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## ENVIRONMENTAL PROTECTION AGENCY

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### NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Title 40—Protection of the Environment  
 CHAPTER I—ENVIRONMENTAL  
 PROTECTION AGENCY  
 SUBCHAPTER D—WATER PROGRAMS  
 PART 125—NATIONAL POLLUTANT  
 DISCHARGE ELIMINATION SYSTEM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) Public notices will now require, where appropriate, a statement that confidential information has been received that may be used to determine appropriate conditions of a permit when

such confidential information has been received. This change will make proposed terms and conditions of permits more understandable.

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

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

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

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

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

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

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

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

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

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

Dated May 16, 1973.

ROBERT W. FRI,  
 Acting Administrator.

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

**Subpart A—General**

**§ 125.1 Definitions.**

Except as otherwise specifically provided:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(o) The term "navigable waters" includes:

- (1) All navigable waters of the United States;
- (2) Tributaries of navigable waters of the United States;
- (3) Interstate waters;
- (4) Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes;
- (5) Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce; and
- (6) Intrastate lakes, rivers, and streams which are utilized for industrial

purposes by industries in interstate commerce.

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

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

- (1) Short form A—Municipal Wastewater Dischargers.
- (2) Short form B—Agriculture.
- (3) Short form C—Manufacturing Establishments and Mining.
- (4) Short form D—Services, Wholesale, and Retail Trade, and All Other Commercial Establishments, Including Vessels, Not Engaged in Manufacturing or Agriculture.

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

- (1) Standard form A—Municipal.
- (2) Standard form C—Manufacturing and Commercial.
- (3) The term "NPDES application form" includes NPDES application short forms and NPDES application standard forms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### § 125.2 Scope and purpose.

(a) (1) The regulations in this part prescribe the policy and procedures to be followed in connection with applications for federally issued permits authorizing discharges into the navigable waters, the waters of the contiguous zone, and the oceans, during the periods that the Ad-

ministrator of the Environmental Protection Agency is authorized to issue such permits pursuant to sections 402 and 405 of the Act.

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

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

#### § 125.3 Law authorizing permits.

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

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

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

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

#### § 125.4 Exclusions.

The following do not require an NPDES permit:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a

vessel: Provided, That this exclusion shall not be construed to apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to discharges when the vessel is operating in a capacity other than a vessel such as when a vessel is being used as a storage facility or a cannery;

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

(c) Approved aquaculture projects;

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

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

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

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

#### § 125.5 Delegation of authority.

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

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