flexible approach in determining compliance because of these variables. EPA notes, in response, that the regulations do not specify rigid sampling requirements and frequencies, and thus already allow for consideration in designing sampling programs to adequately characterize effluent quality for purposes of evaluating compliance with water quality criteria.

New section 301(h)(9) of the CWA requires that the discharge meet the section 304(a)(1) water quality criteria "after initial mixing in the waters surrounding or adjacent to the point at which [the] effluent is discharged." The zone of initial dilution (ZID) is defined in existing § 125.58(w) as "the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards." The existing 1982 regulations required that all applicable State water quality standards adopted under section 303 of the CWA be met at and beyond the boundary of the ZID.

New language was proposed in § 125.62(a)(1)(i) to implement the requirement of new section 301(h)(9) to comply with the section 304(a)(1) water

quality criteria or the directly corresponding State water quality standards, but inadvertently omitted those State water quality standards that do not directly correspond to the section 304(a)(1) water quality criteria. In so doing, EPA inadvertently omitted the existing requirement that all applicable State water quality standards, including those that do not directly correspond, must still be met at and beyond the ZID. This requirement has been retained in the final regulation. For purposes of this discussion, there are three categories of water quality requirements: State water quality standards that directly correspond to water quality criteria, State water quality standards that do not directly correspond to water quality criteria, and water quality criteria. It is the second category, those State water quality standards that do not directly correspond to water quality criteria, that was inadvertently left out of the proposed regulation.

Two commenters questioned whether the proposed rule, by referring to the ZID for purposes of calculating compliance with section 303 State water quality standards, raised a potential conflict with State-specified mixing zones adopted as part of the section 303 standard-setting process. One of these commenters requested that the regulations be clarified to specify that compliance with State water quality standards is to be determined under the methods and conditions specified by the State in its standards.

EPA agrees that the proposed language could create confusion. Today's final rule includes the existing requirement of the 1982 regulations that all applicable State water quality standards adopted under section 303 of the CWA be met at and beyond the boundary of the ZID and promulgates as proposed the new section 301(h)(9) requirement. The effect of today's rule is to retain the existing practice of the section 301(h) program in determining compliance with State water quality standards. As stated in the preamble to the proposed rule, EPA's purpose in promulgating these revisions to the regulations on this issue was to implement the new requirements of the WQA. EPA did not intend to change existing regulatory requirements not affected by the WQA. As promulgated today, § 125.62(a)(1) reflects the existing regulations with the additional requirements of section 301(h)(9) of the CWA, and EPA intends no changes to how determinations of compliance with State water quality standards are made.

One commenter pointed to inconsistencies between language in the technical support document (TSD) on

ZID size and the actual definition of the ZID as contained in § 125.58(dd) of the regulations and requested that this be addressed by amending the ZID definition. The ZID definition was not proposed for amendment in the 1991 proposal and is not being changed today. EPA responded to the comment by adding a clarification to the final TSD on the technical issues regarding calculation of the ZID size.

Combined Impacts of Discharge

Section 303(a) of the WQA requires an applicant to demonstrate that the section 301(h) modified discharge will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of water quality to protect the uses specified in section 301(h)(2). As noted in the preamble to the proposed rule (56 FR 2816), although EPA believes this requirement is consistent with the existing 1982 regulations, EPA added language in proposed § 125.62(f) to clarify this point. Proposed § 125.62(f) requires an applicant to demonstrate that its modified discharge meets § 125.62(a) through (e), both alone, and taking into account the discharge in combination with pollutants from other sources.

One commenter noted that cumulative impact assessments would need to be performed to demonstrate that the POTW is not causing impact alone or in combination with other dischargers and that the information needed to make the assessment may not be available. The commenter recommends that EPA provide sufficient guidance on performing the needed cumulative impact assessments, including information on regional waste load allocations, nonpoint source information, beneficial use quantification, and regional water quality monitoring data. EPA agrees that such information would be useful in making the required demonstration of compliance. The availability of such site-specific information will vary depending on local circumstances. Applicants should work closely with their EPA Region and State water agencies to identify possible sources of such information. EPA considered this comment and made changes to the final TSD for the regulations in order to provide additional guidance on this issue.

Stressed Waters

EPA received comments on two related aspects of the statutory requirements and regulatory provisions regarding stressed waters: (1) Demonstrating that no causal

relationship exists between stressed conditions and the applicant's discharge, and (2) prohibitions on 301(h) modified discharges to stressed saline estuaries. One commenter on § 125.62(f) (1) through (3) (the "stressed waters test") requested that EPA state that an applicant can still make the demonstration required by § 125.62(f) (1) through (3) by showing that no causal relationship exists between the stressed conditions and the applicant's discharge. Other commenters supported the continued requirement to demonstrate that no causal relationship exists between the stressed conditions and the proposed section 301(h) modified discharge. As previously noted, paragraphs (f) (1) through (3) are the same as provisions contained in the existing 1982 section 301(h) regulations, and applicants must demonstrate an absence of a causal relationship between their discharge and stressed conditions as specified in those paragraphs. The three substantive requirements for such a demonstration were not proposed for change. As in the past, applicants invoking this provision may avoid the need to demonstrate compliance with paragraphs (a) through (e) by demonstrating that the modified discharge does not:

- (1) Contribute to, increase or perpetuate stressed conditions;
- (2) Contribute to further degradation; and
- (3) Retard recovery if perturbations from other sources decrease.

To reiterate, despite the addition of the word "entirely," an applicant still can make the demonstration required by § 125.62(f) (1) through (3) by showing that no causal relationship exists between the stressed conditions and its proposed discharge.

Prior to the 1987 WQA, section 301(h) and the 1982 implementing regulations allowed section 301(h) modified discharges to stressed waters only under certain limited conditions, with no distinction made between stressed saline estuaries and stressed ocean waters. The 1987 WQA amendments tighten this restriction with respect to saline estuaries by prohibiting section 301(h) modified discharges altogether to saline estuaries that are stressed (i.e., that exhibit certain characteristics specified in the statute). The amendments also specify that this prohibition applies without regard to whether it is the applicant's discharge that is causing or would cause the stressed water quality conditions. To implement this new statutory prohibition, EPA proposed a change to the existing regulations regarding stressed waters. EPA proposed adding

this new prohibition to § 125.59(b)(4), and making conforming changes to § 125.62(f) to prohibit section 301(h) waivers where stressed saline estuaries are involved. Section 125.62(f) is the provision that allows discharges to stressed waters under certain conditions. The proposal altered this provision so that such discharges would be allowed only with respect to stressed ocean waters and not saline estuarine waters.

Commenters expressed the view that Congress did not intend to make section 301(h) waivers available for any severely degraded waters, whether in estuaries or oceans, and recommended limiting the reach of the stressed waters exception to those locations where severe environmental degradation has not occurred. The commenters noted that if an exception must be available to POTWs discharging to stressed waters, the commenters supported the approach taken in proposed § 125.62(f). In response to this comment, EPA notes that the 1987 WQA flatly prohibits section 301(h) modifications with respect to stressed estuaries only. In contrast, applicants can satisfy 301(h)(2) by showing that their discharges will not "interfere, alone or in combination," with certain water quality objectives. EPA continues to believe that § 125.62(f) fully meets this statutory directive. There is no basis for the suggestion that Congress intended categorically to prohibit waivers with respect to all stressed waters. Indeed, the legislative history cited by the commenter does not lead to a contrary opinion. EPA believes that the provisions adopted in today's final regulations to implement the WQA prohibition on discharges to stressed estuaries are fully consistent with the statute and that extending this prohibition to ocean waters would be inconsistent with the plain statutory language. Accordingly, the stressed waters provision in this section is promulgated as proposed.

Section 125.63: This section outlines the general requirements for monitoring programs required under section 301(h)(3) of the CWA. In the proposal, EPA added language to this section to respond to section 303(b) of the WQA, which restricts the required scope of section 301(h) biological monitoring programs to those scientific investigations necessary to study the effects of the proposed discharge. EPA also noted in the preamble to the proposed rule that the requirements of such monitoring programs under the existing regulations are in fact already focused on the effects of the discharge. The proposal also added a requirement that applicants monitor their discharges

to ensure compliance with water quality criteria (if applicable under § 125.62(a)), in addition to water quality standards based on the provision of section 301(h)(9).

EPA received one comment regarding monitoring. The commenter requested that EPA add a provision for amending monitoring programs in existing permits, including permits administratively extended beyond their expiration dates, when the changes are technically justified. EPA appreciates that changes to section 301(h) monitoring programs during the life of the permit may be appropriate. EPA notes that this is a procedural issue governed by the NPDES regulations and is not the subject of this rulemaking. See 40 CFR 122.6.

Monitoring for Removal Efficiency Requirements

Some commenters suggested that the demonstration of removal efficiency (defined as removal of 30 percent of BOD and TSS) should be made throughout the year, and not simply at the time the modification becomes effective. Other comments suggested that EPA require a demonstration of removal efficiency of BOD as an initial threshold determination only, that is, a one-time demonstration. In response, EPA believes that demonstration of the removal efficiency should be an ongoing requirement, and § 125.60(b) requires that compliance be demonstrated based on monthly averaging, as proposed (subject to the exceptions discussed above). In addition, the statute does not state a one-time requirement but instead envisions an ongoing requirement that the applicant "will be" discharging effluent that has received primary treatment. Given the statutory requirement for primary treatment, it would make little sense to require a one-time demonstration of removal efficiency, with the possible result that less-than-primary treatment could occur during the course of the section 301(h) modified permit and go undetected.

To ensure that data are available for purposes of section 301(h) permit renewals, ongoing monitoring of compliance with the removal efficiency requirement is necessary. EPA thus continues to believe that section 301(h) permittees should monitor for compliance with the primary treatment requirement over the life of the permit at the frequency required in § 125.60 (i.e., monthly, unless a less frequent monitoring period is specified). Although already required in § 125.60(b), to clarify this point the final rule adds a new paragraph, § 125.63(d)(2), to ensure that the permit

monitoring requirements provide adequate data for demonstrating compliance with the removal efficiency requirement over the life of the permit.

EPA is also making a conforming change to § 125.63(a)(1)(i) to clarify that monitoring programs must be designed to evaluate water quality criteria, as well as water quality standards. This conforms to the proposed change in § 125.63(c), reflecting WQA language.

Changes to Monitoring Requirements

Some commenters requested that EPA identify the practical impact the new limitation on the scope of monitoring will have on current monitoring programs. As previously discussed, EPA does not believe that WQA language limiting section 301(h) biological monitoring to investigations necessary to evaluate the discharge effects represents a substantial change in the program. The purpose of the required monitoring programs has always been to evaluate discharge effects. Since the monitoring program was already focused on evaluating discharge effects, the new statutory and regulatory language should not result in substantial changes to existing monitoring programs.

Other commenters expressed concern over potentially increased monitoring costs. The additional monitoring requirements to ensure compliance with the WQA's water quality criteria and primary or equivalent treatment requirements are a necessary and reasonable outgrowth of those new statutory requirements. Given those substantive requirements and the need for data to evaluate continued compliance and to support future requests for permit renewal, EPA believes it is necessary to require monitoring in these areas. As with other section 301(h) monitoring requirements, the exact nature and frequency of such monitoring by a particular applicant would be set on a permit-by-permit basis in order to reflect individual circumstances. Burdens associated with these monitoring requirements were addressed in the supporting documentation for the information collection request accompanying the regulations. Although some extra costs may be incurred, many of these are one-time costs, and are not excessive, especially in light of the economic benefits to the discharger receiving a section 301(h) waiver.

Section 125.64: This section contains criteria related to the impacts of the modified discharge on other point and nonpoint sources and implements section 301(h)(4) of the CWA. There were no proposed changes to this

section and no comments were received. This section remains unchanged.

Section 125.65: This new section sets forth the urban area pretreatment program requirements of section 303(c) of the WQA (CWA section 301(h)(6)). These requirements apply to POTWs serving a population of 50,000 or more, with respect to any toxic pollutant as defined by § 125.58(aa) introduced into the POTW by an industrial source. Applicants subject to this provision must demonstrate that industrial sources are in compliance with all applicable pretreatment requirements, and that the applicant will enforce those requirements. Also, for each toxic pollutant for which there is no applicable pretreatment requirement in effect, the applicant must have in effect a pretreatment program which, in combination with the treatment of discharges from the POTW, removes the same amount of such pollutant as would be removed if the POTW were to apply secondary treatment and had no pretreatment program for such pollutant.

