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TITLE 250 - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 150 - WATER RESOURCES

SUBCHAPTER 10 - WASTEWATER & STORMWATER

PART 1 - Regulations for the Rhode Island Pollutant Discharge Elimination System

1.1 Purpose

It is the purpose of these regulations to restore, preserve, and enhance the quality of the surface waters and to protect the waters from discharges of pollutants so that the waters shall be available for all beneficial uses and thus protect the public health, welfare and the environment.

1.2 Authority

~~These regulations are adopted pursuant to Chapters 46-12, 42-17.1 and 42-35 of the General Laws of Rhode Island as amended. The authority for these regulations is vested in the Director by R.I. Gen. Laws Chapters 46-12, Water Pollution, Chapter 42-17.1, Environmental Management, and Chapter 42-17.6, Administrative Penalties for Environmental Violations of the General Laws of Rhode Island, as amended. These Rules and Regulations are further promulgated pursuant to the requirements and provisions of all Chapters of the R.I. Gen. Laws relating to the duties and responsibilities of the Director for the waters of the State, and in accordance with the requirements of R.I. Gen. Laws Chapter 42-35, Administrative Procedures Act, and R.I. Public Laws Chapters 09-198 and 09-199.~~

1.613 Incorporation by Reference Incorporated Materials

- A.- ~~These regulations hereby adopt and incorporate 33 C.F.R. § 153 (2018) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.~~
- B. ~~-These regulations hereby adopt and incorporate and 40 C.F.R. §§ 3, 35, 122 through -125, 127, 129, 133, 136, 300, 403, 405 through -471, and Chapter 1, Subchapter N (2018) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.~~

1.34 Definitions

A. For the purposes of these rules, the following words and phrases shall have the following meanings:~~Whenever used in these regulations, the following terms shall have the following meaning:~~

1. "Administration" means the administrator of the United States Environmental Protection Agency (EPA) or an authorized representative.
2. "Affected person" means a person who has asserted (and not waived or withdrawn) a confidentiality claim covering information submitted to the Department.
3. "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where: 1) animals (other than aquatic animals) have been, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and 2) crops, vegetation, forage, growth or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of pollutants.
4. "Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a "discharge" or a related activity is subject under the Federal or State Acts including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under ~~Sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of the Clean Water Act, 33 U.S.C. §§ 1311, 1312, 1313, 1314, 1316, 1317, 1318, 1343 and 1345 (Sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of the Clean Water Act).~~
5. "Applicant" means a person who applies for a RIPDES permit, or a Departmental approval pursuant to these regulations.
6. "Application" means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms, or forms approved by EPA for use in "approved States," including any approved modifications of revisions.
7. "Approved program" or "approved State" means a State or interstate program, which has been approved or authorized by EPA under 40 C.F.R. ~~§ Part 123, incorporated above at § 1.3(B) of this Part.~~

8. "Aquaculture project" means a defined managed water area, which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine or marine plants and/or animals. ~~"Designated area", as used in this definition, means the portions of the waters of the State within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of operation (including but not limited to, physical confinement), which on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvestable within a defined geographic area.~~
9. "Areawide plan" means any water quality management plan adopted pursuant to ~~Section 208 of the Federal Clean Water Act, 13 U.S.C. § 1288~~ (Section 208 of the Clean Water Act).
10. "Average monthly discharge limitation" means the highest allowable average of "daily discharges" over a calendar month or any 30 consecutive days, calculated as the sum of all daily discharges measured during a calendar month or any 30 consecutive days, divided by the number of daily discharges measured during that month.
11. "Average weekly discharge limitation" means the highest allowable average of "daily discharges" over a calendar week or any seven consecutive days, calculated as the sum of all daily discharges measured during a calendar week or seven consecutive days, divided by the number of daily discharges measured during that week.
12. ~~"Best management practices" or "BMPs" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. "Best Professional Judgment" or "(BPJ)" means a limitation determined on a case-by-case basis on any pollutant, combination of pollutants or practice(s) which is determined necessary to carry out the provisions of the Clean Water Act and Title 46, Chapter 12 of the General Laws of Rhode Island.~~
13. "Best professional judgment" or "BPJ" means a limitation determined on a case-by-case basis on any pollutant, combination of pollutants or practice(s) which is determined necessary to carry out the provisions of the Clean Water Act and R.I. Gen. Laws Chapter 46-12. BPJ limitations can be used to set Best Available Technology Economically Achievable, Best Conventional Pollutant Control Technology, Best Practicable Control Current Available, or BMP limitations as defined in Clean Water Act either in the absence of an applicable promulgated effluent guideline or where

~~promulgated effluent limitation guidelines only apply to certain aspects of the discharger's operation or to certain pollutants. "Best Professional Judgment" means limitations can be used to set Best Available Technology Economically Achievable, Best Conventional Pollutant Control Technology, Best Practicable Control Current Available, or "Best Management Practices" limitations as defined in Clean Water Act either in the absence of an applicable promulgated effluent guideline or where promulgated effluent limitation guidelines only apply to certain aspects of the discharger's operation or to certain pollutants.~~

~~15. "Best Management Practices" or "(BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.~~

146. "Biological monitoring method" means a testing method which utilizes any biological system or any of its parts for assessing the presence or effects of one or more pollutants and/or environmental factors, either alone or in combination. Biomonitoring refers to acute toxic bioassays.

157. "Bypass" means the intentional diversion of waste streams from any portion of a ~~wastewater~~ treatment facility.

186. "Census designated places" or ("CDPs") ~~means those places that are delineated for the decennial census as the statistical counterparts of incorporated places. CDPs are comprised of densely settled concentrations of population that are identifiable by name, but are not legally incorporated places. To qualify as a CDP, an unincorporated community must meet the following criteria:~~

- a. 1,000 or more persons if outside the boundaries of an urbanized area (UA) delineated for the subsequent special census;
- b. 2,500 or more persons if inside the boundaries of an urbanized area (UA) delineated for subsequent census;
- c. 250 or more persons if outside the boundaries of an urbanized area (UA) delineated for the subsequent special census, and within the official boundaries of an American Indian reservation recognized for the 1990 census.

See Rule 31(b)(22).

179. "CFR" means the Code of Federal Regulations.

1820. "Clean Water Act" means the Federal law enacted under 33 U.S.C. §125 *et seq.* and any amendments thereto.

2119. "Concentrated animal feeding operation" means an animal feeding operation which meets the criteria in § Appendix B1.676 of this Part, ~~or which the Department designates under §1.28 of this Part.~~ Rule 27.

220. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in Appendix C ~~or which the Department designates under § 1.68729 of this Part.~~ Rule 28.

231. "Confidentiality claim" means a claim or allegation that information is entitled to confidential treatment because such information constitutes a trade secret.

242. "Construction" means any placement, assembly or installation of facilities, equipment or treatment works, site preparation work, including clearing, excavation removal, or modification of existing buildings, structures or facilities which is necessary for the placement, assembly or installation of new source facilities, equipment or treatment works, or entering into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering and design studies do not constitute a contractual obligation for the purpose of this definition.

253. "Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

264. "Continuous discharge" means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

275. "Conventional pollutant" means those pollutants designated under the authority of Section 304(a)(4) of the Clean Water Act, 33 U.S.C. § 1314 (Section 304(a)(4) of the Clean Water Act).

286. "Co-permittee" means a permittee to a RIPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.

297. "Daily discharge" means the "discharge of a pollutant" measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total

mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

~~3028.~~ "Densely Populated Area (DPA)." See Rule 31(b)(21). "Densely Populated Area" or "DPA" means a census designated place(s) as defined by the latest Decennial Census that is located outside the urbanized area and meets all of the following criteria:

- a. The population density within the census designated place is equal to or greater than 1,000 people per square mile; and
- b. The census designated place has or is part of a block of contiguous census designated places with a total population of at least 10,000 people.

~~3129.~~ "Department" or "DEM" means the Rhode Island Department of Environmental Management or "DEM" (DEM).

~~30.~~ "Designated area" means, as used in this definition n, means the portions of the waters of the State within which the permittee or permit applicant plans to confine and/or plans to confine the cultivated species, using a method or plan of operation (including but not limited to, physical confinement), which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvestable within a defined geographic area.

~~312.~~ "Direct discharge" means the "discharge of a pollutant." "Director" means the Director of the Department of Environmental Management or any subordinate or subordinates to whom he delegated the powers and duties vested in him by these regulations.

~~332.~~ "Director" means the Director of the Department of Environmental Management or any subordinate or subordinates to whom he delegated the powers and duties vested in him by these regulations. "Direct discharge" means the "discharge of a pollutant."

~~343.~~ "Discharge" means the addition of any pollutant to waters from any point source.

~~345.~~ "Discharge Monitoring Report" or "DMR" means the EPA uniform national form, including any subsequent additions, revisions or modifications, for the reporting of self-monitoring results by permittees. "Discharge of a pollutant" means any addition of any "pollutant" or combination of pollutants to "waters of the State" from any "point sources".

356. "Discharge of a pollutant" means any addition of any "pollutant" or combination of pollutants to "waters of the State" from any "point sources". "Discharge Monitoring Report" or ("DMR)" means the EPA uniform national form, including any subsequent additions, revisions or modifications, for the reporting of self-monitoring results by permittees.

367. "Discharger" means any person, corporation, municipality, sewerage authority or legal entity, who causes, knows of or should have reason to know of, or allows, any discharge.

378. "District ~~e~~Engineer" means the chief administrative official of the New England Division, Corps of Engineers or an authorized representative.

38398. "Draft permit" means a document prepared under § 1.38 of this Part Rule 37 indicating the Department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit and a notice of intent to deny a permit as discussed in § 1.37 of this Part Rule 36 are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination, as discussed in § 1.37 of this Part Rule 36 is not a "draft permit." A "proposed permit" is not a "draft permit".

403939. "Effluent data" means, with reference to any source of discharge of any pollutant:

- a. Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of any pollutant which has been discharged by the source (or of any pollutant resulting from any discharge from the source), or any combination of the foregoing;
- b. Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of the pollutant which, under an applicable standard or limitation, the source was authorized to discharge (including to the extent necessary for such purpose, a description of the manner or rate of operation of the source); and
- c. A general description of the locations and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

(1) Notwithstanding the above, the following information shall be considered to be "effluent data" only to the extent necessary to allow the Department to disclose publicly that a source is (or is not) in compliance with an applicable standard or

limitation, or to allow the Department to demonstrate the feasibility, practicability, or attainability (or lack thereof) of an existing or proposed standard or limitation:

~~(aAA)~~- Information concerning research, or the results of research, on any product, method, device, or installation (or any component thereof) which was produced, developed, installed, and used only for research purposes; and

~~(bBB)~~- Information concerning any product, method, device, or installation (or any component thereof) designed and intended to be marketed or used commercially but not yet so marketed or used.

~~4100. "Effluent limitation guidelines" means a regulation published by the Administrator under Section 304(b) of the Clean Water Act, 33 U.S.C. § 1314(b) (Section 304(b) of the Clean Water Act) to adopt or revise "effluent limitations." "Effluent limitations" means any restriction imposed by the Director on quantities, discharge rates and concentrations of pollutants which are discharged from point sources into waters of Rhode Island, the United States, the contiguous zone or the ocean.~~

~~4214. "Effluent limitations" means any restriction imposed by the Director on quantities, discharge rates and concentrations of pollutants which are discharged from point sources into waters of Rhode Island, the United States, the contiguous zone or the ocean. "Effluent limitation guidelines" means a regulation published by the Administrator under Section 304(b) of the Clean Water Act to adopt or revise "effluent limitations."~~

~~4324.~~ "EPA" means the United States Environmental Protection Agency.

~~4432.~~ "Facility" means any point source or any other activity (including land or appurtenances thereto) that is subject to regulation under the RIPDES permit program.

~~4543.~~ "General permit" means a RIPDES permit issued ~~under under § 1.33 of this Part~~ Rule 32 authorizing a category of discharges within a geographic area.

~~4654.~~ "Groundwater" means water below the land surface in a zone of saturation.

~~4765.~~ "Hazardous substance" means any substance designated under 40 C.F.R. Part § 116 pursuant to Section 311 of the CWA (see Appendix A, Table V § 1.665 of this Part), 33 U.S.C. § 1321 (Section 311 of the Clean Water Act (see § 1.66 of this Part)).

4876. "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a RIPDES permit (other than the RIPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

4987. "Impaired ~~w~~Waters." ~~See Rule 31(b)(25). means for the purpose of § 1.32 of this Part, means those waters within the State, which do not currently meet Rhode Island Water Quality Standards as identified in Categories 4a and 5 of the latest list of Impaired Waters compiled by the Office of Water Resources (OWR) of the Rhode Island Department of Environmental Management and is referred to as the State of Rhode Island's 303(d) list. Integrated Water Quality Monitoring and Assessment Report compiled by the Department.~~

504948. "Incorporated place" means a city, town or other definable place that is incorporated under the laws of the State in which it is located.

51049. "Indirect ~~D~~discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated under ~~section 307(b), (c) or (d) of the Clean Water Act, 33 U.S.C. § 1317(b), (c) or (d) (Section 307(b), (c) or (d) of the Clean Water Act).~~

5210. "Interference" means ~~(a)~~ inhibiting or disrupting the operation of a publicly owned treatment works or its treatment process so as to contribute to, or cause a violation of any condition of a State or Federal permit under which the publicly owned treatment works operates; or

~~(b)a.~~ -discharging industrial process wastewater which, in combination with existing domestic flows are of such volume and/or strength as to exceed the domestic treatment process design capacity; or

~~(c)b.~~ -preventing the use or disposal of sludge produced by the publicly owned treatment works in accordance with ~~Section 405 of the Clean Water Act, 33 U.S.C. § 1345 (Section 405 of the Clean Water Act),~~ and regulations, criteria or guidelines developed pursuant to the Federal Resource Conservation and Recovery Act of 1976, ~~(42 U.S.C. § 3251 et seq.)~~ the Federal Clean Air Act, ~~(15 U.S.C. § 7401 et seq.)~~ and the Federal Toxic Substances Control Act, ~~(15 U.S.C. § 2601 et seq.)~~ and to the extent practicable, the Rhode Island Rules and Regulations ~~Pertaining to the Disposal and Utilization of Wastewater Treatment Facility for Sewage Sludge Management~~Sludge, Part 3 of this Subchapter.