To implement these provisions, the proposed rule added § 125.65 and added or revised certain definitions in § 125.58. Proposed § 125.65(a)(2) clarified that the requirements of § 125.65 are to apply in addition to any applicable pretreatment requirements contained in 40 CFR part 403 and that nothing in § 125.65 is intended to waive or relax the 40 CFR part 403 requirements.

Section 125.65 provides two methods for satisfying the urban area pretreatment requirements. For each toxic pollutant introduced by an industrial discharger, the applicant must demonstrate that it either (1) has an "applicable pretreatment requirement in effect" or (2) has in effect a program that achieves "secondary removal equivalency." EPA received a number of comments requesting clarification of this provision, as well as comments related to pretreatment requirements, which toxic pollutants should be subject to urban area pretreatment requirements, demonstration of secondary equivalency, and enforcement of pretreatment requirements.

Scope of Pollutants to be Addressed

Some commenters believe that the urban area pretreatment program requirements should apply only to "pollutants of concern," rather than applying to all priority pollutants introduced by industrial dischargers. Commenters were concerned that the requirements might be interpreted to apply to all 126 priority pollutants,

whether or not these are known or suspected to be discharged to the POTW by industry. They believe the urban area pretreatment requirements should be limited to those priority pollutants that are specifically known to pose a threat or potential threat to human health, safety, or environmental quality. These commenters stated that pollutants of concern should not include pollutants that do not pose such a risk and provided several options for identifying pollutants of concern, i.e., by excluding from coverage pollutants (1) only discharged in small amounts by one industry; (2) meeting water quality standards at the boundary of initial mixing; (3) discharged in effluent at a threshold level percent of an applicable water quality standard, criterion, or permit limit; (4) discharged in low concentrations; (5) which do not interfere or threaten to interfere with the attainment or maintenance of water quality objectives as found in § 125.62; or (6) not detected in the effluent of the POTW. These commenters felt that developing local limits for all toxic pollutants would be difficult and overly burdensome. The commenters further stated that a distinction should be made between significant and insignificant industrial dischargers.

EPA has not adopted these suggested changes in today's rule. The statute clearly states that the urban area pretreatment requirement applies to any toxic pollutant introduced into the POTW by an industrial discharger. Therefore, EPA believes the regulations should address all such toxic pollutants. However, this means only those toxic pollutants known or suspected to be introduced to the POTW by an industrial discharger. Thus, if all 126 priority pollutants are not discharged to a given POTW, not all 126 priority pollutants will need an applicable pretreatment requirement, e.g., categorical standard or local limit. EPA notes, however, that the industrial user's survey must be comprehensive, addressing all non-domestic sources, to assure that the POTW takes all toxics from industrial sources into account. Guidance is provided in the TSD to help identify toxics known or suspected to be discharged from several industries not subject to categorical pretreatment regulations.

One commenter asserted that receiving waters should be the focus of this requirement; that is, it is inappropriate to have technology-based requirements when receiving waters do not warrant them. The commenter further stated that the requirement should focus on whole effluent toxicity. In response, EPA notes that the statutory

provision is technology-based, and refers to each toxic pollutant introduced by industrial sources. Other Clean Water Act provisions address whole effluent toxicity and this has been taken into account.

Applicable Pretreatment Requirements

As specified in § 125.65(c) of the proposed regulations, applicable pretreatment requirements could take the form of federal categorical pretreatment standards promulgated by EPA under section 307 of the CWA, local limits developed in accordance with 40 CFR part 403, or a combination of both. As proposed, therefore, applicable pretreatment requirements consist of the following as stated in § 125.65(c):

(i) for each industrial source discharging to the applicant's treatment works for which there is no applicable categorical pretreatment standard for the toxic pollutant, a local limit or limits on the toxic pollutant satisfying the requirements of 40 CFR part 403 and § 125.62;

(ii) for each industrial source discharging to the applicant's treatment works that is subject to a categorical pretreatment standard for the toxic pollutant, the categorical standard plus a local limit or limits as necessary to satisfy the requirements of 40 CFR part 403 and § 125.62.

One commenter stated that "applicable pretreatment requirements" should be developed to ensure compliance with 40 CFR part 403 and not also to ensure compliance with requirements in § 125.62, which addresses protection of a balanced indigenous population (BIP). This commenter pointed out that the requirements to achieve a BIP already must be satisfied under § 125.62 if the section 301(h) permit modification is to be granted. Further, it is unnecessarily restrictive to specify that the BIP requirements be met by applying local limits rather than through other means.

EPA agrees and has clarified this provision in the final rule by deleting the reference to § 125.62 from § 125.65(c)(1) (i), (ii) and (2). Any section 301(h) discharge must comply with the BIP requirements of the regulations, but how this is achieved, whether by local pretreatment standards or other toxics control measures, is at the discretion of the applicant. The Agency never intended to require that local limits alone must be shown to independently protect a BIP. The intent was that local limits would be developed to meet 40 CFR part 403 and § 125.65 and would be at least one aspect of overall toxic control efforts by the applicant that

would contribute as a whole to meeting the requirements of a BIP. It should be noted, however, that conditions necessary to achieve and perpetuate a BIP may be used as a basis for setting a local limit.

Because the regulations already require compliance with § 125.62, and in light of the concerns raised over linkage of local limits to the § 125.62 requirement, EPA is making this change to the final regulations. This change does not alter the requirement to meet all other section 301(h) provisions.

Some commenters believe that provisions should be included for local limits to consider sludge quality and the potential for air toxic emissions. Under the Agency's existing local limit program under 40 CFR part 403, and sewage sludge regulations at 40 CFR parts 257, 403 and 503, local limits may be required where necessary to protect sludge quality so as not to interfere with its management and ultimate disposal or beneficial use, and where necessary to protect plant workers. The pretreatment regulations address air toxic emissions within the POTW to protect worker health and safety. The commenters' concerns regarding sludge quality and incineration, and resultant air emissions are addressed by the Agency's pretreatment regulations, sewage sludge regulations and regulations under the Clean Air Act. The Agency has begun to address standards for air toxic emissions from POTWs.

The comments taken as a whole show some confusion about how EPA expects the "applicable pretreatment requirement in effect" provision of the urban area pretreatment program to be implemented. Commenters were concerned that these requirements were overly burdensome and sought flexibility. Commenters pointed out that requirements for every industrial user are unnecessary for ensuring an adequate local limit for the toxic pollutant. After considering these comments, EPA has revised its approach as follows. First, the POTW need not apply a specific local limit to each and every industrial source of each toxic pollutant. Instead, after conducting a local limits analysis, the POTW may apportion the allocation to industrial sources of the toxic in the way that the POTW deems most appropriate, subject to the approval of the Regional Administrator. This could include not imposing any limit for the pollutant on certain industrial users. This modification should achieve the same end result as the proposal, that is, to attain the same level of toxic pollutant reduction, while providing flexibility to the POTW to implement the provision

The Guidance Manual on the Development and Implementation of Local Discharge Limitations under the Pretreatment Program discusses how to allocate local limits among industrial sources for all POTWs, not just 301(h) applicants. EPA believes that the approach of POTWs under 301(h)(6) should be consistent with that guidance. This approach is less burdensome to implement while still achieving equivalent reductions in toxics.

Second, the applicant can show an "applicable pretreatment requirement in effect" for those toxic pollutants for which there is no applicable categorical pretreatment standard, and for which the applicant determines, based on the 40 CFR part 403 analyses, that a local limit is not necessary. The permit in these cases will require the applicant to demonstrate on an annual basis over the permit term, that a local limit is not necessary and, where appropriate, will require the applicant to institute industrial management practices plans.

The following steps are intended to clarify how EPA will implement the "applicable pretreatment requirement in effect" provision for toxic pollutants:

- (1) The applicant must conduct an industrial user survey as required by 40 CFR part 403 and § 125.66;
- (2) The applicant must conduct representative sampling and analysis of the POTW's influent, effluent, and sludge for toxic pollutants;
- (3) The applicant must implement the national categorical standards for each industrial source subject to categorical standards;
- (4) For those toxic pollutants known or suspected to be introduced by an industrial source, the applicant must conduct an analysis under 40 CFR part 403 to assess the need for local limits;
- (5) For those toxic pollutants for which the applicant determines, based on the 40 CFR part 403 analysis, a need for local limits, the applicant must set local limits;
- (6) For those toxic pollutants for which the applicant determines, based on the 40 CFR part 403 analysis, that local limits are not necessary, the applicant must continue to monitor the POTW influent and effluent during the term of the permit and/or conduct technical reviews of data on discharges from industrial sources during the term of the permit, and where appropriate require industrial users to institute industrial management practices plans (IMPs) and other pollution prevention activities, to reduce or control the levels of these toxic pollutants from industrial sources. These plans and activities could include Best Management Practices (BMPs). See TSD and EPA

Guidance Manual on the Development and Implementation of Local Discharge Limitations under the Pretreatment Program (1987 and 1991). For these toxic pollutants, applicants would be required to assure EPA on an annual basis that these particular toxic pollutants do not result in levels that warrant development of local limits. If such monitoring and technical review of data indicate that a local limit is needed, the POTW shall establish and implement a local limit.

The basic philosophy of instituting industrial management practice plans (IMPs) is to minimize the discharge of toxic or hazardous pollutants to the sewer, or reduce the impact of toxic/hazardous pollutant discharges by avoiding short-term, high concentration discharges. IMPs can be applied to all classes of industrial users, e.g., major and minor industrial users. Examples of appropriate uses of IMPs include control of chemical spills and sludge discharges to the POTW through formal chemical or waste management plans (including BMPs), solvent management plans, batch discharge policies, waste recycling and waste minimization. It would also be appropriate to consider IMPs in cases where the POTW does not include biological treatment processes, or provides less treatment, e.g., primary treatment.

In these cases, IMPs can be tailored for industrial sources of toxic pollutants that might otherwise interfere with biological treatment or would be degraded or removed through additional treatment.

EPA has added this information to the regulations in response to comments. The intent of these steps is to set forth a process that is not overly burdensome for applicants but that assures that applicable pretreatment requirements are in effect for each toxic pollutant.

Secondary Removal Equivalency

Under section 301(h)(6) and § 125.65, where there is no applicable pretreatment requirement as described above for a toxic pollutant known or suspected to be introduced by an industrial discharger, the applicant must demonstrate that it has in effect a pretreatment program which, in combination with the POTW's own treatment of discharges, removes the same amount of the pollutant as would be removed if the POTW were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to the pollutant.

EPA has termed this the "secondary removal equivalency" requirement and the proposed rule added this term to the definitions in § 125.58(w). To meet the

"secondary removal equivalency" requirement, the applicant must demonstrate that the combination of its own treatment plus pretreatment by industrial dischargers achieves "secondary removal equivalency."

Under today's final rule, to demonstrate secondary removal equivalency, an applicant would need to use a secondary treatment pilot plant. By diverting part of its waste stream to the pilot plant after primary treatment, the applicant would empirically determine the amount of a toxic pollutant that would be removed from the waste stream if the applicant were to apply full-scale secondary treatment. The applicant would then need to demonstrate to EPA that it has a pretreatment program in effect which, in combination with its own treatment processes, removes at least that total amount of toxic pollutant from the POTW's discharge, achieved through concentration- and mass emissions-based effluent limits. If at least that amount is not removed, then further reductions of the pollutant would be required. The NPDES permit will include concentration and/or mass emissions effluent limits based on the data from the secondary equivalency demonstration when those values are more stringent than effluent limits based on State water quality standards or water quality criteria, if applicable, and to assure that all of the § 301(h) criteria are met. Once such effluent limits are established in an NPDES permit, the POTW may either establish local limits or perform additional treatment at the POTW, or combine the two to achieve the permit limit.

Some commenters thought that they would be penalized for having an existing pretreatment program if they used pretreated waste to determine secondary equivalency, because of the undetermined removals by current industrial pretreatment. They urged the use of procedures for determining pre-existing (prior to source control) conditions to take into account existing toxic pollutant reductions and commented on the difficulty of obtaining "unpretreated" industrial wastewaters. Other commenters thought that the secondary removal equivalency demonstration should be made with all other pretreatment requirements required by section 301(h)(5) in place, because they reasoned that the section 301(h) program does not provide waivers from the toxics requirements.

EPA agrees that the section 301(h) program does not provide a waiver from toxics control requirements, and the existing section 301(h) program already has toxics control requirements.

including industrial pretreatment, in effect. However, the secondary removal equivalency provision of section 301(h)(6) addresses only those toxic pollutants that do not have applicable pretreatment requirements in effect, and that are being introduced by industrial sources to POTWs serving urban areas.

POTWs will not be penalized for having an applicable pretreatment requirement in effect for a particular toxic pollutant. If the POTW has an applicable pretreatment requirement in effect for a specific toxic pollutant, as described in § 125.65, it will be in compliance with § 125.65 with respect to that pollutant, and the POTW will not need to comply with the "secondary removal equivalency" requirement for that pollutant.