5324. "Interstate agency" means an agency of two or more states established by or under 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 under the appropriate Act and regulations.

5432. "Large municipal separate storm sewer system." See Rule 31(b)(4). "Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

- a. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of Census (§ 1.71 of this PartAppendix G); or
- b. Located in the counties listed in § 1.73 of this PartAppendix I, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or
- c. Owned or operated by a municipality other than those described in §§ 1.4(A)(54)(c)((1)) and ((§2)) of this Partdefinition in paragraph (b)(4)(i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under §in § 1.4(A)(54)(c)((1)) and ((2)) of this Part 1 and § 2 paragraph (b)(4) (i) or (ii) of this sectiondefinition. In making this determination the Director may consider the following factors:
 - (1) Physical interconnections between the municipal separate storm sewers;
 - (2) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in § 1.4(A)(54)(c)((1)) paragraph (b)(4)(i) of this Partdefinitionsection;
 - (3) The quantity and nature of pollutants discharged to waters of the State;
 - (4) The nature of the receiving waters; and
 - (5) Other relevant factors.
- d. The Director may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraph §§ 1.4(A)(54)(c)((1)) through, § 2, and ((§ 3)) (b)(4)(i), (ii), (iii) of this Part.definitionsection.

~~5543.~~ - "Log sorting" ~~or and~~ "log storage facilities" means facilities whose discharges result from the holding of unprocessed wood; for example, logs or round-wood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). (See 40 C.F.R. ~~Part §~~ 429, Subpart J, incorporated above at § 1.3(B) of this Part, including the effluent limitations guidelines).

~~5654.~~ "Major facility" means any facility or activity classified as such by the Regional Administrator in conjunction with the Director.

~~5765.~~ "Major municipal separate storm sewer outfall" ~~-(or "major outfall")-~~ means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

~~5876.~~ "Major outfall" means a "major municipal separate storm sewer outfall."

~~5987.~~ "Maximum daily discharge limitation" means the highest allowable "daily discharge."

~~"Medium municipal separate storm sewer system." See Rule 31(b)(7).~~

~~605958.~~ "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

- a. Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of Census (§ 1.712 of this Part)Appendix H); or
- b. Located in the counties listed in § 1.723 of this PartAppendix J, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or
- c. Owned or operated by a municipality other than those described in § paragraph § 1.4(A)(60)((1)) and § ((2)) (b)(4)(i) or (ii) of this sectiondefinitionPart and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described in § 1 and § 2 under paragraph (b)(4)(i) or (ii) of

~~this section definition §§ 1.4(A)(60)((1)) and -((2)) of this Part. In making this determination the Director may consider the following factors:~~

(1) Physical interconnections between the municipal separate storm sewers;

(2) ~~The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in § 1.4(A)(60)(c)((1)) paragraph (b)(7)(i) of this Part definition section;~~

(3) The quantity and nature of pollutants discharged to waters of the State;

(4) The nature of the receiving waters; or

de. Other relevant factors.

~~56109.~~ "Memorandum of ~~a~~Agreement" means the agreement entered into under the Clean Water Act between the Administrator and the Director, governing the relationship, duties, and rights of the parties in operating a State NPDES program (RIPDES).

~~6210.~~ "MGD" means million gallons per day.

~~6324.~~ "Minor facility" means any facility or activity not classified a "major facility" by the Regional Administrator or the Department.

~~6432.~~ "Monitoring report form" means the DEM standard form, including any subsequent additions, revisions or modifications for the reporting of self-monitoring results by permittees.

~~6543.~~ "Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- a. Owned or operated by a city or town or the State, district association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under ~~section 208 of the CWA, 33 U.S.C. § 1288 (section 208 of the Clean Water Act)~~ -that discharges to waters of the State;

- b. Designed or used for collecting or conveying storm water;
- c. Which is not a combined sewer; and
- d. Which is not part of a Publicly Owned Treatment Works (POTW) as defined in § 1.34(A)(87) of this Part Rule 3.

~~"Municipal separate storm sewer system (MS4)." See Rule 31(b)(19).~~

6654. "Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems pursuant to §§ 1.34(A)(53), 1.4(A)(59), or 1.4(A)(105) of this Part Rule 31(b)(4), (b)(7), and (b)(17) of this section, or designated under Rule 31(a)(1)(vii) and (a)(1)(viii).

6765. "Municipality" means a city, town, borough, county, parish, district, quasi-governmental corporation, association or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under ~~Section 208 of the Clean Water Act, 33 U.S.C. § 1288~~ (Section 208 of the Clean Water Act).

6876. "National Pollutant Discharge Elimination System" or ~~("NPDES")~~ means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under ~~Sections 307, 402, 318, and 405 of the Clean Water Act, 33 U.S.C. §§ 1317, 1342, 1328, and 1345 (Sections 307, 402, 318, and 405 of the Clean Water Act)~~. The term includes any State program which has been approved by the Administrator.

6987. "New discharger" means any building, structure, facility, or installation:

- a. From which there is or may be a "discharge of pollutants"; and
- b. That did not commence the "discharge of pollutants" at a particular "site" prior to August 13, 1979; and
- c. Which is not a "new source"; and
- d. Which has never received a finally effective NPDES permit for discharges at that "site". This definition includes an "indirect discharger" which commences discharging into waters of the State after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas development drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a "site" for which it does not have a permit, and any offshore or coastal mobile oil and gas exploratory

drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979 at a "site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Director in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Director shall consider the factors specified in 40 C.F.R. § 125.122(a)(1) through (10). incorporated above at § 1.3(B) of this Part.

— An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a "new discharger" only for the duration of its discharge in an area of biological concern.

706968. "New source" means any building, structure, facility, site or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

- a. after promulgation of standards of performance under Section 306 of the Clean Water Act, 33 U.S.C. § 1316 which 1316 (Section 306 of the Clean Water Act) which are applicable to such sources, or
- b. after proposal of standards of performance in accordance with Section 306, 33 U.S.C. § 1316 of 1316 (Section 306 of the Clean Water Act) which are applicable to such sources, but only if the standards are promulgated in accordance with Section 306, § 1316 within 120 days of their proposal.

74069. "Non-contract cooling water" means water used to reduce temperature for the purpose of cooling. Such waters do not come into direct contact with any raw material, intermediate product (other than heat) or finished product.

7210. "Non-conventional pollutant" means any pollutant not defined as a conventional pollutant or a toxic pollutant (see § 1.654 of this PartAppendix A, Table IV).

"Outstanding National Resource Waters (ONRWs)." See Rule 31(b)(24).

7324. "Outstanding National Resource Waters" or "ONRWs" means water of National and State Parks, Wildlife Refuges, and other such waters designated as having special recreational or ecological value as defined in the State of Rhode Island Water Quality Regulations.

7432. "Outfall" means a point source as defined by § 1.34(A)(78) of this PartRule 3 and includes storm water discharges at the point where a municipal separate storm sewer discharges to waters of the State. It -and- does not

include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

7543. "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

7654. "Owner" or "operator" means the owner or operator of any facility or activity subject to these regulations.

7765. "Permit" means an authorization, license or equivalent control document issued by the Department to implement the requirements of these regulations and the Clean Water Act, or previously issued by the EPA prior to delegation of the NPDES program to the State of Rhode Island. "Permit" includes a general permit, but does not include any document which has not yet been the subject of final Department action, such as a "draft permit" or "proposed permit."

7876. "Person" means an individual, trust, firm, joint stock company, corporation (including a quasi-governmental corporation) partnership, association, syndicate, municipality, municipal or state agency, fire district, club, non-profit agency or any subdivision, commission, ~~d~~department, bureau, agency or department of state or federal government (including quasi-governmental corporation) or of any interstate body and any agent or employee thereof.

7987. "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. This term does not include return flows from irrigated agriculture.

807978. "Pollutant" means any 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 or agricultural waste.

81079. "Pretreatment requirements" means any limitation or prohibition on quantities, quality, rates, and/or concentrations of pollutants directly or indirectly discharged into or transported by truck or rail or otherwise introduced into a publicly owned treatment works that are imposed by federal or state regulation or by publicly owned treatment works.

~~8210.~~ "Primary industry category" means any industry category listed in § 1.698(A) of this Part~~Appendix D~~. Industries may be added to § 1.698(A) of this Part ~~Appendix D~~ by the Director, as he deems appropriate.

~~8321.~~ "Priority pollutant" means those pollutants listed pursuant to Section 307(a)(1) of the Clean Water Act (see Appendix E), 33 U.S.C. § 1317(a)(1) (Section 307(a)(1) of the Clean Water Act).

~~8432.~~ "Privately owned treatment works" means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a "POTW".

~~8543.~~ "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product.

~~8654.~~ "Proposed permit" means a RIPDES "permit" which is sent to EPA for review before final issuance by the State. A "proposed permit" is not a "draft permit".

~~8765.~~ "Propriety information" means commercial or financial information which is used in one's business and is of a type of customarily held in strict confidence or regarded as privileged and not disclosed to any member of the public by the person to whom it belongs.

~~8876.~~ "Publicly owned treatment works" or ~~-(“POTWs”)~~ means any facility for the treatment of pollutants owned by the state or any political subdivision thereof, municipality, or other public entity, including quasi-governmental corporation. ~~-~~This definition includes sewers, pipes if they convey wastewater to a POTW as well as any equipment buildings or machinery used in the treatment operation.

~~8987.~~ "Recommencing discharger" means a source which recommences discharge after terminating operations.

~~908988.~~ "Regional aAdministrator" means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or an authorized representative of the Regional Administrator.

~~"Regulated small municipal separate storm sewer system (Small MS4)." See Rule 31(b)(18).~~

8940. "Regulated small municipal separate storm sewer system" or "regulated small MS4" means a small MS4 that meets the requirements of § 1.32(-A)(-5)(-a) of this Part-Rule 31(a)(5)(i). Once a small MS4 is designated into the Phase II storm water program based on an urbanized

area (UA) calculation for any given census year, the MS4 will remain regulated regardless of the results of subsequent UA area calculations.

8921. "Rhode Island Pollutant Discharge Elimination System" ~~or ("RIPDES")~~ means the Rhode Island system for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing discharge permits and imposing and enforcing pretreatment requirements pursuant to ~~Title 46, Chapter 12 of the R.I. Gen. Laws Chapter 46-12 General Laws of Rhode Island~~ and the Clean Water Act.

9329. "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap (see 40 C.F.R. ~~§Part~~ 436, Subpart B, incorporated above at § 1.3(B) of this Part, including the effluent limitation guidelines).

9431. "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

9542. "Schedule of compliance" means a schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with all applicable State and Federal law and regulations.

9653. "Secondary industry category" means any industry category which is not a "primary industry category."

9764. "Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

~~"Section 313 Water Priority Chemical." See Rule 31(b)(12).~~

985. ~~"Section 313 wWater pPriority cChemical" means a chemical or chemical categories which are:~~

a. ~~Listed at 40 C.F.R. § 372.65 (2018) pursuant to section 313 of Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986, also entitled the "Emergency Planning and Planning and Community Right to Know Act of 1986,"; (42 U.S.C. § 11001 et seq.) (2018).~~

b. ~~Present at or above threshold levels at a facility subject to SARA Title III, section 313 42 U.S.C. § 11001 reporting requirements; and~~

c. ~~Meet at least one of the following criteria:~~

(1) ~~Are listed in appendix D of 40 C.F.R. §part 122 (2018) on either Table II (Organic priority pollutants), Table III (certain~~

metals, cyanides, and phenols), or Table V (certain toxic pollutants and hazardous substances);

(2) — Are listed as a hazardous substance pursuant to § section 311(b)(2)(A) of the CWA at 40 C.F.R. § 116.4 (2018); or

(3) — Are pollutants for which EPA has published acute or chronic water quality criteria.

9976. "Separate storm sewer" means a conveyance or system of conveyances (including pipes, conduits, ditches, and channels) primarily used for collecting storm water runoff and which is either:

a. Located in an urbanized area as designated by the Bureau of the Census according to the criteria in 39 FR 15202 (May 1, 1974); or

b. Not located in an urbanized area but designated by the Director pursuant to § 1.32 of this Part~~Rule 31 of these regulations.~~

1009897. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

1019998. "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, and regulated under ~~Section 312 of the Clean Water Act, 33 U.S.C. § 1322~~ or 1322 (Section 312 of the Clean Water Act) or under Rhode Island law.

102099. "Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the processes or a "publicly owned treatment works." "Sewage" as used in this definition means any wastes, including wastes from human households, commercial establishments, industries and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

10130. "Significant materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under ~~Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) (Section 101(14) of CERCLA)~~; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA, 42 U.S.C. § 11001 et seq.; fertilizers; pesticides; and waste

products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

10424. "Significant spills" ~~means~~includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under ~~Section 311 of the Clean Water Act (40 C.F.R. § 110.10 and 40 C.F.R. § 117.21)~~ or ~~Section 102 of CERCLA (40 C.F.R. § 302.4).~~

10532. "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the State. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a 404 permit pursuant to 33 C.F.R. §§ 209.120 and 123 Subpart E. ~~"Site" means the land or water area where any water pollution control facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.~~

10643. ~~"Site" means the land or water area where any water pollution control facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity. "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the State. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a 404 permit pursuant to the Clean Water Act (see 33 C.F.R. Section §§ 209.120 and Part 123, Subpart E (2018)).~~

~~"Small Municipal Separate Storm Sewer System (Small MS4)." See Rule 31(b)(17).~~

10754. "Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are:

- a. Owned and operated by the United States, state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law, such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the CWA, 33 U.S.C. § 1288 (Section 208 of the Clean Water Act) that discharges to waters of the United States.
- b. Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to § 1.3 of this PartRule 31(b)(4) and (b)(7).
- c. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

~~"Special Resource Protection Waters (SRPWs)." See Rule 31(b)(23).~~

10865. "Special Resource Protection Waters" or "SRPWs" means surface waters identified by the Director as having significant ecological or recreational uses, as defined in the State of Rhode Island Water Quality Regulations and listed in § 1.68 of this PartAppendix D of those regulations.

10976. "State" means the State of Rhode Island.

1100807. "State/EPA aAgreement" means an agreement between the Regional Administrator and the State which integrates and coordinates EPA and State activities, responsibilities and programs under the Clean Water Act.

1110908. "Storm sewer" means a sewer intended to carry only storm water.

1120.09. "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

11310. "Storm water discharge associated with industrial activity." means as See d ()Rule 31(b)(15).

~~"Storm water discharge associated with small construction activity." See Rule 31(b)(16).~~

1141. "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water to separate storm sewers and/or directly to a water

body and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the RIPDES program under 40 C.F.R. § Part 122, incorporated above at § 1.3(B) of this Part. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 C.F.R. §part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State, or municipally owned or operated that meet the description of the facilities listed in this paragraph §§ 1.4(A)(1114)(ab)(15)(i) through (xik) of this Partsection) include those facilities designated under the provisions of § 1.4(A)(1124)paragraph (a)(1)(vi) of this Partsection. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

- 1a. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 C.F.R. Chapter I, Ssubchapter N, incorporated above at § 1.3(B) of this Part, (except facilities with toxic pollutant effluent standards which are exempted under category (xi) in paragraph § 1.4(A)(1141)(kb)(15) of this Partsection) of this Part;
- 2b. Heavy industry. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;
- 3c. Mining operations. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area

under 40 C.F.R. § 434.11(1), incorporated above at § 1.3(B) of this Part, because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4d. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

5e. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

6f. Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junk yards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

7g. Steam electric power generating facilities, including coal handling sites;

8h. Transportation facilities. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under §§ paragraphs 1.4(A)(1141)(ba)(15)(i) through -(gvii) or §§ 1.4(A)(111)(ix) through -(kxi) of this Part section are associated with industrial activity;

9i. Treatment works. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved pretreatment program under 40 C.F.R. Part 403, incorporated above at § 1.3(B) of this Part. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA, 33 U.S.C. § 1345 (Section 405 of the Clean Water Act).

10j. Construction activity. Construction activity including clearing, grading and excavations except: operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

11k. Light industry. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25, (and which are not otherwise included within categories §§ 1.4(A)(111)(ii) through (ix) of this Part;

11522. "Storm water discharge associated with small construction activity" means the discharge of storm water from:

- a. Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan of development or sale will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
- b. Any other construction activity designated by the Department based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States or through a TMDL in accordance with §§

1.32(-A)(-1)(1-g) and (h) of this Part Rule 31(a)(1)(vii) and Rule 31(a)(1)(viii).

11633. "Surface water" means any "waters of the State" which are not "groundwater."

11744. "Thermal discharge" means that component of any discharge which is comprised of heat, and which shall be limited in accordance with Sections 301, 306, 316 of the Clean Water Act, 33 U.S.C. §§ 1311, 1316, 1326 (Sections 301, 306, and 316 of the Clean Water Act) or when determined necessary by the Department.

11855. "Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 C.F.R. §Part 136, incorporated above at § 1.3(B) of this Part.

11966. "Total maximum daily load" or ("TMDL") means the maximum amount of a particular pollutant that may be discharged into a particular stream segment in one day. TMDLs are required for all water quality limited segments but only for those pollutants which limit water uses.

1201747. "Toxic pollutant" means those pollutants, or combinations of pollutants, including disease causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly or indirectly but ingestion through food chains, may, on the basis of information available to the Director cause death, disease, behavioral, abnormalities, cancer, genetic mutations, physiological malfunctions including malfunctions in reproduction, or physical deformation, in such organisms or their offspring. Toxic pollutants shall include but not be limited to those pollutants identified pursuant to Section 307 of the Clean Water Act, 33 U.S.C. § 1317 (Section 307 of the Clean Water Act) (see §§ 1.632 and 1.643 of this PartAppendix A. Tables II and III).

1241848. "Trade secret" means the whole or any portion or phase of any scientific, technical or otherwise "proprietary information," design, process, procedure, formula, or improvement which is used in one's business and is secret when the owner takes measures to prevent it from becoming available to person other than those selected by the owner to have access thereto for limited purposes. A "Trade Secret" shall not apply to "effluent data" "permits" or "permit application forms".

1422199. "Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on or run-off controls established pursuant to subtitle D of the Resource Conservation and Recovery Solid Waste Disposal Act, 42 U.S.C. §6901 et seq.

12300. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by the operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

~~"Urbanized Areas (UAs)." See Rule 31(b)(20).~~

12414. "Urbanized Areas" or "UAs" means those areas that consist of contiguous, densely settled census block groups, and census blocks, that meet minimum population density requirements, along with adjacent densely settled census blocks that together encompass a population of at least 50,000 people. Minimum population density requirements consist of core census block groups or blocks that have a population density of at least 1,000 people per square mile, and, surrounding census blocks that have an overall density of at least 500 people per square mile. The complete criteria are available from the Chief, Geography Division, U.S. Bureau of the Census, Washington, DC 20233. For the purposes of these regulations, any subsequent UA calculated area will be added to any previous UA calculated area as shown in § 1.73 of this Part~~Appendix J.~~

12522. "Variance" means any mechanism or provision under ~~Sections 301 or 316 of the Clean Water Act, 33 U.S.C. § 1311 or 1326 (Sections 301 or 316 of the Clean Water Act)~~ or under 40 C.F.R. ~~§Part 125, incorporated above at § 1.3(B) of this Part,~~ or in the applicable "effluent limitation guidelines" which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the Clean Water Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on ~~Section 301(c), 301(g), 301(h), 301(i) or 316(a) of the Clean Water Act, 33 U.S.C. §§ 1311(c), 1311(g), 1311(h), 1311(i) or 1326(a) (Section 301(c), 301(g), 301(h), 301(i) or 316(a) of the Clean Water Act).~~

12633. "Waste load" means the amount of chemical, physical, or biological matter contained within a waste discharge.

12474. "Waste load allocation" means the assignment of maximum waste loads to point-source discharges so as to maintain water quality standards.

125. ~~"Water priority chemical"~~ "Water priority chemical" means a chemical or chemical categories which are:

- a. Listed at 40 C.F.R. § 372.65 pursuant to the "Emergency Planning and Planning and Community Right-to-Know Act of 1986," 42 U.S.C. § 11001 et seq.
- b. Present at or above threshold levels at a facility subject to 42 U.S.C. § 11001 reporting requirements; and
- c. Meet at least one of the following criteria:
 - (1) Are listed in appendix D of 40 C.F.R. § 122, incorporated above at § 1.3(B) of this Part on either Table II (Organic priority pollutants), Table III (certain metals, cyanides, and phenols), or Table V (certain toxic pollutants and hazardous substances);
 - (2) Are listed as a hazardous substance pursuant to 33 ~~§~~ 311(b)(2)(A) of the CWA, 33 U.S.C. § 1321(b)(2)(A) (Section 311(b)(2)(A) of the Clean Water Act) at 40 C.F.R. § 116.4; or
 - (3) Are pollutants for which EPA has published acute or chronic water quality criteria.

12865. "Water quality criteria" means a designated concentration of a constituent that, when not exceeded, will protect an organism, an organismic community or a prescribed water use or quality.

12976. "Water quality standards" means the physical, chemical, biological and esthetic characteristics of a water body as described by State water quality criteria or the water quality which would result from existing discharges under design conditions, whichever is more stringent as determined by the Department.

1302827. "Waters of the State" or "~~w~~Water" means all surface water and groundwater of the State of Rhode Island, including all tidewaters, territorial seas, wetlands, land masses partially or wholly submerged in water, and both inter-and intrastate bodies of water which are, have been or will be used in commerce, by industry, for the harvesting of fish and shellfish or for recreational purposes.

1312928. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

~~1.4~~ Severability

~~If any provision of these rules and regulations or the application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, the remainder of the rules and regulations shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections shall not affect the validity of the remainder of these rules and regulations.~~

1.5 Application of these Regulations

- A. These regulations shall be liberally constructed to permit the Department to effectuate the purpose of the State law.
- B. The Department may require an applicant to provide additional information where such information is necessary, in the opinion of the Department, to fully disclose all relevant facts concerning the permit application or permit, including propriety data. The applicant may assert a claim of confidentiality but claims of confidentiality regarding the name and address of any permit applicant or permittee or claims related to effluent data, permits, and permit application forms, including attachments to the forms, will be denied. Any failure to submit such information shall constitute valid cause for denial of the permit or other remedy as provided by law.
- C. Nothing in these rules and regulations shall be deemed to interfere with the Director's power and duty to issue an immediate order pursuant to ~~Section 46-12-10 of the R.I. Gen. Laws §Chapter 46-12-10~~ General Laws of Rhode Island.
- D. These regulations and the State continuing planning process, as approved by EPA under 40 C.F.R. § 35.1500 (incorporated above at § 1.3(B) of this Part), shall at all times be construed so as to assure consistency with the Clean Water Act.

1.6 General Prohibitions

A. A RIPDES permit shall not be issued:

- 1A. When the conditions of the permit do not provide for compliance with the applicable requirements of the State and Federal Acts or regulations;
- 2B. For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;
- 3C. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;
- 4D. When the Regional Administrator has objected to the issue of the permit in accordance with the Memorandum of Agreement;

- ~~5E.~~ When, in the judgement of the ~~United~~United States Secretary of the Army, anchorage and navigation in or on any of the waters of the United States could be substantially impaired by the discharge;
- ~~6F.~~ For any ~~discharged~~discharge, inconsistent with a plan or plan amendment approved under ~~Section 208(b) of the Clean Water Act, 33 U.S.C. § 1288(b) (Section 208(b) of the Clean Water Act);~~
- ~~7G.~~ For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:
- ~~a1.~~ Before the promulgation of guidelines under ~~Section 403(c) of the Clean Water Act, 33 U.S.C. § 1343(c) (Section 403(c) of the Clean Water Act)~~ (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the Director determines permit issuance to be in the public interest; or
- ~~b2.~~ After promulgation of guidelines under ~~Section 403(c) of the Clean Water Act, 33 U.S.C. § 1343(c) (Section 403(c) of the Clean Water Act)~~, when insufficient information exists to make a reasonable judgement whether the discharge complies with them.
- ~~BH.~~ To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by ~~Section 301(b)(1)(A) and 301(b)(1)(B) of the Clean Water Act, 33 U.S.C. § 1311(b)(1)(A) and 1311(b)(1)(B) (Section 301(b)(1)(A) and 301(b)(1)(B) of the Clean Water Act)~~ and for which the State or interstate agency has performed a pollutant load allocation for the pollutants to be discharged, must demonstrate, before the close of the public comment period, that:
1. There are sufficient remaining pollutant load allocations to allow for the discharge; and
 2. The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards.

1.7 Conflict of Interest

~~All boards or bodies which approve all or portions of a permit shall comply with the conflict of interest conditions from 40 C.F.R. § 1232.25(c), incorporated above at § 1.3(B) of this Part.A. Any board or body which approves all or portions of a permit shall not include as a member any person who receives, or~~

~~has during the previous two years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.~~

~~B. For the purposes of this section:~~

- ~~1. "Board of body" includes any individual, including the Director, who has or shares authority to approve all or portions of permits either in the first instance, as modified or reissued, or on appeal.~~
- ~~2. "Significant portion of income" means 10 percent or more of gross personal income for a calendar year.~~
- ~~3. "Permit holders or applicants for a permit" does not include any department or agency of state government.~~
- ~~4. "Income" includes retirement benefits, consultant fees, interest, and stock dividends.~~

~~C. For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the primary sources of income.~~

1.8 Persons Required to Apply for RIPDES Permit

- A. Any person who discharges or proposes to discharge pollutants into the waters and who does not have an effective permit, shall, except as provided in § 1.9 of this Part Rule 9, submit a complete application to the Department.
- B. Any person who had a NPDES permit prior to the effective date of these regulations shall be notified in writing by the Department that the NPDES permit is continued in full force pursuant to Rule 13 § 1.13 of this Part of these regulations and that the person must apply for a RIPDES permit in accordance with the schedule for submission of applications in § 1.10 Rule 10(aA) of this Part.
- C. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

1.9 Activities Which do not Require a RIPDES 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. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard, nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, or when secured to a storage facility or a seafood processing facility, or when

secured to the bed of the ocean, contiguous zone or waters of the United States for the purpose of mineral or oil exploration or development.

- B. Any discharge of dredged or fill material into waters of the United States which are regulated under ~~Section 404 of the Clean Water Act, 33 U.S.C. § 1344~~ (Section 404 of the Clean Water Act).
- C. Any discharge in compliance with the instruction of an On-Scene Coordinator pursuant to 40 C.F.R. ~~§ Part 300-~~ (The National Oil and Hazardous Substances Pollution Plan), incorporated above at § 1.3(B) of this Part, or 33 C.F.R. ~~§Part153-305153.1-~~ (Pollution by Oil and Hazardous Substances), incorporated above at § 1.3(A) of this Part.
- D. Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands but not discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.
- E. Return flows from irrigated agriculture.
- F. Discharges of pollutants into a privately-owned treatment works, except as the Director may otherwise require to ensure compliance with applicable state and federal law and regulations.
- G. Discharges covered by a general permit pursuant to ~~Rule 32 § 1.33 of this Part~~ except that the Director may, pursuant to ~~-Rule 54§ 1.55 of this Part,~~ require a person authorized by a general permit to apply for and obtain an individual RIPDES permit.
- H. The introduction of sewage, industrial wastes, or other pollutants into publicly owned treatment works by indirect discharge. Plans or agreements to switch to this method of disposal in the future do not relieve a discharger of the obligation to have and comply with permits until all discharges of pollutants into waters of the United States are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a State, municipality or other party not leading to treatment works.
- I. Discharges or disposal of pollutants into an underground or subsurface disposal well except that such activity must be approved by the Department pursuant to ~~the Subchapter 250-RICR-150-05~~ Part -4 of this Chapter.
- J. Discharges from a water transfer. Water transfer means an activity that conveys or connects waters of the United States without subjecting the transferred water to intervening industrial, municipal, or commercial use. This exclusion does not

apply to pollutants introduced by the water transfer activity itself to the water being transferred.