There may, however, be reduced levels of other toxics that are discharged to the POTW owing to incidental removals from applicable pretreatment requirements targeted to remove specific toxic pollutants. Likewise, there may be reduced levels of a specific toxic pollutant discharged to the POTW from categorical pretreatment for that toxic pollutant that may not satisfy the conditions of an applicable pretreatment requirement in effect. Because neither of these two above situations satisfy the requirements of "applicable pretreatment requirement in effect" with respect to these toxic pollutants, the applicant would need to demonstrate secondary removal equivalency for them. It may be true that the cumulative removal will be lower if pretreated influent is used. EPA does not expect this situation to occur often because if an applicable pretreatment requirement exists for a particular toxic pollutant, then a secondary removal equivalency demonstration is not needed for that toxic pollutant. This situation is only likely if some pretreatment occurs for other pollutants.

One commenter asserted that secondary treatment removal equivalency is highly impractical and appears to resurrect EPA's discredited "removal credit" system. In response, the statute focuses on the levels of toxic pollutants that are removed through a combination of pretreatment and POTW treatment processes, regardless of where the removal occurs.

Some commenters felt that the term "removals" should not include removals obtained by air volatilization and through sludge because this is simply a transfer of a pollution problem between media. EPA notes that removals obtained by a secondary pilot plant are used simply to determine the amount of additional pretreatment and/or POTW treatment if any, that would

be needed to meet secondary removal equivalency. For purposes of achieving removals through a combination of a POTW's treatment and pretreatment, EPA will not consider pollutants that remain in sludge or are volatilized as removed, except those removals that are consistent with sludge and pretreatment regulations. As noted in the discussion on "applicable pretreatment requirements," EPA's pretreatment and sludge regulations do apply in any case to any POTW treatment processes and sludge produced from the POTW.

Some commenters suggested that EPA identify technology-based limits for demonstrating secondary removal equivalency, citing EPA's *Fate of Priority Pollutants in Publicly Owned Treatment Works*, Vol. I (Sept. 1982) and Vol. II (Sept. 1982) as a basis for establishing such limits. In response, in EPA's judgement, the above cited studies demonstrate that each POTW's influent is unique based on a variety of factors. Secondary treatment removes toxics incidental to the technology for reducing BOD and SS, and results in great variability in the levels of toxic and non-conventional pollutants in effluent and sludge. The Act clearly puts the burden on the applicant to demonstrate and not on EPA to develop uniform technology-based standards. In any event, developing uniform technology-based standards would be very difficult because of the variability of influents, pretreatment levels, and other site-specific conditions. Therefore, EPA has not developed technology-based limits representing characteristic removal of toxic pollutants from secondary treatment.

Commenters also asked EPA to address the costs of the pilot plant approach. These costs are addressed in the Economic Impact Analysis.

In summary, for those toxic pollutants for which there is no applicable pretreatment requirement in effect, the POTW must either (1) develop and implement an applicable pretreatment requirement or (2) demonstrate, through a combination of pretreatment by industry and the POTW's own treatment processes, that it removes at least as much of the toxic pollutant as would be removed by a POTW that applies secondary treatment and that has no pretreatment program for the pollutant. Guidance is provided in the TSD.

Compliance Determination

Several commenters stated that EPA needs to address how a POTW will demonstrate that all of its industrial dischargers are in compliance with the pretreatment requirements and that EPA would allow less than 100 percent

compliance. Some suggested that EPA should allow POTWs to demonstrate compliance with all applicable pretreatment requirements by taking all appropriate legal and administrative enforcement actions to enforce pretreatment requirements. Others thought that accommodating less than 100 percent compliance would introduce considerable uncertainty concerning the level of compliance EPA will deem to be adequate and the regulations should identify a definite standard by which to gauge compliance with this new standard. In addition, commenters have provided examples of when less than full compliance will be considered acceptable, such as instances of trivial or isolated violations.

For urban area POTWs with significant numbers of industrial users, at any given time, it is reasonable to expect that at least one or more of those users might be out of compliance. EPA intends to determine a POTW's continuing eligibility for a 301(h) waiver under section 301(h)(6) by measuring industrial user compliance and POTW enforcement activities against existing criteria in the Agency's National Pretreatment Program. In the proposed rule, EPA explained that it would consider the issue of compliance with the pretreatment requirements on a case-by-case basis, taking into account the number and nature of non-compliances. In 1989, EPA established criteria for determining POTW compliance with pretreatment implementation obligations. One element of these criteria is the level of significant noncompliance of the POTW's industrial users. The General Pretreatment Regulations (part 403) identify the circumstances when industrial user noncompliance is significant. The industrial user significant noncompliance (SNC) criteria are set out in 40 CFR 403.8(f)(2)(vii) and address both effluent and reporting violations. This policy is consistent with the approach in the proposed rule. The General Pretreatment Regulations, however, are more explicit. In response to public comments, EPA has changed the approach in today's final rule to be consistent with Agency enforcement policy and to remove uncertainty.

For pretreatment purposes, a POTW's enforcement program is considered adequate if no more than 15 percent of its industrial users meet the SNC criteria in a single year. A similar level of industrial user SNC rate will generally be applicable to POTWs with 301(h) waivers, but will be subject to facility-specific conditions. In addition, a POTW is also considered in SNC if it

fails to take formal appropriate and timely enforcement action against any industrial user, the wastewater from which passes through the POTW or interferes with the POTW operations.

In enforcing the pretreatment programs, POTWs are expected to respond to industrial user noncompliance using local enforcement authorities in accordance with an approved enforcement response plan (ERP) which is required of all approved pretreatment programs (see 40 CFR 403.5). POTWs, including 301(h) POTWs, with greater than 15 percent of their users in SNC, or which fail to enforce appropriately against any single industrial user causing pass through or interference, are deemed to be failing to enforce their pretreatment program.

EPA will base its determination on data collected during site visits to the POTW and from the POTW's pretreatment program performance report required by 40 CFR 403.12(i). These reports include compliance information on industrial users gathered by the POTW as well as a description of the enforcement activities of the POTW. EPA believes that the combination of industrial user compliance and POTW enforcement provides an appropriate measurement of the POTW's eligibility for the 301(h) waiver under section 301(h)(6).

This interpretation is consistent with the directives in a Senate Report on an earlier version of the bill (see S. Rep. No. 1128, 99th Cong., 1st Sess. 14 (1985)) as discussed in the proposal (56 FR 2817). EPA notes that approval of the 301(h) waiver, which requires that the POTW applicant demonstrate that its industrial users are in compliance with their applicable pretreatment requirements, provides a substantial incentive to the POTW to assure that its industrial users are in compliance with all applicable pretreatment requirements. EPA believes that an approach relying on a determination of SNC is preferable to focusing on trivial or isolated violations, or other suggested methods, because it gives clear guidelines and is consistent with the enforcement approach in the pretreatment program.

Section 125.66: This section includes provisions for industrial pretreatment and control of toxic pollutants from nonindustrial sources. To update compliance deadlines, the proposal made a minor change in § 125.66 (c)(1) regarding deadlines by which applicants were required to develop approved pretreatment programs. No comments were received on this section and it is being promulgated as proposed.

Section 125.67: This section discusses the criteria related to increased discharges and implements section 301(h)(8) of the CWA. No changes were proposed for this section, and no comments were received. It remains unchanged.

Section 125.68: This section sets forth special permit conditions to be included in section 301(h) modified NPDES permits. No changes were proposed for this section, and no comments were received. It remains unchanged.

Application questionnaires: Under the section 301(h) regulations promulgated in 1982, there are two application questionnaires (questionnaire is defined in § 125.58), one for use by small applicants and one for use by large applicants. The proposal merged these into a single questionnaire and added questions as necessary to respond to the new requirements of the WQA. No comments were received on the proposed changes, and they are promulgated today as proposed.

Other Issues and Comments

EPA received several technical and minor comments on the draft amended TSD guidance document and some comments that addressed the regulations or 301(h) program in general. EPA responded to many comments by making changes to the TSD as appropriate. The changes are not discussed here. Below are responses to comments for which no change was made in the TSD, and responses to the general comments.

One commenter suggested that it is important that significant flexibility be provided in making determinations regarding the impacts of other sources on water quality until more definitive information is available for nonpoint and other source categories. The commenter also states that this section appears to be in conflict with § 125.63(b) which limits the monitoring program to only those scientific investigations necessary to study the effects of the proposed discharge. In response, the regulations already address the cumulative impacts of a discharge as an integral piece of information necessary to analyze the balanced indigenous population requirements of 301(h). It is not in conflict with § 125.63(b). The effects of the proposed discharge are evaluated in the context of the receiving water environment, alone and in combination with other sources of pollutants.

Another comment recommended that the guidance document be changed to require that a date and approval sequence between the State and EPA Region be mutually agreed-upon, rather

than requiring compliance with § 125.59(d)(4), which requires State determinations to be due to the regions no later than 90 days after an application is submitted to EPA. In response, the TSD simply reflects the regulatory language, which was not proposed for change and is not a subject of this rulemaking.

Another commenter asked that the guidance better define what is meant by "significant ecological change." This comment is beyond the scope of this rulemaking. The approach to defining a balanced indigenous population (BIP) was not proposed for change and EPA is not considering redefining the BIP.

A commenter suggested that the approach to 301(h) waivers should be based on water quality effects and not on any "equivalencies." Another commenter suggested that if high BOD levels are allowed for industrial dischargers under effluent guidelines for certain industries, why do we require the 30% removal of BOD and SS for municipal effluents? In response to both these comments, the statute does not provide us leeway on these issues. The statute is clear on its face in requiring equivalency testing and the removal of 30% of BOD and SS.

One commenter requested that strong consideration be given to centralizing the evaluation of waiver requests. While this comment is beyond the scope of this rulemaking, we recognize the consistency and efficiency this might suggest. However, 301(h) waiver applications are handled case by case, based on site-specific circumstances. Although there is national oversight on the implementation of the program, regional evaluation provides the ability to apply regional expertise on regional and local circumstances surrounding 301(h) applications.

EPA also received requests from commenters for additional time to comment. EPA accommodated these requests and considered all comments received in developing this final rule. Others requested that EPA notify industrial users of the proposal. In response, EPA gave a 60 day public comment period, which EPA believes to be adequate notice for all affected parties.

III. Supporting Documentation

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), federal agencies must, when developing regulations, consider the impact of the regulations on small entities (small businesses, small government jurisdictions, and small organizations).

To evaluate whether this rule will have a significant economic impact on a substantial number of small entities, the Agency has prepared an Economic Impact Analysis (EIA). The Agency has concluded, based on the EIA, that this rule does not unduly impact on small communities in terms of overall cost of compliance. Specifically, none of the small communities will end up spending more than 1 percent of median household income on wastewater treatment. Moreover, although current treatment costs may increase, small communities will still realize an overall cost savings if less than secondary treatment is approved through the section 301(h) process.

There were 51 applicants or permittees in the section 301(h) permit program at the time of the economic analysis. Out of these 51 applicants or permittees, only six are both expected to incur additional costs due to the primary or equivalent treatment requirements and meet the Small Business Administration (SBA) definition of a small entity (a service area with a population of less than 50,000). All those applicants or permittees subject to and expected to incur additional costs due to the urban area pretreatment requirements and one of the permittees expected to incur additional costs due to the primary or equivalent treatment requirements have service area populations of greater than 50,000, and thus are not small entities. On a national level, the total estimated capital cost of meeting the primary or equivalent treatment requirements for the six small entities amounts to less than \$7.2 million, with an associated operations and maintenance cost of \$465,000 per year. Assuming a 20-year repayment schedule, the total annualized cost, for the six small entities, equals approximately \$675,000 a year. After compliance with the primary or equivalent treatment requirements, the total annual sewer fee charged by these ten small entities is less than 1 percent of the community's median household income. Consequently, none of the small entities affected by this rule are expected to incur significant economic impacts, especially in light of the overall savings garnered by these communities from not having to comply with secondary treatment requirements.

In summary, I certify that this rule will not have a significant economic impact on a substantial number of entities.

B. Executive Order 12866

Under Executive Order 12866, [58 Federal Register 51735 (October 4,

1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

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

C. Paperwork Reduction Act

The information collection requirements of this rule 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 control number 2040-0088.