1.10 Schedule for Submission of Applications

- A. Any person who had an NPDES permit prior to the effective date of these regulations shall either apply for a RIPDES permit at least 180 days prior to the scheduled expiration date of the NPDES permit or if the schedule expiration date has already passed then within 60 days of receiving written notification from the Department that a RIPDES permit application is due.
- B. Any person planning to continue discharging after the expiration date of an existing RIPDES permit must file an application for renewal at least 180 days prior to expiration of the existing permit.
- C. All other new applicants for a RIPDES permit(s) shall in accordance with these regulations submit an application to the Department at least 180 days before the date on which the discharge is to commence except as otherwise provided in § 1.10(D) (d) of this Part~~below~~.
- D. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application/notice of intent 180 days before that facility commences industrial activity which may reasonably be expected to result in a discharge of storm water associated with that industrial activity. Facilities described under ~~Rule 31(b)(15)(x) or (b)(16)(i) §§ 1.324(AB)(111)(j10) or §1.4(AB)(112)(a1)(2) of this Part~~ shall submit applications at least ninety (90) days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits.

1.11 Information to be Included in the Application

- A. All applications for a RIPDES permit shall be submitted to: Department of Environmental Management, Office of Water Resources, 235 Promenade Street, Providence, Rhode Island 02908-5767.
- B. Any person who discharges or intends to discharge pollutants into the waters of the state must apply for a RIPDES permit except as otherwise provided in Rule § 1.9 of this Part. ~~Any person required to have a RIPDES or NPDES permit by these regulations and who is currently discharging pollutants into the waters of the state without such permit, may be subject to immediate enforcement action and shall apply for a RIPDES permit within 60 days of the effective date of these regulations.~~ Any person who has a valid NPDES permit shall apply for a RIPDES permit in accordance with the schedule in Rule § 1.10 of this Part. Pre-application conferences with the Department are strongly recommended.

- C. All applicants for NPDES permits, other than POTWs and other TWTDS, must provide the information required under 40 C.F.R. § 122.21(f), incorporated above at § 1.3(B) of this Part.
- D. Existing manufacturing, commercial mining, and silvicultural dischargers applying for NPDES permits, except for those facilities subject to the requirements of §1.11(E) of this Part, shall provide the information required under 40 C.F.R. § 122.21(g), incorporated above at § 1.3(B) of this Part.
- E. Except for storm water discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for NPDES permits which discharge only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the information required under 40 C.F.R. § 122.21(h), incorporated above at § 1.3(B) of this Part.—The following information, where applicable, shall be submitted:
- F. New and existing concentrated animal feeding operations (defined in §1.28 of this Part) and concentrated aquatic animal production facilities (defined in §1.29 of this Part) shall provide the information required under 40 C.F.R. § 122.21(i), incorporated above at § 1.3(B) of this Part.
- G. All POTWs and other dischargers designated by the Director must provide, at a minimum, the information required under 40 C.F.R. § 122.21(j), incorporated above at § 1.3(B) of this Part.
- H. New manufacturing, commercial, mining and silvicultural dischargers shall provide the information required under 40 C.F.R. § 122.21(k), incorporated above at § 1.3(B) of this Part.
- ~~1C. Information required for a RIPDES Permit: Existing manufacturing, commercial, mining, and silvicultural discharges applying for RIPDES permits shall provide the following information, using application forms proved by the Department:~~
- ~~a1. State name, mailing address and location of facility, type of waste to be discharged, and the activities conducted by the applicant which require a RIPDES permit.~~
- ~~b2. Provide a brief description of the nature of the business including the Standard Industrial Classification (SIC) codes which best reflect the principal products or services provided by the facility.~~
- ~~c3. The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity, and whether the facility is located on Indian lands.~~
- ~~d4. Name of applicant's parent corporation.~~

- ~~e5. A listing of all permits, or orders of approval received or applied for by the applicant or its parent corporation at the site.~~
- ~~f6. The expiration date of existing permit or proposed start up^{startup} date for new source. Applications must be received at least 180 days before proposed start up for new sources.~~
- ~~g7. A topographic map (or other if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities, each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.~~
- ~~h8. Outfall location. Show the location of the discharge(s), treatment facilities and receiving stream on a plot plan prepared by a Licensed Professional Engineer or Land Surveyor, and on a U.S. Geological Survey (Quadrangle) map. The latitude and longitude for each discharge must be given to the nearest 15 seconds and the name and classification of the receiving water must be provided.~~
- ~~i9. Line Drawing. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units.~~
- ~~j10. Average flows and treatment. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water runoff, the average flow which each process contributes, and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, "dye-making reactor", "distillation tower"). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. If discharge is due to rain runoff, state acres of land drained, give runoff coefficient, and calculate flow based on a 10 year, 24 hour, storm frequency.~~
- ~~k11. Intermittent flows. If any of the discharges described in paragraph ~~(a)(1)~~10 of this Partsection are intermittent or seasonal, a description of the frequency, approximate time of day where practicable, duration and flow rate of each discharge occurrence.~~
- ~~l12. Maximum production. If an effluent guidelines^{an effluent guideline} promulgated under Section 304 of the Clean Water Act, 33 U.S.C. § 1314 applies to the applicant and is expressed in terms of production (or other measure of~~

operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility as required by Rule § 17.1.18 of this Part.

~~m13.~~ Improvements. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operations of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

~~n14.~~ Effluent characteristics. Information on the discharge of pollutants specified in this subparagraph (except information on storm water discharges associated with industrial activity which are to be provided as specified in Rule 31 § 1.32 of this Part). When "quantitative data" for a pollutant is required, the applicant must collect a sample of effluent, analyze it for the pollutant in accordance with analytical methods approved under 40 C.F.R. Part § 136 and provide a description of the method. When no analytical method is approved, the applicant must comply with Rule 14.11(d) § 1.14(K)(2)(5) of this Part. The requirements in paragraphs (a)(14)(iii) and (iv) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present and will be required to establish the presence of pollutants in intake water by the appropriate testing or submission of an evaluation of intake water. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform and all volatile organics. For all other pollutants, 24-hour composite samples must be used unless otherwise specified by the Department. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch in a 24 hour period and at least 72 hours from the previously measurable (greater than 0.1 in a 24 hour period inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges

~~under Rule 31(d) § 1.32 of this Part(b)(4) (40 CFR 122.26(d)) may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Director). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in Rule 31(c)(1) § 1.32(5)(C)(1)(i) of this Part(40 CFR 122.26(c)(1)). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in Rule 31 (i) of this Part§1.32 (40 CFR 122.26) except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The Director may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 C.F.R. §Part 136, and additional time for submitting data on a case-by-case basis. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)~~

~~(A1a). Every applicant must report quantitative data for every outfall for the following pollutants:~~

~~(AA)(1). — Biochemical Oxygen Demand (BOD);~~

~~(BB)(2). — Chemical Oxygen Demand;~~

~~(CC)(3). — Total Organic Carbon;~~

~~(DD)(4). — Total Suspended Solids and Total Dissolved Solids;~~

~~(EE)(5). — Ammonia (as N);~~

~~(FF)(6). — Temperature (both winter and summer); and pH;~~

~~(2)bB. At the applicant's request, the Department may waive the reporting requirements for one or more of the pollutants listed in paragraph (a)(14)(i)(A) of this Partsection.~~

~~C(3)c. Each applicant with processes in one or more primary industry category (see § 1.68 of this Part Appendix D) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:~~

~~(AA)(1). The organic toxic pollutants in the fractions designated in Table I of Appendix A for the applicant's industrial category or categories unless the applicant qualifies as a small business under paragraph (a)(15) of this Part of this section. Table II of Appendix A § 1.62 of this Part lists the organic toxic pollutants in each fraction. The fractions resulted from the sample preparation required by the analytical procedures which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.~~

~~(BB)(2). The pollutants listed in § 1.63 Table III of Appendix A of this Part (the toxic metals, cyanide, and total phenols).~~

~~D(4)d. Each applicant must report for each outfall quantitative data for the following pollutants, if the applicant knows or has reason to believe that the pollutant is discharged from the outfall:~~

~~(AA)(1). All pollutants listed in §§ Table II or Table III of Appendix A 1.62 and 1.63 of this Part (the toxic pollutants) for which quantitative data is not otherwise required under paragraph (a)(14)(ii) of this Part section except that an applicant qualifying as a small business under of this Part paragraph (a) (15) of this section is not required to analyze for the pollutants listed in § Table II of Appendix A 1.62 of this Part (the organic toxic pollutants).~~

~~(BB)(2). All pollutants in § Table IV of Appendix A 1.64 of this Part (certain conventional and nonconventional pollutants).~~

~~E(5)e. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in § Appendix A, Table V 1.65 of this Part (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.~~

~~F(6)f. Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:~~

~~(AA)(1). Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothionate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or~~

~~(BB)(2). — Knows or has reason to believe that TCDD is or may be present in an effluent.~~

~~G(7)g. Small business exemption. An applicant which qualifies as a small business may be exempt from the requirements in n of this Part paragraphs (a)(14)(ii)(A) or (a)(14)(iii)(A) of this section to submit quantitative data for the pollutants listed in § Table II of Appendix B 1.66 of this Part (the organic toxic pollutants); An applicant may qualify if its gross total annual sales averages less than \$100,000 per year (in second quarter 1980 dollars). Applicants who feel they qualify should submit a request for exemption to the Department. The Department shall consider the toxicity of the pollutant in making a decision to exempt an applicant pursuant to this paragraph.~~

~~H(8)h. Toxics used or manufactured. A listing of any toxic pollutant which the applicant does or expects that it will, during the next 5 years, use or manufacture as an intermediate or final product or byproduct.~~

~~I(9)i. Potential discharges. A description of the expected levels of and the reasons for any discharges of pollutants which the applicant knows or has reason to believe will exceed two times the values reported in n of this Part paragraph (a)(14) of this section over the next five (5) years.~~

~~J(10)j. Biological toxicity tests. An identification of biological toxicity tests which the applicant knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge.~~

~~K(11)k. — Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by n of this Part paragraph (a)(14) of this section, the identity of each laboratory or firm and the analyses performed.~~

~~L(12)l. Additional information. In addition to the information reported on the application form, applicants shall provide to the Department upon the Department's request, such other information as the Department may reasonably require to assess the discharges of the facility and to determine whether to issue a RIPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the causes of the toxicity.~~

~~D. — RIDepartment1. — 2. — 3. — 4. —:~~

~~a. — ...§ ...§(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11)
b. — of this Partc. — d. — of this Part of this Part5. 6. — 7. —
of this Part8. — of this PartE. — D. — Application requirements for new and
existing concentrated animal feeding operations and aquatic animal production
facilities. New and existing concentrated animal feeding operations and~~

~~concentrated aquatic animal production facilities shall provide the following information:~~
~~information:~~ 1. ~~a. b. c. d. area; e. f. g. h. i. j. of this Part~~
~~For concentrated animal feeding operations:~~

~~(1)a. The type and number of animals in open confinement and housed under roof.~~

~~(2)b. The number of acres used for confinement feeding.~~

~~(3)c. The designs basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.~~

~~2.2. For concentrated aquatic animal production facilities:~~

~~a. a. The maximum daily and average monthly flows from each outfall.~~

~~b. b. The number of ponds, raceways, and similar structures.~~

~~c. c. The name of the receiving water and the source of intake water.~~

~~d. d. For each species of aquatic animals, the total yearly and maximum harvestable weight.~~

~~e. e. The calendar month of maximum feeding and the total mass of food fed during that month.~~

~~F. department 1. a. b. c. (1) 42 U.S.C. § 6901 et seq. (2) (3) (4) (5) (6) (7) (8) , 42 U.S.C. § 6901 et seq. (9) d. e. f. g. h. (1) e.g. (2) ((AA)AA) ((BB)BB) ((CC)CC) (3) ((AA)AA) ((BB)BB) ((CC)CC) ((DD)DD) (4) (AA)(AA) (BB)(BB) (CC)(CC) (DD)(DD) (5) § () through () of this Part ((AA)AA) ((BB)BB) (CC)(CC) 2. a. b. 1 2 3 4 5) 6 c.~~

~~(1) 2) d. e 1 2 3 (AA)AA (BB)BB (CC)CC (DD)DD) iv 3. a. 1 2) 3 4 5 6 (AA)AA (BB)BB D(CC)CC (DD)DD 7 b. 1 2 3 4 c. 1 (AA)AA (BB)BB (CC)CC (DD)DD (EE)EE 2) 4.~~

~~a. b. ...§ Appendix J, Table 1Ac....§ Appendix J, Table 1Ad. ...§ Appendix J, Table 21 2 3 e. Department f. g. of this Part h. ...§ i. 1 2 3 4 j. 5.~~

~~a. b. 1 2 3 (AA)AA (BB)BB (CC)CC (DD)DD (EE)EE c. d. 12 zone-half e. 1 2 3 f. g.~~

~~h. ...§i. j. 6. a. b. ...§1 2 3 4 5
67c. of this Part12 . a. ...§1 2 b. ,42 U.S.C. §
6901 , 42 U.S.C. § 6928(h)1 2 ...§ Appendix VIII3 c. of this
Part... § 8. a. 1 (AA)AA (BB)BB (CC)CC2 (AA)AA
(BB)BB (CC)CC (DD)DD (EE)EE b. 1
(AA)AA (BB)BB (CC)CC (DD)DD (EE)EE .
. . . (FF)FF 2 (AA)AA (BB)BB
(CC)CC (DD)DD 3 (AA)AA (BB)BB (CC)CC
4 9. 10. of this PartG. 1.11.D.1.32Department1. 2.
3. :~~

~~a. b. c. 4. , 33 U.S.C. § 13165. of this Parta. 1 2
3 4 5 6 7 8 b. ...§Appendix D, Table IV c.
1 ...§ Appendix D, Table III2 ...§Appendix D, Table II d. 1 2
3 4 5 6 e. ...§ Appendix D, Table Vf. 6. 7.
of this PartHI.E. The Department may require that an applicant for a RIPDES
permit provide additional data, reports, specifications, plans or other information
concerning the existing or proposed pollution control program.~~

~~FJ.~~ Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted to the Department under these regulations for a period of at least 5 years from the date the application is signed.

~~JG.~~ Special provisions for applications for new sources.

~~a1.~~ The owner or operator of any facility which may be a new source (as defined in Rule 3§1.3 of this Part) must comply with the provisions of this paragraph.