The estimated average annual burden hours for the collection of information is approximately 1,006 hours per POTW respondent, and 120 hours per State respondent. Of that, the incremental burden from these regulatory changes is approximately 192 hours per small facility, 256 hours per large facility, and 40 hours per State respondent. These estimates include the time for reviewing instructions, for POTWs to collect information to comply with this final rule, including conducting monitoring and toxics control activities, and completing and submitting the applicant questionnaire, as well as time for States to prepare the State determinations and certifications. No comments were received on the information collection requirements.

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, S.W., (Mail Code 2136), Washington, D.C. 20460; and to the Office of Management and Budget,

Washington, D.C. 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 125

Environmental protection, Marine point source discharges, Reporting and recordkeeping, Waste treatment and disposal, Water pollution control.

Dated: July 14, 1994.

Carol M. Browner,
Administrator.

For the reasons set out in the preamble, part 125 of Title 40 of the Code of Federal Regulations is amended as set forth below. *Note:* For clarity, EPA has set forth below part 125, subpart G in its entirety. However, the Agency is amending only portions of these regulations in today's notice. Although the existing portions of subpart G that EPA is not amending are also set forth below, EPA did not reconsider those portions and they are not subject to challenge as part of this final rulemaking.

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

1. The authority citation for 40 CFR part 125, subpart G is revised to read as follows:

Authority: Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 *et seq.*, unless otherwise noted.

2. 40 CFR part 125, subpart G is revised to read as follows:

Subpart G—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

Sec.

- 125.56 Scope and purpose.
- 125.57 Law governing issuance of a section 301(h) modified permit.
- 125.58 Definitions.
- 125.59 General.
- 125.60 Primary or equivalent treatment requirements.
- 125.61 Existence of and compliance with applicable water quality standards.
- 125.62 Attainment or maintenance of water quality which assures protection of public water supplies; assures the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife; and allows recreational activities.
- 125.63 Establishment of a monitoring program.
- 125.64 Effect of the discharge on other point and nonpoint sources.
- 125.65 Urban area pretreatment program.
- 125.66 Toxics control program.
- 125.67 Increase in effluent volume or amount of pollutants discharged.

125.68 Special conditions for section 301(h) modified permits.

Appendix to Subpart G—Applicant Questionnaire for Modification of Secondary Treatment Requirements

Subpart G—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

§ 125.56 Scope and purpose.

This subpart establishes the criteria to be applied by EPA in acting on section 301(h) requests for modifications to the secondary treatment requirements. It also establishes special permit conditions which must be included in any permit incorporating a section 301(h) modification of the secondary treatment requirements ("section 301(h) modified permit").

§ 125.57 Law governing issuance of a section 301(h) modified permit.

(a) Section 301(h) of the Clean Water Act provides that:

Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of paragraph (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) There is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

(2) The discharge of pollutants in accordance with such modified requirements will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water;

(3) The applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable, and the scope of such monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge;

(4) Such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) All applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) In the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such

requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;

(7) To the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(8) There will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(9) The applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 304(a)(1) of this Act after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.

For the purposes of this section, the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this section, and section 101(a)(2) of this Act. For the purposes of paragraph (9), "primary or equivalent treatment" means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biological oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of paragraph (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters. In order for a permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish, and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish, and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition

contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge. Notwithstanding any other provisions of this subsection, no permit may be issued under this subsection for discharge of a pollutant into the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

(b) Section 301(j)(1) of the Clean Water Act provides that:

Any application filed under this section for a modification of the provisions of—

(A) subsection (b)(1)(B) under subsection (h) of this section shall be filed not later than the 365th day which begins after the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, except that a publicly owned treatment works which prior to December 31, 1982, had a contractual arrangement to use a portion of the capacity of an ocean outfall operated by another publicly owned treatment works which has applied for or received modification under subsection (h) may apply for a modification of subsection (h) in its own right not later than 30 days after the date of the enactment of the Water Quality Act of 1987.

(c) Section 22(e) of the Municipal Wastewater Treatment Construction Grant Amendments of 1981, Public Law 97-117, provides that:

The amendments made by this section shall take effect on the date of enactment of this Act except that no applicant, other than the city of Avalon, California, who applies after the date of enactment of this Act for a permit pursuant to subsection (h) of section 301 of the Federal Water Pollution Control Act which modifies the requirements of subsection (b)(1)(B) of section 301 of such Act shall receive such permit during the one-year period which begins on the date of enactment of this Act.

(d) Section 303(b)(2) of the Water Quality Act, Public Law 100-4, provides that:

Section 301(h)(3) shall only apply to modifications and renewals of modifications which are tentatively or finally approved after the date of the enactment of this Act.

(e) Section 303(g) of the Water Quality Act provides that:

The amendments made to sections 301(h) and (h)(2), as well as provisions of (h)(6) and (h)(9), shall not apply to an application for a permit under section 301(h) of the Federal Water Pollution Control Act which has been tentatively or finally approved by the Administrator before the date of the enactment of this Act; except that such amendments shall apply to all renewals of such permits after such date of enactment.

§ 125.58 Definitions.

For the purpose of this subpart:

(a) *Administrator* means the EPA Administrator or a person designated by the EPA Administrator.

(b) *Altered discharge* means any discharge other than a current discharge or improved discharge, as defined in this regulation.

(c) *Applicant* means an applicant for a new or renewed section 301(h) modified permit. Large applicants have populations contributing to their POTWs equal to or more than 50,000 people or average dry weather flows of 5.0 million gallons per day (mgd) or more; small applicants have contributing populations of less than 50,000 people and average dry weather flows of less than 5.0 mgd. For the purposes of this definition the contributing population and flows shall be based on projections for the end of the five-year permit term. Average dry weather flows shall be the average daily total discharge flows for the maximum month of the dry weather season.

(d) *Application* means a final application previously submitted in accordance with the June 15, 1979, section 301(h) regulations (44 FR 34784); an application submitted between December 29, 1981, and December 29, 1982; or a section 301(h) renewal application submitted in accordance with these regulations. It does not include a preliminary application submitted in accordance with the June 15, 1979, section 301(h) regulations.

(e) *Application questionnaire* means EPA's "Applicant Questionnaire for Modification of Secondary Treatment Requirements," published as an appendix to this subpart.

(f) *Balanced indigenous population* means an ecological community which:

(1) Exhibits characteristics similar to those of nearby, healthy communities existing under comparable but unpolluted environmental conditions; or

(2) May reasonably be expected to become re-established in the polluted water body segment from adjacent waters if sources of pollution were removed.

(g) *Categorical pretreatment standard* means a standard promulgated by EPA under 40 CFR Chapter I, Subchapter N.

(h) *Current discharge* means the volume, composition, and location of an applicant's discharge at the time of permit application.

(i) *Improved discharge* means the volume, composition, and location of an applicant's discharge following:

(1) Construction of planned outfall improvements, including, without limitation, outfall relocation, outfall repair, or diffuser modification; or

(2) Construction of planned treatment system improvements to treatment levels or discharge characteristics; or

(3) Implementation of a planned program to improve operation and maintenance of an existing treatment system or to eliminate or control the introduction of pollutants into the applicant's treatment works.

(j) *Industrial discharger or industrial source* means any source of nondomestic pollutants regulated under section 307(b) or (c) of the Clean Water Act which discharges into a POTW.

(k) *Modified discharge* means the volume, composition, and location of the discharge proposed by the applicant for which a modification under section 301(h) of the Act is requested. A modified discharge may be a current discharge, improved discharge, or altered discharge.

(l) *New York Bight Apex* means the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and northward of 40 degrees 10 minutes north latitude.

(m) *Nonindustrial source* means any source of pollutants which is not an industrial source.

(n) *Ocean waters* means those coastal waters landward of the baseline of the territorial seas, the deep waters of the territorial seas, or the waters of the contiguous zone. The term "ocean waters" excludes saline estuarine waters.

(o) *Permittee* means an NPDES permittee with an effective section 301(h) modified permit.

(p) *Pesticides* means demeton, guthion, malathion, mirex, methoxychlor, and parathion.

(q) *Pretreatment* means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical, or biological processes, process changes, or by other means, except as prohibited by 40 CFR part 403.

(r) *Primary or equivalent treatment* for the purposes of this subpart means treatment by screening, sedimentation, and skimming adequate to remove at least 30 percent of the biochemical oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate.

(s) *Public water supplies* means water distributed from a public water system.

(t) *Public water system* means a system for the provision to the public of piped water for human consumption, if

such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. This term includes: (1) Any collection, treatment, storage, and distribution facilities under the control of the operator of the system and used primarily in connection with the system, and (2) Any collection or pretreatment storage facilities not under the control of the operator of the system which are used primarily in connection with the system.

(u) *Publicly owned treatment works or POTW* means a treatment works, as defined in section 212(2) of the Act, which is owned by a State, municipality, or intermunicipal or interstate agency.

(v) *Saline estuarine waters* means those semi-enclosed coastal waters which have a free connection to the territorial sea, undergo net seaward exchange with ocean waters, and have salinities comparable to those of the ocean. Generally, these waters are near the mouth of estuaries and have cross-sectional annual mean salinities greater than twenty-five (25) parts per thousand.

(w) *Secondary removal equivalency* means that the amount of a toxic pollutant removed by the combination of the applicant's own treatment of its influent and pretreatment by its industrial users is equal to or greater than the amount of the toxic pollutant that would be removed if the applicant were to apply secondary treatment to its discharge where the discharge has not undergone pretreatment by the applicant's industrial users.

(x) *Secondary treatment* means the term as defined in 40 CFR part 133.

(y) *Shellfish, fish, and wildlife* means any biological population or community that might be adversely affected by the applicant's modified discharge.

(z) *Stressed waters* means those ocean waters for which an applicant can demonstrate to the satisfaction of the Administrator, that the absence of a balanced indigenous population is caused solely by human perturbations other than the applicant's modified discharge.

(aa) *Toxic pollutants* means those substances listed in 40 CFR 401.15.

(bb) *Water quality criteria* means scientific data and guidance developed and periodically updated by EPA under section 304(a)(1) of the Clean Water Act, which are applicable to marine waters.

(cc) *Water quality standards* means applicable water quality standards which have been approved, left in effect, or promulgated under section 303 of the Clean Water Act.

(dd) *Zone of initial dilution (ZID)* means the region of initial mixing surrounding or adjacent to the end of the outfall pipe or diffuser ports, provided that the ZID may not be larger than allowed by mixing zone restrictions in applicable water quality standards.

§ 125.59 General.

(a) *Basis for application.* An application under this subpart shall be based on a current, improved, or altered discharge into ocean waters or saline estuarine waters.

(b) *Prohibitions.* No section 301(h) modified permit shall be issued:

(1) Where such issuance would not assure compliance with all applicable requirements of this subpart and part 122;

(2) For the discharge of sewage sludge;

(3) Where such issuance would conflict with applicable provisions of State, local, or other Federal laws or Executive Orders. This includes compliance with the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 *et seq.*; the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*; and Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*;

(4) Where the discharge of any pollutant enters into saline estuarine waters which at the time of application do not support a balanced indigenous population of shellfish, fish, and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish, fish, and wildlife or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge; or

(5) Where the discharge of any pollutant is into the New York Bight Apex.

(c) *Applications.* Each applicant for a modified permit under this subpart shall submit an application to EPA signed in compliance with 40 CFR part 122, subpart B, which shall contain:

(1) A signed, completed NPDES Application Standard form A, parts I, II, III;

(2) A completed Application Questionnaire;

(3) The certification in accordance with 40 CFR 122.22(d);

(4) In addition to the requirements of § 125.59(c) (1) through (3), applicants for permit renewal shall support continuation of the modification by supplying to EPA the results of studies and monitoring performed in accordance with § 125.63 during the life of the permit. Upon a demonstration meeting the statutory criteria and requirements of this subpart, the permit may be renewed under the applicable procedures of 40 CFR part 124.

(d) *Revisions to applications.* (1) POTWs which submitted applications in accordance with the June 15, 1979, regulations (44 FR 34784) may revise their applications one time following a tentative decision to propose changes to treatment levels and/or outfall and diffuser location and design in accordance with § 125.59(f)(2)(i); and

(2) Other applicants may revise their applications one time following a tentative decision to propose changes to treatment levels and/or outfall and diffuser location and design in accordance with § 125.59(f)(2)(i). Revisions by such applicants which propose downgrading treatment levels and/or outfall and diffuser location and design must be justified on the basis of substantial changes in circumstances beyond the applicant's control since the time of application submission.

(3) Applicants authorized or requested to submit additional information under § 125.59(g) may submit a revised application in accordance with § 125.59(f)(2)(ii) where such additional information supports changes in proposed treatment levels and/or outfall location and diffuser design. The opportunity for such revision shall be in addition to the one-time revision allowed under § 125.59(d) (1) and (2).