~~a. 1.~~ Before beginning any on-site construction as defined in 40 CFR 122.29, the owner or operator of any facility which may be a new source must submit information to the Director Department so that he or she can determine if the facility is a new source. The Director may request any additional information needed to determine whether the facility is a new source.

~~2.b.~~ The Director Department shall make an initial determination whether the facility is a new source within 30 days of receiving all necessary information under paragraph (b)(1) of this section.

~~bc.~~ The Director Department shall issue a public notice in accordance with Rule 41§1.42 of this Part of the new source determination under paragraph (b) of this section.

~~ed. Any interested person may challenge the Director's Department's initial new source determination by requesting an evidentiary hearing under Rule 49 §1.50 of this Part within 30 days of issuance of the public notice of the initial determination. The Director Department may defer the evidentiary hearing in the determination until after a final permit decision is made, and consolidate the hearing on the determination with any hearing on the permit.~~

1.12 Signatories to Permit Application and Reports

~~A. Applications. All reports and permit applications submitted under this Part shall be signed in accordance with the signatory requirements from 40 C.F.R. § 122.22, incorporated above at § 1.3(B) of this Part.as follows:~~

- ~~1. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:~~
 - ~~a. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or~~
 - ~~b. The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.~~
 - ~~b. the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.~~
- ~~2. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or~~
- ~~3. For a municipality, State, Federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:~~

~~a. The chief executive officer of the agency, or~~

~~b. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).~~

~~B. Reports. All reports required by permits and other information requested by the Director shall be signed by a person described in paragraph (a) of this Partsection, or by a duly authorized representative of that person. A person is a duly authorized representative only if:~~

~~1. The authorization is made in writing by a person described in of this Partparagraph (a) of this section;~~

~~2. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and~~

~~3. The written authorization is submitted to the Director.~~

~~C. Changes to authorization. If an authorization under of this Part paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of of this Partparagraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.~~

~~D. Certification. Any person signing a document under § of this Part paragraphs (a) or (b) of this section shall make the following certification:~~

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

~~E. Electronic reporting. If documents described in § of this Partparagraph (a) or (b) of this section are submitted electronically by or on behalf of the NPDES-regulated facility, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 C.F.R. §part 3 (including, in all cases,~~

subpart D to part 3) (Cross-Media Electronic Reporting) and 40 C.F.R. §part 127 (NPDES Electronic Reporting Requirements) are met for that submission.

1.13 Continuation of NPDES Permits and Expired RIPDES Permits

- ~~A. The conditions of an NPDES permit or an expired RIPDES permit shall be~~
~~are~~ continued in force until the effective date of a new RIPDES permit in
accordance with the requirements from 40 C.F.R. § 122.6, incorporated above at
§ 1.3(B) of this Part, except that references to the Regional Administrator shall
refer to the Director. ~~if: the permittee has submitted a timely and complete~~
~~application for a RIPDES permit or an application for a renewal of the permit, and~~
~~the Department through no fault of the permittee, does not issue a new permit~~
~~with an effective date under Rule 46 § 1.47 of this Part on or before the~~
~~expiration date of the previous permit (e.g. when issuance is impracticable due to~~
~~time or resource constraints).~~
- ~~B. Permits continued under this section remain fully effective and enforceable.~~
- ~~C. Enforcement. When the permittee is not in compliance with the conditions of the~~
~~expiring or expired permit the Department may choose to do any or all of the~~
~~following:~~
- ~~1. Initiate enforcement action based upon the permit which has been continued;~~
 - ~~2. Issue a notice of intent to deny the new permit, under § 1.42 of this Part Rule 41.~~
~~If the permit is denied, the owner or operator would then be required to cease the~~
~~activities authorized by the continued permit or be subject to enforcement action~~
~~for operating without a permit;~~
 - ~~3. Issue a new permit with appropriate conditions; or~~
 - ~~4. Take other actions authorized by these regulations or the General Laws of~~
~~Rhode Island.~~

1.14 Conditions Applicable to All Permits

- A. All conditions applicable to all permits shall be incorporated into the permit either expressly or by reference. A specific citation to these or other regulations shall be given in the permit. The following conditions apply to all permits:
- B. Duty to comply
1. The permittee shall comply with all conditions of this permit. No pollutant shall be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit. The discharge of any pollutant not specifically authorized in the RIPDES permit or listed and quantified in

the RIPDES application shall constitute a violation of the permit. Any permit noncompliance constitutes a violation of the State Act or other authority of these regulations and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. A permittee shall not achieve any effluent concentration by dilution. Nor shall a permittee increase the use of process water or cooling water or otherwise attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve permit limitations or water quality standards.
 3. The permittee shall comply with applicable effluent standards or prohibitions established under ~~Section 307(a) of the Clean Water Act, 33 U.S.C. § 1317(a)~~ (Section 307(a) of the Clean Water Act) for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
- C. Duty to reapply. If the permittee wishes to continue an activity regulated by a RIPDES permit after the expiration date of the permit, the permittee shall apply for and obtain a new permit.
- D. Need to halt or reduce not a defense.
- ~~a.~~ It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- E. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
- F. Proper operation, ~~and~~ maintenance, and operator licensing. The permittee shall at all times maintain in good working order and operate as efficiently as possible all treatment works, facilities, and systems of treatment and control (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance includes but is not limited to effective performance based on designed facility removals, adequate funding, effective management, adequate operator staffing and training and adequate laboratory and process controls including quality assurance procedures as determined to be appropriate by the ~~Director~~Department. This provision requires the filing of an Operation and

Maintenance Plan which describes backup or auxiliary facilities or similar systems to assure compliance with permit conditions.

- G. Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- H. Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.
- I. Duty to provide information. The permittee shall furnish to the Department within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.
- J. Inspection and entry. The permittee shall allow the Department or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:
 - 1. Enter upon the permittee's premises where a discharge source is or might be located or in which monitoring equipment or records required by a permit are kept for purposes of inspection, sampling or copying;
 - 2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 - 3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
 - 4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the State [Water Pollution Act, R.I. Gen. Laws Chapter 46-12](#), any substances or parameters at any location.
- K. Monitoring and Records
 - 1. All permits shall specify:
 - a. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

- b. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity, when appropriate, continuous monitoring;
- c. Applicable reporting requirements based upon the impact of the regulated activity and as specified in these regulations but in no case less than once a year.

~~2.~~ 2. The permittee shall monitor:

~~aa1.~~ aa1. The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

~~b.b2.~~ b.b2. The volume of effluent discharged from each outfall;

~~c.c3.~~ c.c3. Other measurements as appropriate; including pollutants in internal waste streams, pollutants in intake water for net limitations; frequency, rate of discharge, etc. for noncontinuous discharges; and pollutants subject to notification requirements under § 1.17(A) of this Part~~Rule 16.01.~~

334. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

454. All analyses shall be performed in accordance with the analytical test procedures approved under 40 C.F.R. ~~§Part 136,~~ incorporated above at § 1.3(B) of this Part, or subsequently established by EPA. Where no approved test procedure is available, the applicant must indicate a suitable analytical procedure and must provide the Department with literature references or a detailed description of the procedure. The Department may consider such method as appropriate procedure and may require its use in the RIPDES permit.

LNL. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 5 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.

M. Records of monitoring information shall include:

- 1. The date, exact place, and time of sampling of measurements;
- 2. The individual(s) who performed the sampling of measurements;
- 3. The date(s) analyses were performed;

4. The individual(s) who performed the analyses;
5. The analytical techniques or methods used;
6. The results of such analyses; and
7. The volume of effluent discharged at the time of sampling or measurement.

~~NQ.~~ Monitoring results shall be reported on a Discharge Monitoring Report (DMR) ~~and on the Department's Monitoring Report Form (MRF).~~

O. If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 C.F.R. § 136, incorporated above at § 1.3(B) of this Part, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR and MRF.

P. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit.

Q. Reporting requirements-

1. Planned changes. The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility.
2. Anticipated noncompliance. The permittee shall give reasonable advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
3. Transfers. The permit is not transferable to any person except after notice to the Department. The Department may require modification, revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary.
4. Monitoring reports. Monitoring results shall be reported at the intervals specified in the permit.
5. Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any

compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

~~L~~R. Reporting

1. ~~a.~~ The permittee shall immediately report any noncompliance which may endanger health or the environment. Any information shall be provided orally when the permittee becomes aware of the circumstances by calling DEM, ~~Operations & Maintenance Section at 222-4700 or 222-3070 during non-business hours.~~ A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

~~2b~~2. The following shall be included as information which must be reported immediately

~~_____~~

~~a.(1)a.~~ Any unanticipated bypass which exceeds any effluent limitation in the permit.

~~_____~~

~~b(2).b.~~ Any upset which exceeds any effluent limitation on the permit.

~~c.(3c.)~~ Violation of a maximum daily discharge limitation for any of the pollutants listed by the ~~Director~~ Department in the permit.

~~3.3c.~~ The ~~Director~~ Department may waive the written report in a case-by-case basis ~~for reports under paragraph (b) of this section~~ if the oral report has been received within 24 hours.

~~M.7S.~~ Other noncompliance. The permittee shall report all instances of noncompliance, not otherwise reported under ~~subsections §§ 1.14(Q) 14.17 and §1.14(R)14 of this Part 14.18~~ at the time monitoring reports are submitted. The reports shall contain the information required in ~~subsection § 1.14(R) of this Part 14.18.~~

~~N~~ST. Bypass:

1. Bypass not exceeding limitations. -The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These

bypasses are not subject to the provisions of ~~paragraphs §§ 1.14(T)(2) and (3) of this Part(b) and (c) of this section.~~

2. Notice

- a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
- b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in ~~Rule § 1.14(R) of this Part 14.18~~ (24-hour notice).

3. Prohibition of bypass

- a. Bypass is prohibited, and the ~~Director-Department~~ may take enforcement action against a permittee for bypass, unless:
 - (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; for purposes of this section "severe property damage" means:

Substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

- b. ~~_____~~ There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- c. The permittee submitted notices as required under ~~§ 1.14(T)(2) of this Part-paragraph (b) of this section.~~

- 4. The ~~Director-Department~~ may approve an anticipated bypass, after considering its adverse effects, if the ~~Director-Department~~ determines that it will meet the three conditions listed above in ~~§ 1.14(T)(3) of this Partparagraph (c)(1)(i) of this section.~~

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of § 1.14(U)(2) of this Part paragraph (b) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset and before an action for noncompliance, is final administrative action subject to judicial review.
2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An upset occurred and that the permittee can identify the specific cause(s) of the upset;
 - b. The permitted facility was at the time being properly operated;
 - c. The permittee submitted notice of the upset as required in § 1.14(R) of this Part §1.14(Q) of this Part Rule 14.18 of this section (24-hour notice); and
 - d. The permittee complied with any remedial measures required under Rule 14.05 of this section § 1.14(E) of this Part of this Part.
3. Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

PUV. Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, the permittee shall promptly submit such facts or information.

1.15 Establishing Permit Conditions (applicable to State programs, see §123.25).

- A. In addition to conditions required in all permits, the Department shall establish conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements of CWA and regulations. These shall include conditions for duration of permits, monitoring, electronic reporting requirements of 40 CFR part 3 (Cross-Media Electronic Reporting Regulation) and 40 CFR part 127 (NPDES Electronic Reporting)
1. An applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit.

2. New or reissued permits, and to the extent allowed § 1.37 of this Part modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in §§ 1.16 and §1.17 of this Part.

GB. Incorporation. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

1.156 Establishing Limitations, Standards & Other Permit Conditions

A. Each permit shall include conditions meeting the following requirements when applicable:

1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under ~~Section 301 of the Clean Water Act~~, 33 U.S.C. § 1311 (Section 301 of the Clean Water Act) or new source performance standards promulgated under 33 U.S.C. § 1316 (Section 306 of the Clean Water Act); or case-by-case effluent limitations determined under ~~Section 402(a)(1) of the Clean Water Act~~, 33 U.S.C. § 1342(a)(1) (Section 402(a)(1) of the Clean Water Act), or on a combination of the two, in accordance with 40 C.F.R. ~~§Section Part~~ 125.3, incorporated above at § 1.3(B) of this Part.

2. Monitoring waivers for certain guideline-listed pollutants.

a. The ~~Director~~Department may authorize a discharger subject to technology-based effluent limitations guidelines and standards in an RIPDES permit to forego sampling of a pollutant found at 40 C.F.R. Chapter I, Subchapter N, incorporated above at § 1.3(B), of this Part- of this chapter if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

b(ii)2. -This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger.

c(iii)3. -Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is

present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

d(iv)4. -Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis.

e(v) 5. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

3

2B. Other effluent limitations and standards under ~~Sections 301, 302, 303, 307, 318 and 405 of the Clean Water Act, 33 U.S.C. §§ 1311, 1312, 1313, 1317, 1328 and 1345 (Sections 301, 302, 303, 307, 318 and 405 of the Clean Water Act), and 40 C.F.R. Parts §§ 125, 129, 133, and Chapter I, Subchapter N, incorporated above at § 1.3(B) of this Part.~~ If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standards or prohibition) is promulgated under ~~Section 307(a) of the Clean Water Act, 33 U.S.C. § 1317(a) (Section 307(a) of the Clean Water Act)~~ for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Department shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

4.3C. Reopener clause: for any discharge within a primary industry category (see § 1.698 of this Part Appendix D), requirements under ~~Section 307(a)(2) of the Clean Water Act, 33 U.S.C. § 1317(a)(2) (Section 307(a)(2) of the Clean Water Act)~~ as follows:

aa1. Any permit issued shall include effluent limitations and a compliance schedule to meet the requirements of ~~Sections 301(b)(2)(A),(C),(D),(E) and (F) of the Clean Water Act, 33 U.S.C. § 1311(b)(2)(A),(C),(D),(E) and (F) (Sections 301(b)(2)(A),(C),(D),(E) and (F) of the Clean Water Act)~~ whether or not applicable effluent limitation guidelines have been promulgated or approved. Such permits shall contain a provision that, if an applicable standard limitation is promulgated under ~~Section 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act, 33 U.S.C. §§ 1311(b)(2)(C) and (D), 1314(b)(2), and 1317(a)(2) (Section 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act)~~, and that effluent standard or limitations is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit, the permit shall be promptly modified or

revoked and reissued to conform to the effluent standard or limitation.