(4) POTWs which revise their applications must:

(i) Modify their NPDES form and Application Questionnaire as needed to ensure that the information filed with their application is correct and complete;

(ii) Provide additional analysis and data as needed to demonstrate compliance with this subpart;

(iii) Obtain new State determinations under §§ 125.61(b)(2) and 125.64(b); and

(iv) Provide the certification described in paragraph (c)(3) of this section.

(5) Applications for permit renewal may not be revised.

(e) *Submission of additional information to demonstrate compliance with §§ 125.60 and 125.65.* (1) On or before the deadline established in paragraph (f)(3) of this section,

applicants shall submit a letter of intent to demonstrate compliance with §§ 125.60 and 125.65. The letter of intent is subject to approval by the Administrator based on the requirements of this paragraph and paragraph (f)(3) of this section. The letter of intent shall consist of the following:

(i) For compliance with § 125.60: (A) A description of the proposed treatment system which upgrades treatment to satisfy the requirements of § 125.60.

(B) A project plan, including a schedule for data collection and for achieving compliance with § 125.60. The project plan shall include dates for design and construction of necessary facilities, submittal of influent/effluent data, and submittal of any other information necessary to demonstrate compliance with § 125.60. The Administrator will review the project plan and may require revisions prior to authorizing submission of the additional information.

(ii) For compliance with § 125.65: (A) A determination of what approach will be used to achieve compliance with § 125.65.

(B) A project plan for achieving compliance. The project plan shall include any necessary data collection activities, submittal of additional information, and/or development of appropriate pretreatment limits to demonstrate compliance with § 125.65. The Administrator will review the project plan and may require revisions prior to submission of the additional information.

(iii) POTWs which submit additional information must:

(A) Modify their NPDES form and Application Questionnaire as needed to ensure that the information filed with their application is correct and complete;

(B) Obtain new State determinations under §§ 125.61(b)(2) and 125.64(b); and

(C) Provide the certification described in paragraph (c)(3) of this section.

(2) The information required under this paragraph must be submitted in accordance with the schedules in § 125.59(f)(3)(ii). If the applicant does not meet these schedules for compliance, EPA may deny the application on that basis.

(f) *Deadlines and distribution.*—(1) *Applications.*—(i) The application for an original 301(h) permit for POTWs which directly discharges effluent into saline waters shall be submitted to the appropriate EPA Regional Administrator no later than December 29, 1982.

(ii) The application for renewal of a 301(h) modified permit shall be submitted no less than 180 days prior to

the expiration of the existing permit, unless permission for a later date has been granted by the Administrator. (The Administrator shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

(iii) A copy of the application shall be provided to the State and interstate agency(s) authorized to provide certification/concurrence under §§ 124.53 through 124.55 on or before the date the application is submitted to EPA.

(2) *Revisions to Applications.* (i) Applicants desiring to revise their applications under § 125.59 (d)(1) or (d)(2) must:

(A) Submit to the appropriate Regional Administrator a letter of intent to revise their application either within 45 days of the date of EPA's tentative decision on their original application or within 45 days of November 26, 1982, whichever is later. Following receipt by EPA of a letter of intent, further EPA proceedings on the tentative decision under 40 CFR part 124 will be stayed.

(B) Submit the revised application as described for new applications in § 125.59(f)(1) either within one year of the date of EPA's tentative decision on their original application or within one year of November 26, 1982, if a tentative decision has already been made, whichever is later.

(ii) Applicants desiring to revise their applications under § 125.59(d)(3) must submit the revised application as described for new applications in § 125.59(f)(1) concurrent with submission of the additional information under § 125.59(g).

(3) Deadline for additional information to demonstrate compliance with §§ 125.60 and 125.65.

(i) A letter of intent required under § 125.59(e)(1) must be submitted by the following dates: for permittees with 301(h) modifications or for applicants to which a tentative or final decision has been issued, November 7, 1994; for all others, within 90 days after the Administrator issues a tentative decision on an application. Following receipt by EPA of a letter of intent containing the information required in § 125.59(e)(1), further EPA proceedings on the tentative decision under 40 CFR part 124 will be stayed.

(ii) The project plan submitted under § 125.59(e)(1) shall ensure that the applicant meets all the requirements of §§ 125.60 and 125.65 by the following deadlines:

(A) By August 9, 1996 for applicants that are not grandfathered under § 125.59(j).

(B) At the time of permit renewal or by August 9, 1996, whichever is later, for applicants that are grandfathered under § 125.59(j).

(4) *State determination deadline.* State determinations, as required by §§ 125.61(b)(2) and 125.64(b) shall be filed by the applicant with the appropriate Regional Administrator no later than 90 days after submission of the revision to the application or additional information to EPA. Extensions to this deadline may be provided by EPA upon request.

However, EPA will not begin review of the revision to the application or additional information until a favorable State determination is received by EPA. Failure to provide the State determination within the timeframe required by this paragraph (f)(4) is a basis for denial of the application.

(g)(1) The Administrator may authorize or request an applicant to submit additional information by a specified date not to exceed one year from the date of authorization or request.

(2) Applicants seeking authorization to submit additional information on current/modified discharge characteristics, water quality, biological conditions or oceanographic characteristics must:

(i) Demonstrate that they made a diligent effort to provide such information with their application and were unable to do so; and

(ii) Submit a plan of study, including a schedule, for data collection and submittal of the additional information. EPA will review the plan of study and may require revisions prior to authorizing submission of the additional information.

(h) *Tentative decisions on section 301(h) modifications.* The Administrator shall grant a tentative approval or a tentative denial of a section 301(h) modified permit application. To qualify for a tentative approval, the applicant shall demonstrate to the satisfaction of the Administrator that it is using good faith means to come into compliance with all the requirements of this subpart and that it will meet all such requirements based on a schedule approved by the Administrator. For compliance with §§ 125.60 and 125.65, such schedule shall be in accordance with § 125.59(f)(3)(ii).

(i) *Decisions on section 301(h) modifications.* (1) The decision to grant or deny a section 301(h) modification shall be made by the Administrator and shall be based on the applicant's demonstration that it has met all the requirements of §§ 125.59 through 125.68.

(2) No section 301(h) modified permit shall be issued until the appropriate State certification/concurrence is granted or waived pursuant to § 124.54 or if the State denies certification/concurrence pursuant to § 124.54.

(3) In the case of a modification issued to an applicant in a State administering an approved permit program under 40 CFR part 123, the State Director may:

(i) Revoke an existing permit as of the effective date of the EPA issued section 301(h) modified permit; and

(ii) Cosign the section 301(h) modified permit if the Director has indicated an intent to do so in the written concurrence.

(4) Any section 301(h) modified permit shall:

(i) Be issued in accordance with the procedures set forth in 40 CFR part 124, except that, because section 301(h) permits may be issued only by EPA, the terms "Administrator or a person designated by the Administrator" shall be substituted for the term "Director" as appropriate; and

(ii) Contain all applicable terms and conditions set forth in 40 CFR part 122 and § 125.68.

(5) Appeals of section 301(h) determinations shall be governed by the procedures in 40 CFR part 124.

(j) *Grandfathering provision.* Applicants that received tentative or final approval for a section 301(h) modified permit prior to February 4, 1987, are not subject to § 125.60, the water quality criteria provisions of § 125.62(a)(1), or § 125.65 until the time of permit renewal. In addition, if permit renewal will occur prior to August 9, 1996, applicants may have additional time to come into compliance with §§ 125.60 and 125.65, as determined appropriate by EPA on a case-by-case basis. Such additional time, however, shall not extend beyond August 9, 1996. This paragraph does not apply to any application that was initially tentatively approved, but as to which EPA withdrew its tentative approval or issued a tentative denial prior to February 4, 1987.

§ 125.60 Primary or equivalent treatment requirements.

(a) The applicant shall demonstrate that, at the time its modification becomes effective, it will be discharging effluent that has received at least primary or equivalent treatment.

(b) The applicant shall perform monitoring to ensure, based on the monthly average results of the monitoring, that the effluent it discharges has received primary or equivalent treatment.

(c)(1) An applicant may request that the demonstration of compliance with the requirement under § 125.60(b) to provide 30 percent removal of BOD be allowed on an averaging basis different from monthly (e.g., quarterly), subject to the demonstrations provided in paragraph (c)(2) of this section. If, however, the applicant has demonstrated an ability to achieve 30 percent removal of BOD on a monthly average basis over the calendar year prior to August 9, 1994, the applicant shall not be eligible for an averaging basis longer than monthly.

(2) If the Administrator is satisfied that the applicant has met the eligibility requirement of paragraph (c)(1) of this section, the Administrator may approve such requests if the applicant demonstrates to the Administrator's satisfaction that:

(i) The applicant's POTW is adequately designed and well operated;

(ii) The applicant will be able to meet all requirements under section 301(h) of the CWA and these subpart C regulations with the averaging basis selected; and

(iii) The applicant cannot achieve 30 percent removal on a monthly average basis because of circumstances beyond the applicant's control. Circumstances beyond the applicant's control may include seasonally dilute influent BOD concentrations due to relatively high (although nonexcessive) inflow and infiltration; relatively high soluble to insoluble BOD ratios on a fluctuating basis; or cold climates resulting in cold influent. Circumstances beyond the applicant's control shall not include less concentrated wastewater due to excessive inflow and infiltration (I&I). The determination of whether the less concentrated wastewater is the result of excessive I&I will be based on the definition of excessive I&I in 40 CFR 35.2005(b)(16) plus the additional criterion that inflow is nonexcessive if the total flow to the POTW (i.e., wastewater plus inflow plus infiltration) is less than 275 gallons per capita per day.

(3) In no event shall averaging on a less frequent basis than annually be allowed.

§ 125.61 Existence of and compliance with applicable water quality standards.

(a) There must exist a water quality standard or standards applicable to the pollutant(s) for which a section 301(h) modified permit is requested, including:

(1) Water quality standards for biochemical oxygen demand or dissolved oxygen;

(2) Water quality standards for suspended solids, turbidity, light

transmission, light scattering, or maintenance of the euphotic zone; and

(3) Water quality standards for pH.

(b) The applicant must: (1) Demonstrate that the modified discharge will comply with the above water quality standard(s); and

(2) Provide a determination signed by the State or interstate agency(s) authorized to provide certification under §§ 124.53 and 124.54 that the proposed modified discharge will comply with applicable provisions of State law including water quality standards. This determination shall include a discussion of the basis for the conclusion reached.

§ 125.62 Attainment or maintenance of water quality which assures protection of public water supplies; assures the protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife; and allows recreational activities.

(a) *Physical characteristics of discharge.* (1) At the time the 301(h) modification becomes effective, the applicant's outfall and diffuser must be located and designed to provide adequate initial dilution, dispersion, and transport of wastewater such that the discharge does not exceed at and beyond the zone of initial dilution:

(i) All applicable water quality standards; and

(ii) All applicable EPA water quality criteria for pollutants for which there is no applicable EPA-approved water quality standard that directly corresponds to the EPA water quality criterion for the pollutant.

(iii) For purposes of paragraph (a)(1)(ii) of this section, a State water quality standard "directly corresponds" to an EPA water quality criterion only if:

(A) The State water quality standard addresses the same pollutant as the EPA water quality criterion and

(B) The State water quality standard specifies a numeric criterion for that pollutant or State objective methodology for deriving such a numeric criterion.

(iv) The evaluation of compliance with paragraphs (a)(1)(i) and (ii) of this section shall be based upon conditions reflecting periods of maximum stratification and during other periods when discharge characteristics, water quality, biological seasons, or oceanographic conditions indicate more critical situations may exist.

(2) The evaluation under paragraph (a)(1)(ii) of this section as to compliance with applicable section 304(a)(1) water quality criteria shall be based on the following:

(i) *For aquatic life criteria:* The pollutant concentrations that must not

be exceeded are the numeric ambient values, if any, specified in the EPA section 304(a)(1) water quality criteria documents as the concentrations at which acute and chronic toxicity to aquatic life occurs or that are otherwise identified as the criteria to protect aquatic life.

(ii) *For human health criteria for carcinogens:* (A) For a known or suspected carcinogen, the Administrator shall determine the pollutant concentration that shall not be exceeded. To make this determination, the Administrator shall first determine a level of risk associated with the pollutant that is acceptable for purposes of this section. The Administrator shall then use the information in the section 304(a)(1) water quality criterion document, supplemented by all other relevant information, to determine the specific pollutant concentration that corresponds to the identified risk level.