~~bb2.~~ The Department shall promptly modify or revoke and reissue any permit to incorporate an applicable effluent standard or limitation under ~~Sections 301(b)(2)(C) and (D), 304(b)(2) and 307(a)(2) of the Clean Water Act, 33 U.S.C. §§ 1311(b)(2)(C) and (D), 1314(b)(2) and 1317(a)(2) (Sections 301(b)(2)(C) and (D), 304(b)(2) and 307(a)(2) of the Clean Water Act)~~ which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

~~54D.~~ Water quality standards and State requirements: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under ~~Sections 301, 304, 306, 307, 318, and 405 of the Clean Water Act~~ 33 U.S.C. §§ 1311, 1314, 1316, 1317, 1328, and 1345 (~~Sections 301, 304, 306, 307, 318, and 405 of the Clean Water Act~~) necessary to:

~~aa1.~~ Achieve water quality standards; established under ~~Section 303 of the Clean Water Act, 33 U.S.C. § 1313 (Section 303 of the Clean Water Act);~~

~~b~~ ~~(i)2.~~ -Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the ~~Director~~Department determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

~~c.(ii)3.~~ -When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

~~d.(iii)4.~~ -When the permitting authority determines, using the procedures in this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an

individual pollutant, the permit must contain effluent limits for that pollutant.

~~e(iv)5.~~ -When the permitting authority determines, using the procedures in this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.

~~f(v)6.~~ -Except as provided in this subparagraph, when the permitting authority determines, using the procedures in this section, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the permitting authority demonstrates in the fact sheet or statement of basis of the RIPDES permit, using the procedures in this section, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

~~g(vi)7.~~ -Where the State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard, the permitting authority must establish effluent limits using one or more of the following options:

~~(1)(A)a.~~ -Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

~~(2)(B)b.~~ -Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 304(a) of the CWA, 33 U.S.C. § 1314(a) (Section

304(a) of the Clean Water Act), supplemented where necessary by other relevant information; or

~~(3)(C)c.~~ -Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

~~((AA)AA)- The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;~~

~~((BB)BB)- The fact sheet sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;~~

~~(CC)(CC)- The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and~~

~~(DD)(DD)- The permit contains a reopener clause allowing the permitting authority to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.~~

~~h(vii)8.~~ -When developing water quality-based effluent limits under this paragraph the permitting authority shall ensure that:

~~(1)(A)a.~~ -The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

~~(B)b.(2)~~ -Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 C.F.R. § 130.7.

~~b6.(3)~~ Attain or maintain a specified water quality through water quality-related effluent limits established under ~~Section 302 of the Clean Water Act, 33 U.S.C. § 1312 (Section 302 of the Clean Water Act);~~

- ~~_____ed.~~ (4) Conform to applicable water quality requirements under ~~Section 401(a)(2) of the Clean Water Act, 33 U.S.C. § 1341(a)(2) (Section 401(a)(2) of the Clean Water Act)~~ when the discharge affects a state other than the certifying State;
- ~~_____de.~~ (5) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under Federal or State law or regulations in accordance with ~~Section 301(b)(1)(C) of the Clean Water Act, 33 U.S.C. § 1311(b)(1)(C) (Section 301(b)(1)(C) of the Clean Water Act) or Chapter 46-12 of the R.I. Gen. Laws Chapter § 46-12 General Laws of Rhode Island;~~
- ~~_____ef.~~ (6) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA and the Governor of Rhode Island under ~~Section 208(b) of the Clean Water Act, 33 U.S.C. § 1288(b); (Section 208(b) of the Clean Water Act);~~
- ~~_____fg.~~ (7) Incorporate Section 403(c) criteria under 40 C.F.R. ~~§Part~~ 125, Subpart M, incorporated above at § 1.3(B) of this Part for ocean discharges;
- ~~_____gh.~~ (8) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors", under 40 C.F.R. ~~§Part~~ 125, Subpart D, incorporated above at § 1.3(B) of this Part.
- ~~_____658.~~ Toxic pollutants: limitations established under §§ 1.16(A)(1), §1.16(A)(3), and §1.16(A)(5) of this Part~~paragraphs (a), (b), or (d) of this section,~~ to control pollutants meeting the criteria listed in § 1.16(A)(6)(a) of this Part~~paragraph (e)(1) of this section,~~ shall be established in accordance with § 1.16(A)(6)(b) of this Part~~paragraph (e)(2) of this section.~~ An explanation of the development of these limitations shall be included in the fact sheet under ~~Rule 39~~§ 1.40 of this Part.
- ~~_____Aa.~~ Limitations must control all toxic pollutants which:

 - ~~_____ (1)~~ 4. The Department determines (based on information reported in a permit application under Rule § 1.11 of this Part or in a notification under § 1.17(A) of this Part ~~subsection 16.01~~ or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 C.F.R. ~~Section Part §~~ 125.3(c), incorporated above at § 1.3(B) of this Part; or

~~2(2).~~ The discharger does or may use or manufacture as an intermediate or final product or byproduct.

~~Bb.~~ The requirement that the limitations control the pollutants meeting the criteria of § 1.16(A)(6)(a) of this Part paragraph (e)(1) of this section will be satisfied by:

~~(1)1.~~ Limitations on those pollutants; or

~~(2)2.~~ Limitations on other pollutants which, in the judgement of the Department, will provide treatment of the pollutants under § 1.16(A)(6)(a) of this Part paragraph (e)(1) of this section to the levels required by 40 C.F.R. §Section 125.3(c), incorporated above at § 1.3(B) of this Part.

~~697.~~ Maximum Daily Discharge Limitations. The requirement that the permit contain a list of all pollutants for which a permittee must report violations of maximum daily discharge limitations. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

~~8107.~~ Best Management Practices: Adopt best management practices to control or abate the discharge of pollutants when:

~~aa.~~ Authorized under ~~Section 304(e) of the Clean Water Act, 33 U.S.C. § 1314(e) (Section 304(e) of the Clean Water Act)~~ for the control of toxic pollutants and hazardous substances from ancillary activities;

~~bb.~~ Authorized under ~~Section 402(p) of CWA, 33 U.S.C. § 1342(p) (Section 402(p) of Clean Water Act)~~ for the control of storm water discharges;

~~cc.~~ Numeric effluent limitations are infeasible, or

~~dd.~~ The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the State and Federal Acts.

~~8119.~~ Notification Level: The requirement that the permit contain a "notification level" which may not exceed those levels provided in § 1.167(A) of this Part(1) of this PartRule 16.01 (a) or the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 C.F.R. §Section Part 125.3(c), incorporated above at § 1.3(B) of this Part.

~~10912.~~ Qualifying State, or local programs. A qualifying local program is a local or State storm water management program that the ~~Director-Department~~ determines, at a minimum, the relevant requirements in ~~§ 1.32(5E)(e3)(2b) of this Part of this PartRule 31(e)(3)(ii)~~ are imposed. Where a qualifying State, or local program does not include one or more of the elements as conditions in the permit, the operator of the MS4 is required to include the missing elements in the storm water management program.

~~aa.~~ For storm water discharges associated with small construction activity identified in ~~§ 1.4 of this PartRule 31(b)(16)~~, the ~~Director-Department~~ may include permit conditions that incorporate qualifying State, or local erosion and sediment control program requirements by reference. A qualifying State, or local erosion and sediment control program is one that includes:

~~(1)4.~~ Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

~~2(2).~~ Requirements for construction site operators to control waste, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

~~3(3).~~ Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions, description of appropriate control measures, copies of approved State or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges); and

~~4(4).~~ Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

~~bb.~~ For storm water discharges from construction activity identified in ~~§ 1.34 of this Part of this PartRule 31(b)(15)(x)~~, the ~~Director-Department~~ may include permit conditions that incorporate qualifying State, or local erosion and sediment control program requirements by reference. A qualifying State, or local erosion and sediment control program is one that includes the elements listed in ~~§ 1.16(A)(10)(a) of this Partparagraph (i)(1) of this section~~ and any additional requirements necessary to achieve the applicable technology-based standards of “best available technology” and

“best conventional technology” based on the best professional judgement of the permit writer.

1.167 Conditions Applicable to Specific Types of Permits

A. The following conditions, in addition to those set forth in §§ 1.14, §1.15, and §1.16 of this Part~~1.15 of this Part~~Rules 14 and 15 of this Part, apply to all RIPDES permits within the categories specified below:

BA. Existing manufacturing, commercial, mining, and silvicultural dischargers and research facilities. All existing manufacturing, commercial, mining, and silvicultural dischargers and research facilities must notify the Department as soon as they know or have reason to believe:

1. That any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification level".
 - a. One hundred micrograms per liter (100 ug/l);
 - b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2, 4 - dinitrophenol and for 2 - methyl-4, 6-dinitrophenol, and one milligram per liter (1 mg/l) for antimony;
 - c. Five (5) times the maximum concentration value reported for the pollutant ~~on~~in the permit application;
 - d. The level established by the Department in accordance with § 1.18 of this Part of this Part~~Rule 17~~.
 - e. That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application.
2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - a. Five hundred micrograms per liter (500 µg/l);
 - b. One milligram per liter (1 mg/l) for antimony;
 - c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application.

d. The level established by the Department in accordance with § 1.18 of this Part.

B. Publicly Owned Treatment Works (POTWs)-

1. All POTWs must provide adequate notice to the Department of the following:
 - a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to ~~Sections 301 or 306 of the Clean Water Act, 33 U.S.C. §§ 1311 or 1316 (Sections 301 or 306 of the Clean Water Act)~~, if it were directly discharging those pollutants; and
 - b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
 - c. For purposes of this paragraph, adequate notice shall include information ~~on (a)~~ the quality and quantity of effluent introduced into the POTW, and ~~(ii)~~ any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

C. Grants to POTWs. Any conditions imposed in grants made ~~by the Administrator to POTWs under Sections 201 and 204 of the Clean Water Act, 33 U.S.C. §§ 1281 and 1284 (Sections 201 and 204 of the Clean Water Act)~~ or by the Department which are reasonably necessary for the achievement of effluent limitations under ~~33 U.S.C. § 1311 (Section 301 of the Clean Water Act) or Chapter 46-12 of the R.I. Gen. Laws Chapter § 46-12 General Laws of Rhode Island.~~

D. Pretreatment Requirements for POTWs

1. Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under ~~Section 307(b) of the Clean Water Act, 33 U.S.C. § 1317(b); (Section 307(b) of the Clean Water Act), 40 C.F.R. § Part 403, incorporated above at § 1.3(B) of this Part, and the Rhode Island Pretreatment Regulations, Part 2 of this Subchapter;~~
2. Notify the Department in advance of the quality and quantity of all new introduction of pollutants into a facility and of any substantial change in the pollutants introduced into a facility by an existing user of the facility, except for such introductions of nonindustrial pollutants as the Department may exempt from this notification requirement when ample capacity remains in the facility to accommodate new inflows. Such notifications shall estimate

the effects of such changes on the effluents to be discharged from the facility;

3. To establish an effective regulatory program, alone or in conjunction with the operators of sewage collection systems, that will assure compliance and monitor progress toward compliance by industrial users of the facilities with toxicity standards and pretreatment standards;
4. As actual flows to the facility approach design flow or design loading limits, to submit to the Department for approval, a program which the permittee and the persons responsible for building and maintaining the contributory system shall pursue in order to prevent overload of the facilities;
5. Submit a local program when required by and in accordance with 40 C.F.R. ~~§Part~~ 403, incorporated above at § 1.3(B) of this Part -and the Rhode Island Pretreatment Regulations Part 2 of this Subchapter to assure compliance with pretreatment standards to the extent applicable under ~~Section 307(b), 33 U.S.C. § 1317(b) (Section 307(b) of the Clean Water Act)~~. The local program shall be incorporated into the permit as described in 40 C.F.R. ~~§Part~~ 403, incorporated above at § 1.3(B) of this Part, and the Rhode Island Pretreatment Regulations, Part 2 of this Subchapter. This program shall require all indirect dischargers to the POTW to comply with the reporting requirements of 40 C.F.R. ~~§Part~~ 403 and the Rhode Island Pretreatment Regulations, Part 2 of this Subchapter.

- E. Privately Owned Treatment Works. A permit for a privately owned treatment works may contain any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable regulations parts. Alternatively, the ~~Director-Department~~ Director's-Department's may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The

decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

- F. Reissued Permits

1. Except as provided in § 1.17(F)(2) of this Part~~paragraph (b) of this subsection~~, when a permit is renewed or reissued, interim limitations, standards, or conditions which are at least as stringent as the final limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would

constitute causes for permit modification or revocation and reissuance) shall be included in such permit.

2. When effluent limitations were imposed under ~~Section 402(a)(1) of the Clean Water Act, 33 U.S.C. § 1342(a)(1)~~ (Section 402(a)(1) of the Clean Water Act) in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, this paragraph shall apply unless:
 - a. The discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous limitations. In this case the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by the subsequently promulgated effluent limitation guidelines);
 - b. The subsequently promulgated effluent guidelines are based in best conventional pollutant control technology ~~pursuant to (Section 301(b)(2)(E) of the Clean Water Act, 33 U.S.C. § 1311(b)(2)(E))~~ (Section 301(b)(2)(E) of the Clean Water Act);
 - c. The circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance; or
 - d. There is increased production at the facility which results in significant reduction in treatment efficiency, in which case the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads; but in no event shall permit limitations be less stringent than those required by subsequently promulgated standards and limitations.
- G. Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.
- H. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with § 1.56 of this Part~~Rule 55~~.
- I. Sewage Sludge. A permit may contain conditions governing the disposal of sewage sludge from publicly owned treatment works in accordance with ~~Section~~

~~405 of the Clean Water Act, 33 U.S.C. § 1345 (Section 405 of the Clean Water Act)~~ and any applicable regulations.

J. Municipal Separate Storm Sewer Systems

1. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the ~~Director Department~~ under ~~Rule 31(a)(1)(v) § 1.32(b)(3)(AA)(b)42 of this Part~~ must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:
 - a. The status of implementing the components of the storm water management program that are established as permit conditions;
 - ~~b.~~ b. ~~P~~Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with ~~Rule 31(d)(2)(iv); § 1.32(bD)(2)4(dCC)(6) of this Part~~ and
 - c. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under ~~Rule 31(d)(2)(v) §§ 1.32(Db)(23)(d)AA)(b)42 of this Part~~ and ~~(d)(2)(vi) § 1.32(D)(2)(e)(CC)(5) of this Part~~;
 - d. A summary of data, including monitoring data, that is accumulated throughout the reporting year;
 - e. ~~Projected a~~Annual expenditures and budget for year following each annual report;
 - f. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and
 - g. Identification of water quality improvements or degradation.
2. The operator of a regulated small MS4 must evaluate program compliance, the appropriateness of the identified best management practices, and progress towards achieving the identified measurable goals. The Department may develop specific monitoring requirements in accordance with State monitoring plans appropriate to the watershed.
 - a. The operator of a regulated small MS4 must keep records required by the RIPDES permit for at least three (3) years. The operator must submit the records to the Department only when specifically asked to do so. The operator must make the records, including a copy of the storm-water management program plan, available to the public at reasonable times during regular business hours.

- b. Unless the operator is relying on another entity to satisfy the RIPDES permit obligation in accordance to ~~Rule 31(a)(5)(ii)(D) § 1.32(5A)(a5)(b)((4))~~ of this Part, the operator must submit annual reports to the Department for the first permit term. For subsequent permit terms, the operator must submit reports in year two (2) and four (4) unless the Department requires more frequent reports. The report must include:
- (1) The status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures;
 - (2) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;
 - (3) A summary of the storm water activities the operator plans to undertake ~~durng~~during the next reporting cycle;
 - (4) A change in any identified best management practices or measurable goals for any of the minimum control measures; and
 - (5) Notice that the operator is relying on another government entity to satisfy some of the permit obligations (if applicable).

K. ~~L.~~ Concentrated animal feeding operations (CAFOs). Any permit issued to a CAFO must include the following requirements:

(4)-1. Requirement to implement a nutrient management plan. Any permit issued to a CAFO must include a requirement to implement a nutrient management plan that, at a minimum, contains best management practices necessary to meet the requirements of this subsection and applicable effluent limitations and standards, including those specified in 40 C.F.R. ~~§part~~ 412, incorporated above at § 1.3(B) of this Part. The nutrient management plan must, to the extent applicable:

- (i)a. -Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
- (ii)b. -Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

- (iii)c. -Ensure that clean water is diverted, as appropriate, from the production area;
 - (iv)d. -Prevent direct contact of confined animals with waters of the United States;
 - (v)e. -Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;
 - (vi)f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;
 - (vii)g. -Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;
 - (viii)h. -Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and
 - (ix)i. -Identify specific records that will be maintained to document the implementation and management of the minimum elements described in this section.
- (2)2. -Recordkeeping requirements. The permittee must create, maintain for five years, and make available to the ~~Director~~Department, upon request, the following records:
- (A)a. -All applicable records identified pursuant to this section;
 - (B)b. -In addition, all CAFOs subject to 40 C.F.R. ~~§part~~ 412, incorporated above at § 1.3(B) of this Part, must comply with record keeping requirements as specified in § 412.37(b) and (c) and § 412.47(b) and (c).
 - (ii1) -A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the ~~Director~~Department upon request.
- (3)3. -Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter or process wastewater to other persons, Large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of 40 C.F.R.

~~§part~~ 412, incorporated above at § 1.3(B) of this Part. Large CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of manure, litter or process wastewater transferred to another person.

~~(4)4.~~ -Annual reporting requirements for CAFOs. The permittee must submit an annual report to the ~~Director~~Department. As of ~~December 21,~~ 2020December 21, 2020 all annual reports submitted in compliance with this section must be submitted electronically by the permittee to the ~~Director~~Department or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this section and 40 C.F.R. ~~§part~~ 3- (including, in all cases, subpart D to part 3), § 122.22, and 40 C.F.R. ~~part~~§ 127 (incorporated above at § 1.3(B) of this Part. ~~Part~~Section 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of ~~part~~Section 127, the permittee may be required to report electronically if specified by a particular permit or if required to do so by state law. The annual report must include:

- ~~(i)a.~~ -The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);
- ~~(ii)b.~~ -Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
- ~~(iii)c.~~ -Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months (tons/gallons);
- ~~(iv)d.~~ -Total number of acres for land application covered by the nutrient management plan;
- ~~(v)e.~~ -Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;
- ~~(vi)f.~~ -Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months, including, for each discharge, the date of discovery, duration of discharge, and approximate volume; and
- ~~(vii)g.~~ -A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner; and

(viii)h. -The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with section, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with § 1.17(K)(1)(h) of this Part, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with paragraph § 1.17(K)(1)(h) of this Part, and the amount of any supplemental fertilizer applied during the previous 12 months.

(5)5. -Terms of the nutrient management plan. Any permit issued to a CAFO must require compliance with the terms of the CAFO's site-specific nutrient management plan. The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined by the ~~Director~~Department to be necessary to meet the requirements of this section. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater required by § 1.17(K)(1) of this Part and, as applicable, 40 C.F.R. § 412.4(c) , incorporated above at § 1.3(B) of this Part, must include the fields available for land application; field-specific rates of application properly developed to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application. The terms must address rates of application using one of the following two approaches, unless the ~~Director~~Department specifies that only one of these approaches may be used:

(i)a. -Linear approach. An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

(A1) -The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the ~~Director~~Department, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms must include: The outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field such

as pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations from sources specified by the DirectorDepartment for each crop or use identified for each field; credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; and accounting for all other additions of plant available nitrogen and phosphorus to the field. In addition, the terms include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

(B)2) -Large CAFOs that use this approach must calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application; or

(ii)b. -Narrative rate approach. An approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications:

(A1) -The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the DirectorDepartment, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms must include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses such as pasture or fallow fields (including alternative crops identified in accordance with paragraph § 1.17 (K)(4)(h) of this sectionPart); the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the DirectorDepartment for each crop or use identified for each field. In addition, the terms include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure,

litter, and process wastewater to be land applied; Results of soil tests conducted in accordance with protocols identified in the nutrient management plan; credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

(B2) -The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops must be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan must include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the ~~Director~~Department for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied must be determined in accordance with the methodology described in § 1.17(K)(1) of this Part.

(G3) -For CAFOs using this approach, the following projections must be included in the nutrient management plan submitted to the ~~Director~~Department, but are not terms of the nutrient management plan: The CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

(D4) -CAFOs that use this approach must calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology

required in this section before land applying manure, litter, and process wastewater and must rely on the following data:

(AA)(1AA) -A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by this section, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the DirectorDepartment; and

(BB)(2BB) -The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

(6)6. -Changes to a nutrient management plan. Any permit issued to a CAFO must require the following procedures to apply when a CAFO owner or operator makes changes to the CAFO's nutrient management plan previously submitted to the DirectorDepartment:

(i)a. -The CAFO owner or operator must provide the DirectorDepartment with the most current version of the CAFO's nutrient management plan and identify changes from the previous version.

(ii)b. -The DirectorDepartment must review the revised nutrient management plan to ensure that it meets the requirements of this section and applicable effluent limitations and standards, including those specified in 40 C.F.R. §part 412 , incorporated above at § 1.3(B) of this Part, and must determine whether the changes to the nutrient management plan necessitate revision to the terms of the nutrient management plan incorporated into the permit issued to the CAFO. If revision to the terms of the nutrient management plan is not necessary, the DirectorDepartment must notify the CAFO owner or operator and upon such notification the CAFO may implement the revised nutrient management plan. If revision to the terms of the nutrient management plan is necessary, the Director must determine whether such changes are substantial changes as described in this section.

(A1) -If the DirectorDepartment determines that the changes to the terms of the nutrient management plan are not substantial, the DirectorDepartment must make the revised nutrient management plan publicly available and include it in

the permit record, revise the terms of the nutrient management plan incorporated into the permit, and notify the owner or operator and inform the public of any changes to the terms of the nutrient management plan that are incorporated into the permit.

(B2) -If the DirectorDepartment determines that the changes to the terms of the nutrient management plan are substantial, the DirectorDepartment must notify the public and make the proposed changes and the information submitted by the CAFO owner or operator available for public review and comment. The process for public comments, hearing requests, and the hearing process if a hearing is held must follow the procedures applicable to draft permits set forth in §§ 1.42 and §1.44 of this Part. The DirectorDepartment may establish, either by regulation or in the CAFO's permit, an appropriate period of time for the public to comment and request a hearing on the proposed changes that differs from the time period specified in § 1.42 of this Part. The Director must respond to all significant comments received during the comment period as provided in § 1.48 of this Part, and require the CAFO owner or operator to further revise the nutrient management plan if necessary, in order to approve the revision to the terms of the nutrient management plan incorporated into the CAFO's permit. Once the Director incorporates the revised terms of the nutrient management plan into the permit, the DirectorDepartment must notify the owner or operator and inform the public of the final decision concerning revisions to the terms and conditions of the permit.

(iii.c.) -Substantial changes to the terms of a nutrient management plan incorporated as terms and conditions of a permit include, but are not limited to:

(A1) -Addition of new land application areas not previously included in the CAFO's nutrient management plan. Except that if the land application area that is being added to the nutrient management plan is covered by terms of a nutrient management plan incorporated into an existing RIPDES permit and the CAFO owner or operator applies manure, litter, or process wastewater on the newly added land application area in accordance with the existing field-specific permit terms applicable to the newly added land application area, such addition of new land would be a change to the new CAFO owner or operator's nutrient management plan but not a substantial change for purposes of this section;

- (B2) -Any changes to the field-specific maximum annual rates for land application and to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop;
- (G3) -Addition of any crop or other uses not included in the terms of the CAFO's nutrient management plan and corresponding field-specific rates of application; and
- (D4) -Changes to site-specific components of the CAFO's nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the State.

1.178 Calculating RIPDES Permit Conditions

- A. Outfalls and discharge points. All permit effluent limitations, standards, and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under § 1.16(4G) of this Part Rule 15.01(g) (BMPs where limitations are infeasible) and § 1.18(K) of this Part paragraph 17.09 of this section (limitations on internal waste streams).
- B. Production-based ~~B~~ limitations:
 - 1. In the case of POTWs, permit effluent limitations, standards or prohibitions shall be calculated based on design flow.
 - 2. Except in the case of POTWs, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility, such as the production during the high month of previous year, or the monthly average for the highest of the previous five years. For new sources or new discharges, actual production shall be estimated using projected production. The time period for calculating permit limitations, for example, monthly production, shall be used to calculate average monthly discharge limitations. of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.
 - 3. -The Department may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

C. For the automotive manufacturing industry only, the Regional Administrator shall, and the State Department may establish a condition under § 1.18(B)(3) of this Partparagraph (b)(2)(ii)(A)(1) of this section- if the applicant satisfactorily demonstrates to the Department at the time the application is submitted that its actual production, as indicated in § 1.18(B)(2) of this Partparagraph (b)(2)(i) of this section, is substantially below maximum production capability and that there is a reasonable potential for an increase above actual production during the duration of the permit.

1. If the Department establishes permit conditions under § 1.18(B)(3) of this Partparagraph (b)(2)(ii)(A) of this section:

a. The permit shall require the permittee to notify the Department at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

b. The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Department under § 1.18(C)(1)(a) of this Partparagraph (b)(2)(ii)(B)(1) of this section, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

c. The permittee shall submit with the DMR the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

DE. Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of the total metal (that is, the sum of the dissolved and suspended fractions of the metal) unless:

1. An applicable effluent standard or limitation has been promulgated under the Federal or State Acts and specifieds the limitation for the metal in the dissolved or valent forms; or

2. In establishing permit limitations on a case-by-case basis under 40 C.F.R. ~~§Section Part~~ 125.3, incorporated above at § 1.3(B) of this Part, it is necessary to express the limitation on the metal in dissolved or valent form in order to carry out the provisions of the ~~State~~R.I. Water Pollution Act, R.I. Gen. Laws Chapter 46-12 and ~~Federal the Clean Water Acts, 33 U.S.C. 1251, et seq (the Clean Water Act).~~
3. All approved analytical methods for the metal inherently measure only its dissolved form (e.g., hexavalent chromium).

~~DE~~. Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

1. Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and
2. Maximum daily, average weekly and average monthly discharge limitations for POTWs.

~~EF~~. Non-continuous discharges. Discharges which are not continuous shall be particularly described and limited, considering the following factors, as appropriate:

1. Frequency (for example, a batch discharge shall not occur more than once every 3 weeks);
2. Total mass (for example, not to exceed 100 pounds of zinc and 200 pounds of chromium per batch discharge);
3. Maximum rate of discharge of pollutants during the discharge (for example, not to exceed 2 pounds of zinc per minute); and
4. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/l zinc or more than .25 pounds of zinc in any discharge).

~~FG~~. Non-continuous discharges. Discharges which are not continuous shall be particularly described and limited, considering the following factors, as appropriate:

1. Frequency (for example, a batch discharge shall not occur more than once every 3 weeks);
2. Total mass (for example, not to exceed 100 pounds of zinc and 200 pounds of chromium per batch discharge);

3. Maximum rate of discharge of pollutants during the discharge (for example, not to exceed 2 pounds of zinc per minute); and
4. Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/l zinc or more than .25 pounds of zinc in any discharge).

GH. Mass Limitations

1. All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:
 - aA. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;
 - bB. When applicable standards and limitations are expressed in terms of other units of measurement; or
 - cC. If in establishing permit limitations on a case-by-case basis under 40 C.F.R. ~~§Section~~ 125.3, incorporated above at § 1.3(B) of this Part, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operations (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.
2. Pollutants limited in terms of mass may additionally be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

HJ. Pollutants in Intake Water:

~~Except as provided in Rule 17.08, effluent limitations imposed in permits shall not be adjusted for pollutants in the intake water.~~

1. Upon request of the discharger, technology-based effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:
 - a. The applicable effluent limitations and standards contained in 40 C.F.R. Chapter I, Ssubchapter N, incorporated above at § 1.3(B) of this Part,- specifically provide that they shall be applied on a net basis; or
 - b. -The discharger demonstrates that the control system it proposes or uses to meet applicable technology-based limitations and

standards would, if properly installed and operated, meet the limitations and standards in the absence of pollutants in the intake waters.