(B) For purposes of paragraph (a)(2)(ii)(A) of this section, an acceptable risk level will be a single level that has been consistently used, as determined by the Administrator, as the basis of the State's EPA-approved water quality standards for carcinogenic pollutants. Alternatively, the Administrator may consider a State's recommendation to use a risk level that has been otherwise adopted or formally proposed by the State. The State recommendation must demonstrate, to the satisfaction of the Administrator, that the recommended level is sufficiently protective of human health in light of the exposure and uncertainty factors associated with the estimate of the actual risk posed by the applicant's discharge. The State must include with its demonstration a showing that the risk level selected is based on the best information available and that the State has held a public hearing to review the selection of the risk level, in accordance with provisions of State law and public participation requirements of 40 CFR part 25. If the Administrator neither determines that there is a consistently used single risk level nor accepts a risk level recommended by the State, then the Administrator shall otherwise determine an acceptable risk level based on all relevant information.

(iii) *For human health criteria for noncarcinogens:* For noncarcinogenic pollutants, the pollutant concentrations that must not be exceeded are the numeric ambient values, if any, specified in the EPA section 304(a)(1) water quality criteria documents as protective against the potential toxicity of the contaminant through ingestion of contaminated aquatic organisms.

(3) The requirements of paragraphs (a)(1) and (a)(2) of this section apply in addition to, and do not waive or substitute for, the requirements of § 125.61.

(b) *Impact of discharge on public water supplies.* (1) The applicant's modified discharge must allow for the attainment or maintenance of water quality which assures protection of public water supplies.

(2) The applicant's modified discharge must not:

(i) Prevent a planned or existing public water supply from being used, or from continuing to be used, as a public water supply; or

(ii) Have the effect of requiring treatment over and above that which would be necessary in the absence of such discharge in order to comply with local and EPA drinking water standards.

(c) *Biological impact of discharge.* (1) The applicant's modified discharge must allow for the attainment or maintenance of water quality which assures protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

(2) A balanced indigenous population of shellfish, fish, and wildlife must exist:

(i) Immediately beyond the zone of initial dilution of the applicant's modified discharge; and

(ii) In all other areas beyond the zone of initial dilution where marine life is actually or potentially affected by the applicant's modified discharge.

(3) Conditions within the zone of initial dilution must not contribute to extreme adverse biological impacts, including, but not limited to, the destruction of distinctive habitats of limited distribution, the presence of disease epicenter, or the stimulation of phytoplankton blooms which have adverse effects beyond the zone of initial dilution.

(4) In addition, for modified discharges into saline estuarine water:

(i) Benthic populations within the zone of initial dilution must not differ substantially from the balanced indigenous populations which exist immediately beyond the boundary of the zone of initial dilution;

(ii) The discharge must not interfere with estuarine migratory pathways within the zone of initial dilution; and

(iii) The discharge must not result in the accumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within the zone of initial dilution.

(d) *Impact of discharge on recreational activities.* (1) The applicant's modified discharge must allow for the attainment or maintenance

of water quality which allows for recreational activities beyond the zone of initial dilution, including, without limitation, swimming, diving, boating, fishing, and picnicking, and sports activities along shorelines and beaches.

(2) There must be no Federal, State, or local restrictions on recreational activities within the vicinity of the applicant's modified outfall unless such restrictions are routinely imposed around sewage outfalls. This exception shall not apply where the restriction would be lifted or modified, in whole or in part, if the applicant were discharging a secondary treatment effluent.

(e) *Additional requirements for applications based on improved or altered discharges.* An application for a section 301(h) modified permit on the basis of an improved or altered discharge must include:

(1) A demonstration that such improvements or alterations have been thoroughly planned and studied and can be completed or implemented expeditiously;

(2) Detailed analyses projecting changes in average and maximum monthly flow rates and composition of the applicant's discharge which are expected to result from proposed improvements or alterations;

(3) The assessments required by paragraphs (a) through (d) of this section based on its current discharge; and

(4) A detailed analysis of how the applicant's planned improvements or alterations will comply with the requirements of paragraphs (a) through (d) of this section.

(f) *Stressed waters.* An applicant must demonstrate compliance with paragraphs (a) through (e) of this section not only on the basis of the applicant's own modified discharge, but also taking into account the applicant's modified discharge in combination with pollutants from other sources. However, if an applicant which discharges into ocean waters believes that its failure to meet the requirements of paragraphs (a) through (e) of this section is entirely attributable to conditions resulting from human perturbations other than its modified discharge (including, without limitation, other municipal or industrial discharges, nonpoint source runoff, and the applicant's previous discharges), the applicant need not demonstrate compliance with those requirements if it demonstrates, to the satisfaction of the Administrator, that its modified discharge does not or will not:

(1) Contribute to, increase, or perpetuate such stressed conditions;

(2) Contribute to further degradation of the biota or water quality if the level

of human perturbation from other sources increases; and

(3) Retard the recovery of the biota or water quality if the level of human perturbation from other sources decreases.

§ 125.63 Establishment of a monitoring program.

(a) *General requirements.* (1) The applicant must:

(i) Have a monitoring program that is:

(A) Designed to provide data to evaluate the impact of the modified discharge on the marine biota, demonstrate compliance with applicable water quality standards or water quality criteria, as applicable, and measure toxic substances in the discharge; and

(B) Limited to include only those scientific investigations necessary to study the effects of the proposed discharge;

(ii) Describe the sampling techniques, schedules and locations (including appropriate control sites), analytical techniques, quality control and verification procedures to be used in the monitoring program;

(iii) Demonstrate that it has the resources necessary to implement the program upon issuance of the modified permit and to carry it out for the life of the modified permit; and

(iv) Determine the frequency and extent of the monitoring program taking into consideration the applicant's rate of discharge, quantities of toxic pollutants discharged, and potentially significant impacts on receiving water quality, marine biota, and designated water uses.

(2) The Administrator may require revision of the proposed monitoring program before issuing a modified permit and during the term of any modified permit.

(b) *Biological monitoring program.* The biological monitoring program for both small and large applicants shall provide data adequate to evaluate the impact of the modified discharge on the marine biota.

(1) Biological monitoring shall include to the extent practicable:

(i) Periodic surveys of the biological communities and populations which are most likely affected by the discharge to enable comparisons with baseline conditions described in the application and verified by sampling at the control stations/reference sites during the periodic surveys;

(ii) Periodic determinations of the accumulation of toxic pollutants and pesticides in organisms and examination of adverse effects, such as disease, growth abnormalities, physiological stress, or death;

(iii) Sampling of sediments in areas of solids deposition in the vicinity of the ZID, in other areas of expected impact, and at appropriate reference sites to support the water quality and biological surveys and to measure the accumulation of toxic pollutants and pesticides; and

(iv) Where the discharge would affect commercial or recreational fisheries, periodic assessments of the conditions and productivity of fisheries.

(2) Small applicants are not subject to the requirements of paragraph (b)(1)(ii) through (iv) of this section if they discharge at depths greater than 10 meters and can demonstrate through a suspended solids deposition analysis that there will be negligible seabed accumulation in the vicinity of the modified discharge.

(3) For applicants seeking a section 301(h) modified permit based on:

(i) A current discharge, biological monitoring shall be designed to demonstrate ongoing compliance with the requirements of § 125.62(c);

(ii) An improved discharge or altered discharge other than outfall relocation, biological monitoring shall provide baseline data on the current impact of the discharge and data which demonstrate, upon completion of improvements or alterations, that the requirements of § 125.62(c) are met; or

(iii) An improved or altered discharge involving outfall relocation, the biological monitoring shall:

(A) Include the current discharge site until such discharge ceases; and

(B) Provide baseline data at the relocation site to demonstrate the impact of the discharge and to provide the basis for demonstrating that requirements of § 125.62(c) will be met.

(c) Water quality monitoring program. The water quality monitoring program shall to the extent practicable:

(1) Provide adequate data for evaluating compliance with water quality standards or water quality criteria, as applicable under § 125.62(a)(1);

(2) Measure the presence of toxic pollutants which have been identified or reasonably may be expected to be present in the discharge.

(d) Effluent monitoring program. (1) In addition to the requirements of 40 CFR part 122, to the extent practicable, monitoring of the POTW effluent shall provide quantitative and qualitative data which measure toxic substances and pesticides in the effluent and the effectiveness of the toxic control program.

(2) The permit shall require the collection of data on a frequency specified in the permit to provide

adequate data for evaluating compliance with the percent removal efficiency requirements under § 125.60.

§ 125.64 Effect of the discharge on other point and nonpoint sources.

(a) No modified discharge may result in any additional pollution control requirements on any other point or nonpoint source.

(b) The applicant shall obtain a determination from the State or interstate agency(s) having authority to establish wasteload allocations indicating whether the applicant's discharge will result in an additional treatment pollution control, or other requirement on any other point or nonpoint sources. The State determination shall include a discussion of the basis for its conclusion.

§ 125.65 Urban area pretreatment program.

(a) Scope and applicability. (1) The requirements of this section apply to each POTW serving a population of 50,000 or more that has one or more toxic pollutants introduced into the POTW by one or more industrial dischargers and that seeks a section 301(h) modification.

(2) The requirements of this section apply in addition to any applicable requirements of 40 CFR part 403, and do not waive or substitute for the part 403 requirements in any way.

(b) Toxic pollutant control. (1) As to each toxic pollutant introduced by an industrial discharger, each POTW subject to the requirements of this section shall demonstrate that it either:

(i) Has an applicable pretreatment requirement in effect in accordance with paragraph (c) of this section; or

(ii) Has in effect a program that achieves secondary removal equivalency in accordance with paragraph (d) of this section.

(2) Each applicant shall demonstrate that industrial sources introducing waste into the applicant's treatment works are in compliance with all applicable pretreatment requirements, including numerical standards set by local limits, and that it will enforce those requirements.

(c) Applicable pretreatment requirement. (1) An applicable pretreatment requirement under paragraph (b)(1)(i) of this section with respect to a toxic pollutant shall consist of the following:

(i) As to a toxic pollutant introduced into the applicant's treatment works by an industrial discharger for which there is no applicable categorical pretreatment standard for the toxic pollutant, a local limit or limits on the toxic pollutant as

necessary to satisfy the requirements of 40 CFR part 403; and

(ii) As to a toxic pollutant introduced into the applicant's treatment works by an industrial discharger that is subject to a categorical pretreatment standard for the toxic pollutant, the categorical standard and a local limit or limits as necessary to satisfy the requirements of 40 CFR part 403;

(iii) As to a toxic pollutant introduced into the applicant's treatment works by an industrial discharger for which there is no applicable categorical pretreatment standard for the toxic pollutant, and the 40 CFR part 403 analysis on the toxic pollutant shows that no local limit is necessary, the applicant shall demonstrate to EPA on an annual basis during the term of the permit through continued monitoring and appropriate technical review that a local limit is not necessary, and, where appropriate, require industrial management practices plans and other pollution prevention activities to reduce or control the discharge of each such pollutant by industrial dischargers to the POTW. If such monitoring and technical review of data indicate that a local limit is needed, the POTW shall establish and implement a local limit.

(2) Any local limits developed to meet the requirements of paragraphs (b)(1)(i) and (c)(1) of this section shall be:

(i) Consistent with all applicable requirements of 40 CFR part 403 and

(ii) Subject to approval by the Administrator as part of the 301(h) application review. The Administrator may require such local limits to be revised as necessary to meet the requirements of this section or 40 CFR part 403.

(d) Secondary removal equivalency. An applicant shall demonstrate that it achieves secondary removal equivalency through the use of a secondary treatment pilot (demonstration) plant at the applicant's facility which provides an empirical determination of the amount of a toxic pollutant removed by the application of secondary treatment to the applicant's influent where the applicant's influent has not been pretreated. Alternatively, an applicant may make this determination using influent that has received industrial pretreatment, notwithstanding the definition of secondary removal equivalency in § 125.58(w). The NPDES permit shall include effluent limits based on the data from the secondary equivalency demonstration when those limits are more stringent than effluent limits based on State water quality standards or water quality criteria, if applicable, or are otherwise required to assure that all

applicable environmental protection criteria are met. Once such effluent limits are established in the NPDES permit, the POTW may either establish local limits or perform additional treatment at the POTW or a combination of the two to achieve the permit limit.

§ 125.66 Toxics control program.

(a) *Chemical analysis.* (1) The applicant shall submit at the time of application a chemical analysis of its current discharge for all toxic pollutants and pesticides as defined in § 125.58(aa) and (p). The analysis shall be performed on two 24-hour composite samples (one dry weather and one wet weather). Applicants may supplement or substitute chemical analyses if composition of the supplemental or substitute samples typifies that which occurs during dry and wet weather conditions.

(2) Unless required by the State, this requirement shall not apply to any small section 301(h) applicant which certifies that there are no known or suspected sources of toxic pollutants or pesticides and documents the certification with an industrial user survey as described by 40 CFR 403.8(f)(2).

(b) *Identification of sources.* The applicant shall submit at the time of application an analysis of the known or suspected sources of toxic pollutants or pesticides identified in § 125.66(a). The applicant shall to the extent practicable categorize the sources according to industrial and nonindustrial types.

(c) *Industrial pretreatment requirements.* (1) An applicant that has known or suspected industrial sources of toxic pollutants shall have an approved pretreatment program in accordance with 40 CFR part 403.

(2) This requirement shall not apply to any applicant which has no known or suspected industrial sources of toxic pollutants or pesticides and so certifies to the Administrator.

(3) The pretreatment program submitted by the applicant under this section shall be subject to revision as required by the Administrator prior to issuing or renewing any section 301(h) modified permit and during the term of any such permit.

(4) Implementation of all existing pretreatment requirements and authorities must be maintained through the period of development of any additional pretreatment requirements that may be necessary to comply with the requirements of this subpart.

(d) *Nonindustrial source control program.* (1) The applicant shall submit a proposed public education program designed to minimize the entrance of nonindustrial toxic pollutants and

pesticides into its POTW(s) which shall be implemented no later than 18 months after issuance of a 301(h) modified permit.

(2) The applicant shall also develop and implement additional nonindustrial source control programs on the earliest possible schedule. This requirement shall not apply to a small applicant which certifies that there are no known or suspected water quality, sediment accumulation, or biological problems related to toxic pollutants or pesticides in its discharge.

(3) The applicant's nonindustrial source control programs under paragraph (d)(2) of this section shall include the following schedules which are to be implemented no later than 18 months after issuance of a section 301(h) modified permit:

(i) A schedule of activities for identifying nonindustrial sources of toxic pollutants and pesticides; and
(ii) A schedule for the development and implementation of control programs, to the extent practicable, for nonindustrial sources of toxic pollutants and pesticides.

(4) Each proposed nonindustrial source control program and/or schedule submitted by the applicant under this section shall be subject to revision as determined by the Administrator prior to issuing or renewing any section 301(h) modified permit and during the term of any such permit.

§ 125.67 Increase in effluent volume or amount of pollutants discharged.

(a) No modified discharge may result in any new or substantially increased discharges of the pollutant to which the modification applies above the discharge specified in the section 301(h) modified permit.

(b) Where pollutant discharges are attributable in part to combined sewer overflows, the applicant shall minimize existing overflows and prevent increases in the amount of pollutants discharged.

(c) The applicant shall provide projections of effluent volume and mass loadings for any pollutants to which the modification applies in 5-year increments for the design life of its facility.

§ 125.68 Special conditions for section 301(h) modified permits.

Each section 301(h) modified permit issued shall contain, in addition to all applicable terms and conditions required by 40 CFR part 122, the following:

(a) Effluent limitations and mass loadings which will assure compliance with the requirements of this subpart;

(b) A schedule or schedules of compliance for:

(1) Pretreatment program development required by § 125.66(c);

(2) Nonindustrial toxics control program required by § 125.66(d); and

(3) Control of combined sewer overflows required by § 125.67.

(c) Monitoring program requirements that include:

(1) Biomonitoring requirements of § 125.63(b);

(2) Water quality requirements of § 125.63(c);

(3) Effluent monitoring requirements of §§ 125.60(b), 125.62(c) and (d), and 125.63(d).

(d) Reporting requirements that include the results of the monitoring programs required by paragraph (c) of this section at such frequency as prescribed in the approved monitoring program.

Appendix to Subpart G—Applicant Questionnaire for Modification of Secondary Treatment Requirements

OMB Control Number 2040-0088 Expires on 2/28/96 Public reporting burden for this collection of information is estimated to average 1,295 - 19,552 hours per response, for small and large applicants, respectively. The reporting burden includes time for reviewing instructions, gathering data, including monitoring and toxics control activities, and completing and reviewing the questionnaire. Send comments regarding the burden estimate or any other aspect of this collection, including suggestions for reducing the burden, to Chief, Information Policy Branch, U.S. Environmental Protection Agency, 401 M St., SW (2136), Washington, DC 20460 and Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for EPA, Washington, DC 20503.

I. Introduction

1. This questionnaire is to be submitted by both small and large applicants for modification of secondary treatment requirements under section 301(h) of the Clean Water Act (CWA). A small applicant is defined as a POTW that has a contributing population to its wastewater treatment facility of less than 50,000 and a projected average dry weather flow of less than 5.0 million gallons per day (mgd, 0.22 cubic meters/sec) [40 CFR 125.58(c)]. A large applicant is defined as a POTW that has a population contributing to its wastewater treatment facility of at least 50,000 or a projected average dry weather flow of its discharge of at least 5.0 million gallons per day (mgd, 0.22 cubic meters/sec) [40 CFR 125.58(c)]. The questionnaire is in two sections, a general information and basic requirements section (part II) and a technical evaluation section (part III). Satisfactory completion by small and large dischargers of the appropriate questions of this questionnaire is necessary to enable EPA to determine whether the applicant's modified discharge meets the criteria of section 301(h)

and EPA regulations (40 CFR part 125, subpart G).

2. Most small applicants should be able to complete the questionnaire using available information. However, small POTWs with low initial dilution discharging into shallow waters or waters with poor dispersion and transport characteristics, discharging near distinctive and susceptible biological habitats, or discharging substantial quantities of toxics should anticipate the need to collect additional information and/or conduct additional analyses to demonstrate compliance with section 301(h) criteria. If there are questions in this regard, applicants should contact the appropriate EPA Regional Office for guidance.

3. Guidance for responding to this questionnaire is provided by the newly amended section 301(h) technical support document. Where available information is incomplete and the applicant needs to collect additional data during the period it is preparing the application or a letter of intent, EPA encourages the applicant to consult with EPA prior to data collection and submission. Such consultation, particularly if the applicant provides a project plan, will help ensure that the proper data are gathered in the most efficient manner.

4. The notation (L) means large applicants must respond to the question, and (S) means small applicants must respond.

II. General Information and Basic Data Requirements

A. Treatment System Description

1. (L,S) On which of the following are you basing your application: a current discharge, improved discharge, or altered discharge, as defined in 40 CFR 125.58? [40 CFR 125.59(a)]

2. (L,S) Description of the Treatment/Outfall System [40 CFR 125.62(a) and 125.62(e)]

a. Provide detailed descriptions and diagrams of the treatment system and outfall configuration which you propose to satisfy the requirements of section 301(h) and 40 CFR part 125, subpart G. What is the total discharge design flow upon which this application is based?

b. Provide a map showing the geographic location of proposed outfall(s) (i.e., discharge). What is the latitude and longitude of the proposed outfall(s)?

c. For a modification based on an improved or altered discharge, provide a description and diagram of your current treatment system and outfall configuration. Include the current outfall's latitude and longitude, if different from the proposed outfall.

3. (L,S) Primary or equivalent treatment requirements [40 CFR 125.60]

a. Provide data to demonstrate that your effluent meets at least primary or equivalent treatment requirements as defined in 40 CFR 125.58(r) [40 CFR 125.60]

b. If your effluent does not meet the primary or equivalent treatment requirements, when do you plan to meet them? Provide a detailed schedule, including design, construction, start-up and full operation, with your application. This requirement must be met by the effective date of the new section 301(h) modified permit.

4. (L,S) Effluent Limitations and Characteristics [40 CFR 125.61(b) and 125.62(e)(2)]

a. Identify the final effluent limitations for five-day biochemical oxygen demand (BOD₅), suspended solids, and pH upon which your application for a modification is based:

- BOD₅ _____ mg/L
- Suspended solids _____ mg/L
- pH _____ (range)

b. Provide data on the following effluent characteristics for your current discharge as well as for the modified discharge if different from the current discharge:

Flow (m³/sec):

- minimum
- average dry weather
- average wet weather
- maximum
- annual average

BOD₅ (mg/L) for the following plant flows:

- minimum
- average dry weather
- average wet weather
- maximum
- annual average

Suspended solids (mg/L) for the following plant flows:

- minimum
- average dry weather
- average wet weather
- maximum
- annual average

Toxic pollutants and pesticides (ug/L):

- list each toxic pollutant and pesticide
- list each 304(a)(1) criteria and toxic pollutant and pesticide

pH:

- minimum
- maximum

Dissolved oxygen (mg/L, prior to chlorination) for the following plant flows:

- minimum
- average dry weather
- average wet weather
- maximum
- annual average

Immediate dissolved oxygen demand (mg/L).

5. (L,S) Effluent Volume and Mass Emissions [40 CFR 125.62(e)(2) and 125.67]

a. Provide detailed analyses showing projections of effluent volume (annual average, m³/sec) and mass loadings (mt/yr) of BOD₅ and suspended solids for the design life of your treatment facility in five-year increments. If the application is based upon an improved or altered discharge, the projections must be provided with and without the proposed improvements or alterations.

b. Provide projections for the end of your five-year permit term for 1) the treatment facility contributing population and 2) the average daily total discharge flow for the maximum month of the dry weather season.

6. (L,S) Average Daily Industrial Flow (m³/sec). Provide or estimate the average daily industrial inflow to your treatment facility for the same time increments as in question II.A.5 above. [40 CFR 125.66]

7. (L,S) Combined Sewer Overflows [40 CFR 125.67(b)]

a. Does (will) your treatment and collection system include combined sewer overflows?

b. If yes, provide a description of your plan for minimizing combined sewer overflows to the receiving water.

8. (L,S) Outfall/Diffuser Design. Provide the following data for your current discharge as well as for the modified discharge, if different from the current discharge: [40 CFR 125.62(a)(1)]

- Diameter and length of the outfall(s) (meters)
- Diameter and length of the diffuser(s) (meters)
- Angle(s) of port orientation(s) from horizontal (degrees)
- Port diameter(s) (meters)
- Orifice contraction coefficient(s), if known
- Vertical distance from mean lower low water (or mean low water) surface and outfall port(s) centerline (meters)
- Number of ports
- Port spacing (meters)
- Design flow rate for each port, if multiple ports are used (m³/sec)

B. Receiving Water Description

1. (L,S) Are you applying for a modification based on a discharge to the ocean [40 CFR 125.58(a)] or to a saline estuary [40 CFR 125.58(v)]? [40 CFR 125.59(a)]

2. (L,S) Is your current discharge or modified discharge to stressed waters as defined in 40 CFR 125.58(z)? If yes, what are the pollution sources contributing to the stress? [40 CFR 125.59(b)(4) and 125.62(f)]

3. (L,S) Provide a description and data on the seasonal circulation patterns in the vicinity of your current and modified discharge(s). [40 CFR 125.62(a)]

4. (L) Oceanographic conditions in the vicinity of the current and proposed modified discharge(s). Provide data on the following: [40 CFR 125.62(a)]

- Lowest ten percentile current speed (m/sec)
- Predominant current speed (m/sec) and direction (true) during the four seasons
- Period(s) of maximum stratification (months)
- Period(s) of natural upwelling events (duration and frequency, months)
- Density profiles during period(s) of maximum stratification

5. (L,S) Do the receiving waters for your discharge contain significant amounts of effluent previously discharged from the treatment works for which you are applying for a section 301(h) modified permit? [40 CFR 125.57(a)(9)]

6. Ambient water quality conditions during the period(s) of maximum stratification: at the zone of initial dilution (ZID) boundary, at other areas of potential impact, and at control stations. [40 CFR 125.62(a)]

a. (L) Provide profiles (with depth) on the following for the current discharge location and for the modified discharge location, if different from the current discharge:

- BOD₅ (mg/L)
- Dissolved oxygen (mg/L)
- Suspended solids (mg/L)
- pH
- Temperature (°C)

- Salinity (ppt)
- Transparency (turbidity, percent light transmittance)
- Other significant variables (e.g., nutrients, 304(a)(1) criteria and toxic pollutants and pesticides, fecal coliform bacteria)

b. (S) Provide available data on the following in the vicinity of the current discharge location and for the modified discharge location, if different from the current discharge: [40 CFR 125.61(b)(1)]

- Dissolved oxygen (mg/L)
- Suspended solids (mg/L)
- pH
- Temperature (°C)
- Salinity (ppt)
- Transparency (turbidity, percent light transmittance)
- Other significant variables (e.g., nutrients, 304(a)(1) criteria and toxic pollutants and pesticides, fecal coliform bacteria)

c. (L,S) Are there other periods when receiving water quality conditions may be more critical than the period(s) of maximum stratification? If so, describe these and other critical periods and data requested in 6.a. for the other critical period(s). [40 CFR 125.62(a)(1)].

7. (L) Provide data on steady state sediment dissolved oxygen demand and dissolved oxygen demand due to resuspension of sediments in the vicinity of your current and modified discharge(s) (mg/L/day).

C. Biological Conditions

1. (L) Provide a detailed description of representative biological communities (e.g., plankton, macrobenthos, demersal fish, etc.) in the vicinity of your current and modified discharge(s): within the ZID, at the ZID boundary, at other areas of potential discharge-related impact, and at reference (control) sites. Community characteristics to be described shall include (but not be limited to) species composition; abundance; dominance and diversity; spatial/temporal distribution; growth and reproduction; disease frequency; trophic structure and productivity patterns; presence of opportunistic species; bioaccumulation of toxic materials; and the occurrence of mass mortalities.

2. (L,S)a. Are distinctive habitats of limited distribution (such as kelp beds or coral reefs) located in areas potentially affected by the modified discharge? [40 CFR 125.62(c)]

b. If yes, provide information on type, extent, and location of habitats.

3. (L,S)a. Are commercial or recreational fisheries located in areas potentially affected by the discharge? [40 CFR 125.62(c) and (d)]

b. If yes, provide information on types, location, and value of fisheries.

D. State and Federal Laws [40 CFR 125.61 and 125.62(a)(1)]

1. (L,S) Are there water quality standards applicable to the following pollutants for which a modification is requested:

- Biochemical oxygen demand or dissolved oxygen?
- Suspended solids, turbidity, light transmission, light scattering, or maintenance of the euphotic zone?
- pH of the receiving water?

2. (L,S) If yes, what is the water use classification for your discharge area? What are the applicable standards for your discharge area for each of the parameters for which a modification is requested? Provide a copy of all applicable water quality standards or a citation to where they can be found.

3. (L,S) Will the modified discharge: [40 CFR 125.59(b)(3)].

—Be consistent with applicable State coastal zone management program(s) approved under the Coastal Zone Management Act as amended, 16 U.S.C. 1451 et seq.? [See 16 U.S.C. 1456(c)(3)(A)]

—Be located in a marine sanctuary designated under Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA) as amended, 16 U.S.C. 1431 et seq., or in an estuarine sanctuary designated under the Coastal Zone Management Act as amended, 16 U.S.C. 1461? If located in a marine sanctuary designated under Title III of the MPRSA, attach a copy of any certification or permit required under regulations governing such marine sanctuary. [See 16 U.S.C. 1432(f)(2)]

—Be consistent with the Endangered Species Act as amended, 16 U.S.C. 1531 et seq.? Provide the names of any threatened or endangered species that inhabit or obtain nutrients from waters that may be affected by the modified discharge. Identify any critical habitat that may be affected by the modified discharge and evaluate whether the modified discharge will affect threatened or endangered species or modify a critical habitat. [See 16 U.S.C. 1536(a)(2)].

4. (L,S) Are you aware of any State or Federal laws or regulations (other than the Clean Water Act or the three statutes identified in Item 3 above) or an Executive Order which is applicable to your discharge? If yes, provide sufficient information to demonstrate that your modified discharge will comply with such law(s), regulation(s), or order(s). [40 CFR 125.59(b)(3)].

III. Technical Evaluation

A. Physical Characteristics of Discharge [40 CFR 125.62(a)]

1. (L,S) What is the critical initial dilution for your current and modified discharge(s) during (1) the period(s) of maximum stratification? and (2) any other critical period(s) of discharge volume/composition, water quality, biological seasons, or oceanographic conditions?

2. (L,S) What are the dimensions of the zone of initial dilution for your modified discharge(s)?

3. (L) What are the effects of ambient currents and stratification on dispersion and transport of the discharge plume/wastefield?

4. (S) Will there be significant sedimentation of suspended solids in the vicinity of the modified discharge?

5. (L) Sedimentation of suspended solids

a. What fraction of the modified discharge's suspended solids will accumulate within the vicinity of the modified discharge?

b. What are the calculated area(s) and rate(s) of sediment accumulation within the

vicinity of the modified discharge(s) (g/m²/yr)?

c. What is the fate of settleable solids transported beyond the calculated sediment accumulation area?

B. Compliance with Applicable Water Quality Standards and CWA §304(a)(1) water quality criteria [40 CFR 125.61(b) and 125.62(a)]

1. (L,S) What is the concentration of dissolved oxygen immediately following initial dilution for the period(s) of maximum stratification and any other critical period(s) of discharge volume/composition, water quality, biological seasons, or oceanographic conditions?

2. (L,S) What is the farfield dissolved oxygen depression and resulting concentration due to BOD exertion of the wastefield during the period(s) of maximum stratification and any other critical period(s)?

3. (L) What are the dissolved oxygen depressions and resulting concentrations near the bottom due to steady sediment demand and resuspension of sediments?

4. (L,S) What is the increase in receiving water suspended solids concentration immediately following initial dilution of the modified discharge(s)?

5. (L) What is the change in receiving water pH immediately following initial dilution of the modified discharge(s)?

6. (L,S) Does (will) the modified discharge comply with applicable water quality standards for:

- Dissolved oxygen?
- Suspended solids or surrogate standards?
- pH?

7. (L,S) Provide data to demonstrate that all applicable State water quality standards, and all applicable water quality criteria established under Section 304(a)(1) of the Clean Water Act for which there are no directly corresponding numerical applicable water quality standards approved by EPA, are met at and beyond the boundary of the ZID under critical environmental and treatment plant conditions in the waters surrounding or adjacent to the point at which your effluent is discharged. [40 CFR 125.62(a)(1)]

8. (L,S) Provide the determination required by 40 CFR 125.61(b)(2) for compliance with all applicable provisions of State law, including water quality standards or, if the determination has not yet been received, a copy of a letter to the appropriate agency(s) requesting the required determination.

C. Impact on Public Water Supplies [40 CFR 125.62(b)]

1. (L,S) Is there a planned or existing public water supply (desalination facility) intake in the vicinity of the current or modified discharge?

2. (L,S) If yes:

a. What is the location of the intake(s) (latitude and longitude)?

b. Will the modified discharge(s) prevent the use of intake(s) for public water supply?

c. Will the modified discharge(s) cause increased treatment requirements for public water supply(s) to meet local, State, and EPA drinking water standards?

D. Biological Impact of Discharge [40 CFR 125.62(c)]

1. (L,S) Does (will) a balanced indigenous population of shellfish, fish, and wildlife exist:

—Immediately beyond the ZID of the current and modified discharge(s)?

—In all other areas beyond the ZID where marine life is actually or potentially affected by the current and modified discharge(s)?

2. (L,S) Have distinctive habitats of limited distribution been impacted adversely by the current discharge and will such habitats be impacted adversely by the modified discharge?

3. (L,S) Have commercial or recreational fisheries been impacted adversely by the current discharge (e.g., warnings, restrictions, closures, or mass mortalities) or will they be impacted adversely by the modified discharge?

4. (L,S*) Does the current or modified discharge cause the following within or beyond the ZID: [40 CFR 125.62(c)(3)]

—Mass mortality of fishes or invertebrates due to oxygen depletion, high concentrations of toxics, or other conditions?

—An increased incidence of disease in marine organisms?

—An abnormal body burden of any toxic material in marine organisms?

—Any other extreme, adverse biological impacts?

5. (L,S) For discharges into saline estuarine waters: [40 CFR 125.62 (c)(4)]

—Does or will the current or modified discharge cause substantial differences in the benthic population within the ZID and beyond the ZID?

—Does or will the current or modified discharge interfere with migratory pathways within the ZID?

—Does or will the current or modified discharge result in bioaccumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within the ZID?

No section (h) modified permit shall be issued where the discharge enters into stressed saline estuarine waters as stated in 40 CFR 125.59(b)(4).

6. (L,S) For improved discharges, will the proposed improved discharge(s) comply with the requirements of 40 CFR 125.62(a) through 125.62(d)? [40 CFR 125.62(e)]

7. (L,S) For altered discharge(s), will the altered discharge(s) comply with the requirements of 40 CFR 125.62(a) through 125.62(d)? [40 CFR 125.62(e)]

8. (L,S) If your current discharge is to stressed ocean waters, does or will your current or modified discharge: [40 CFR 125.62(f)]

—Contribute to, increase, or perpetuate such stressed condition?

—Contribute to further degradation of the biota or water quality if the level of human perturbation from other sources increases?

—Retard the recovery of the biota or water quality if human perturbation from other sources decreases?

E. Impacts of Discharge on Recreational Activities [40 CFR 125.62(d)]

1. (L,S) Describe the existing or potential recreational activities likely to be affected by the modified discharge(s) beyond the zone of initial dilution.

2. (L,S) What are the existing and potential impacts of the modified discharge(s) on recreational activities? Your answer should include, but not be limited to, a discussion of fecal coliform bacteria.

3. (L,S) Are there any Federal, State, or local restrictions on recreational activities in the vicinity of the modified discharge(s)? If yes, describe the restrictions and provide citations to available references.

4. (L,S) If recreational restrictions exist, would such restrictions be lifted or modified if you were discharging a secondary treatment effluent?

F. Establishment of a Monitoring Program [40 CFR 125.63]

1. (L,S) Describe the biological, water quality, and effluent monitoring programs which you propose to meet the criteria of 40 CFR 125.63. Only those scientific investigations that are necessary to study the effects of the proposed discharge should be included in the scope of the 301(h) monitoring program [40 CFR 125.63(a)(1)(i)(B)].

2. (L,S) Describe the sampling techniques, schedules, and locations, analytical techniques, quality control and verification procedures to be used.

3. (L,S) Describe the personnel and financial resources available to implement the monitoring programs upon issuance of a modified permit and to carry it out for the life of the modified permit.

G. Effect of Discharge on Other Point and Nonpoint Sources [40 CFR 125.64]

1. (L,S) Does (will) your modified discharge(s) cause additional treatment or control requirements for any other point or nonpoint pollution source(s)?

2. (L,S) Provide the determination required by 40 CFR 125.64(b) or, if the determination has not yet been received, a copy of a letter to the appropriate agency(s) requesting the required determination.

H. Toxics Control Program and Urban Area Pretreatment Program [40 CFR 125.65 and 125.66]

1. a. (L,S) Do you have any known or suspected industrial sources of toxic pollutants or pesticides?

b. (L,S) If no, provide the certification required by 40 CFR 125.66(a)(2) for small dischargers, and required by 40 CFR 125.66(c)(2) for large dischargers.

c. (L,S*) Provide the results of wet and dry weather effluent analyses for toxic pollutants and pesticides as required by 40 CFR 125.66(a)(1). (* to the extent practicable)

d. (L,S*) Provide an analysis of known or suspected industrial sources of toxic pollutants and pesticides identified in (1)(c) above as required by 40 CFR 125.66(b). (* to the extent practicable)

2. (S)a. Are there any known or suspected water quality, sediment accumulation, or biological problems related to toxic pollutants or pesticides from your modified discharge(s)?

(S)b. If no, provide the certification required by 40 CFR 125.66(d)(2) together with available supporting data.

(S)c. If yes, provide a schedule for development and implementation of nonindustrial toxics control programs to meet the requirements of 40 CFR 125.66(d)(3).

(L)d. Provide a schedule for development and implementation of a nonindustrial toxics control program to meet the requirements of 40 CFR 125.66(d)(3).

3. (L,S) Describe the public education program you propose to minimize the entrance of nonindustrial toxic pollutants and pesticides into your treatment system. [40 CFR 125.66(d)(1)]

4. (L,S) Do you have an approved industrial pretreatment program?

a. If yes, provide the date of EPA approval.

b. If no, and if required by 40 CFR part 403 to have an industrial pretreatment program, provide a proposed schedule for development and implementation of your industrial pretreatment program to meet the requirements of 40 CFR part 403.

5. Urban area pretreatment requirement [40 CFR 125.65] Dischargers serving a population of 50,000 or more must respond.

a. Provide data on all toxic pollutants introduced into the treatment works from industrial sources (categorical and noncategorical).

b. Note whether applicable pretreatment requirements are in effect for each toxic pollutant. Are the industrial sources introducing such toxic pollutants in compliance with all of their pretreatment requirements? Are these pretreatment requirements being enforced? [40 CFR 125.65(b)(2)]

c. If applicable pretreatment requirements do not exist for each toxic pollutant in the POTW effluent introduced by industrial sources,

—provide a description and a schedule for your development and implementation of applicable pretreatment requirements [40 CFR 125.65(c)], or

—describe how you propose to demonstrate secondary removal equivalency for each of those toxic pollutants, including a schedule for compliance, by using a secondary treatment pilot plant. [40 CFR 125.65(d)]

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