2. Credit for generic pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the generic measure in the effluent are substantially similar to the constituents of the generic measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.
3. Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.
4. Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Department may waive this requirement if he finds that no environmental degradation will result.
5. This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

U. Net Limitations

1. Upon request of the discharger, effluent limitations or standards imposed in a permit shall be calculated on a "net" basis; that is, adjusted to reflect credit for pollutants in the discharger's intake water, if the discharger demonstrates that its intake water is drawn from the same body of water into which the discharge is made and if:
 - aA. The applicable effluent limitations and standards contained in 40 C.F.R. Chapter I, Subchapter N, incorporated above at § 1.3(B) of this Part, specifically provide that they shall be applied on a net basis; or
 - bB. The discharger demonstrates that pollutants present in the intake water will not be entirely removed by the treatment systems operated by the discharger; and
2. The permit conditions requiring:
 - aA. The permittee to conduct additional monitoring (for example, for flow and concentration of pollutants) as necessary to determine

continued eligibility for and compliance with any such adjustments;
and

~~bB.~~ The permittee to notify the Department if eligibility for an adjustment under this section has been altered or no longer exists. In that case, the permit may be modified.

3. Permit effluent limitations or standards adjusted under this paragraph shall be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the discharger. Adjustments under this paragraph shall be given only to the extent that pollutants in the intake water which are limited in the permit are not removed by the treatment technology employed by the discharger.
4. In addition, effluent limitations or standards shall not be adjusted to the extent that the pollutants in the intake water vary physically, chemically, or biologically from the pollutants limited in the permit. Nor shall effluent limitations or standards be adjusted to the extent that the discharger or standards be adjusted to the extent that the discharger significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same.
5. This subsection shall apply to dischargers to surface or ground water only if the discharger demonstrates to the satisfaction of the Department that the discharger is not responsible for the background pollutants present in the intake water.

~~JK.~~ Internal ~~W~~waste ~~S~~streams

- A. When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by § 1.14(K)(2) of this Part Rule 14.11(b) shall also be applied to the internal waste streams.
- B. Limits on internal waste streams will be imposed only when the fact sheet under § 1.40 of this Part Rule 39 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible (for example, under 10 meters of water), the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

~~KL.~~ Disposal of pollutants into wells, into POTWs, or by land applications. Permit limitations and standards shall be calculated as provided in § 1.19 of this Part. Rule 18.

~~LM.~~ Water quality based effluent limitations applicable to discharge into the surface waters of the State shall be developed in accordance with "Rhode Island "Water Quality Regulations ~~for Water Pollution Control~~" as amended.

~~MN.~~ ~~The values assigned to the toxic substances listed in Appendix E shall be used in computing limitations of an individual toxic substance being discharged from a source into surface waters. The limitation assigned to the toxic substances derived through use of these values shall determine the permissible effluent concentration of an individual toxic substance provided shall be established such that the effluent standard for toxic discharges, as set forth in 40 C.F.R. §Section 125.3, incorporated above at § 1.3(B) of this Part, is not exceeded.~~

A1. In-stream concentrations of discharged pollutants shall be determined by the following formulas, or other methods which may be found to be acceptable.

~~4a.~~ ~~_____~~ For effluent discharges into surface waters of the State with essentially one dimensional flow (stream discharge):

$$C_x = \frac{(C_E \times Q_E) + (C_U \times Q_U)}{(Q_E + Q_U)}$$

~~where, C_x = in-stream concentration of pollutants, downstream of the discharge~~

~~C_E = concentration of the pollutant in the effluent~~

~~Q_E = effluent discharge flow rate~~

~~C_U = concentration of the pollutant in the receiving stream, immediately upstream of the discharge~~

~~Q_U = the seven day, 10 year, low flow of the receiving stream immediately upstream of the discharge~~

~~_____~~
~~_____~~ $(C_E \times Q_E) + (C_U \times Q_U)$

~~C_x = _____~~

~~_____~~
~~_____~~ $(Q_E + Q_U)$

~~where, C_x = in-stream concentration of pollutants, downstream of the discharge.~~

~~C_E = concentration of the pollutant in the effluent.~~

~~Q_E = effluent discharge flow rate.~~

~~C_u = concentration of the pollutant in the receiving stream, immediately upstream of the discharge.~~

~~Q_u = the seven day, 10 year, low flow of the receiving stream immediately upstream of the discharge.~~

B2. For effluent discharges into surface waters of the State with essentially multi-dimensional flow:

$$F = \frac{v_j}{\sqrt{(\Delta S/S)gD}}$$

where, F = Froude number

v_j = jet velocity (ft./sec.)

ΔS = difference in specific gravity between the surrounding seawater.

S = Specific gravity of the waste

g = acceleration due to gravity (ft./sec.²)

D = discharge jet diameter (ft.)

The initial dilution, D1, is a function of the Froude number, F, the depth of the discharge port, Y, and the diameter of the discharge port, d. The dilution factor is determined using the curves shown in § 1.70 of this Part, Figure 1.

Secondary dispersion of the effluent will be determined using § 1.70 of this Part, Figure 2 where:

D2 = dilution due to dispersion after initial dilution

V = current velocity (ft./sec.)

~~_____ v_j~~

~~$F = \frac{v_j}{\sqrt{(\Delta S/S) g D}}$~~

~~$\sqrt{(\Delta S/S) g D}$~~

~~where, F = Froude number~~

~~_____ v_j = jet velocity (ft./sec.)~~

~~_____ ΔS = difference in specific gravity between the surrounding seawater.~~

~~_____ S = Specific gravity of the waste~~

~~_____ g = acceleration due to gravity (ft./sec.²)~~

~~_____ D = discharge jet diameter (ft.)~~

~~_____ The initial dilution, D_1 , is a function of the Froude number, F, the depth of the discharge port, Y, and the diameter of the discharge port, d. The dilution factor is determined using the curves shown in § 1.70 of this Part, Figure 1. Appendix F, Figure 1.~~

~~_____ Secondary dispersion of the effluent will be determined using § 1.70 of this Part Appendix F, Figure 2 where:~~

~~_____ D_2 = dilution due to dispersion after initial dilution~~

~~_____ V = current velocity (ft./sec.)~~

BC3. Where a total maximum daily load has been developed for a pollutant in a given stream segment, effluent limitations for that pollutant shall be determined by calculating waste load allocations for individual dischargers within that stream segment, instead of by the methods outlined in ~~paragraph (a) and (b) of~~ this section.

1.189 Calculating Adjusted RIPDES Permit Conditions for Certain Practices

- 4A.** When part of a discharger's process wastewater is not being discharged into surface waters of the State or contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into surface waters of the State, applicable effluent standards and limitations for the discharge in a RIPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

A1. If none of the waste from a particular process is discharged into surface waters of the State, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

B2. In all cases other than those described in § 1.19(A)(1) of this Part~~paragraph (a)(1) of this section~~, effluent limitations shall be adjusted by multiplying the effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into surface waters of the State and dividing the result by total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 40 C.F.R. ~~§ Part~~ 125, Subpart D, incorporated above at § 1.3(B) of this Part, or applicable State regulations to make them more stringent if dischargers to wells, POTWs or by land application change the character or treatability of the pollutants being discharged to receiving waters.

a. This method may be algebraically expressed as: _____

$$P = E \times \frac{N}{T}$$

Where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to surface waters of the State, and T is the total wastewater flow.

$$P = E \times \frac{N}{T}$$

P = E x N/T

~~Where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to surface waters of the State, and T is the total wastewater flow.~~

2B. § 1.19(Aa) of this Part ~~Paragraph (a) of this section~~ shall not apply to the extent that promulgated effluent limitations guidelines:

A1. Control concentrations of pollutants discharged but not mass; or

B2. Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

- ~~C3. § 1.19(Aa) of this Part Paragraph (a) of this section~~ does not alter a discharger's obligation to meet any more stringent requirements established under ~~§§ 1.14, 1.15, 1.165 and 1.176 of this Part. Rule 14, 15 and 16.~~

1.4209 Duration of Permit

- ~~1. A permit shall be effective for a fixed term not to exceed the duration specified in 40 C.F.R. § 122.46, incorporated above at § 1.3(B) of this Part. five (5) years.~~
- ~~2. A permit may be issued for a full term if the permit includes effluent limitations and a compliance schedule to meet the requirements of Section 301(b)(2)(A), (C), (D), (E), and (F) of the Clean Water Act, 33 U.S.C. § 1311(b)(2)(A), (C), (D), (E), and (F), whether or not applicable effluent limitations guidelines have been promulgated or approved.~~
- ~~3. A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under of this Part paragraph (b) of this section is not conclusive in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.~~
- ~~4. The term of a permit shall not be extended by modification beyond the duration specified in of this Part subsection (a) above.~~
- ~~5. The Director Department may issue any permit for a duration that is less than the full allowable term under this section.~~

1.201 Schedule of Compliance

- A. ~~General.~~ The permit may, when appropriate, specify a schedule of compliance leading to compliance with the State and Federal Acts and all other applicable authority for these regulations.
- ~~B.~~ B. Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible.
1. For discharges to surface water or groundwater, schedules of compliance shall require compliance not later than the applicable statutory deadline under State and Federal law, and shall be subject to State and Federal regulations.
 2. The first RIPDES permit issued to a new source, a new discharger, which commenced discharge after August 13, 1979, or a recommencing discharge, or a recommencing discharger, may not contain a schedule of compliance under this section. Within the shortest feasible time of issuance of the new sources new dischargers recommencing discharge

permit (not to exceed 90 days) the owner or operator must meet permit conditions.

~~C.~~ C. Interim dates. Except as provided in § 1.21(B)(2) of this Part~~paragraph (a)(2) of Rule 20.04(b)(1)(ii) of this section~~, if a permittee establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

~~1a1.~~ 1a1. The time between interim dates shall not exceed one year.

~~2b2.~~ 2b2. If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date. Examples of interim requirements include: (1) submit a complete step ~~1-construction~~ construction grant (for POTWs); (2) get a contract for construction of required facilities; (3) commence construction of required facilities; and (4) complete construction of required facilities.

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~~3.~~ 3. Reporting. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Department in writing of its compliance or noncompliance with the interim or final requirements, ~~or submit progress reports if paragraph (a)(3)(ii) is applicable.~~

~~DBD.~~ DBD. Alternative schedules of compliance. A RIPDES permit application or permittee may cease conducting activities regulated by ~~the State Act~~ this Part rather than continue to operate and meet permit requirements as follows:

1. If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

Aa. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

Bb. The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

2. If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure compliance no later than the statutory deadline in the Clean Water Act.

3. If the permittee is undecided whether to cease conducting regulated activities, the Department may issue or modify a permit to contain two schedules as follows:
 - Aa. Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;
 - Bb. One schedule shall lead to timely compliance with applicable requirements and shall be no later than the statutory deadline in the Clean Water Act;
 - Cc. The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements, and shall be no later than the statutory deadline in the Clean Water Act;
 - Dde. Each permit containing two schedules shall include a requirement that after the permittee has made final decision under § 1.21(D)(3)(a) of this Part ~~paragraph (c)(1) (b)(3)(i) of this section~~ it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.
 4. The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a solemn public commitment satisfactory to the Department, such as a resolution of the board of directors of a corporation.
- E. A publicly owned treatment works (POTW) required to develop a pretreatment program shall have a pretreatment program compliance schedule incorporated into the RIPDES permit at the time of issuance, reissuance, or modification of the permit. The compliance schedule shall require the development of an approvable POTW pretreatment program no later than the time prescribed by 40 C.F.R. §Part 403.8, incorporated above at § 1.3(B) of this Part, and §1.Rule 10 of the Rhode Island Pretreatment Rregulations, whichever is more stringent.
 - F. ~~20.06~~ New sources or new dischargers or sources which recommence discharging after terminating operations and those sources which had been indirect dischargers which commence discharging into surface waters of the State do not qualify for compliance schedules under this section.
 - G. All permittees shall provide a report indicating the status of compliance in accordance with § 1.Rule 14 of this Part.

1.2~~1~~² Effect of a Permit

~~4The effect of the permit shall be consistent with the requirements of 40 C.F.R. § 122.5, incorporated above at § 1.3(B) of this Part. Except for any toxic effluent standards and prohibitions imposed under Section 307 of the Clean Water Act, 33 U.S.C. § 1317, compliance with a permit during its term constitutes compliance for purposes of enforcement under the Clean Water Act and Chapter 46-12 of the Chapter General Laws of Rhode Island. A permit, however, may be modified, revoked and reissued, or terminated during its term for cause as set forth in these regulations.~~

- ~~2. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.~~
- ~~3. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of Federal, State or local law or regulations.~~

1.2~~2~~³ Transfer of Permits

- ~~4~~A. Transfer by modification. Except as provided in § 1.23(B) of this Part~~paragraph (b) of this section~~, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued or a minor modification made to identify the new permittee and incorporate such other requirements as may be necessary under the State and Federal Acts.
- ~~2~~B. Automatic transfers. As an alternative to transfers under § 1.23(A) of this Part~~paragraph (a) of this section~~, any RIPDES permit may be automatically transferred to a new permittee if:
 - ~~A~~1. The current permittee notifies the Department in writing by certified mail of the proposed transfer as follows:
 - ~~4~~a. Where production levels, products produced, rates of discharge, and wastewater characteristics will remain unchanged, the following information shall be submitted at least 90 days prior to a proposed "transfer date":
 - ~~(1)~~a. Name and address of current facility;
 - ~~(2)~~b. Name and address of new owner;
 - ~~(3)~~c. RIPDES permit number;
 - ~~(4)~~d. Names of the new principal persons responsible;
 - ~~(5)~~e. Names of persons upon whom legal process can be served; and

- ~~(6)f.~~ A notarized statement signed by the new principal officer stating that he has read the RIPDES permit and agrees to abide by all the conditions of the permit and that the production levels, products produced, rates of discharge, and wastewater characteristics will remain unchanged.
- ~~4b.~~ Where there will be a change in production levels, products produced, rates of discharge, or wastewater characteristics, the information required in § 1.23(B)(1)(a) of this Part ~~paragraph (b)(1)(i)~~ shall be submitted at least 180 days prior to a proposed transfer date.
- ~~B2.~~ The current permittee shall include in the notice of proposed transfer a written agreement between the existing and new permittee which includes a specific date for transfer of permit responsibility, coverage and liability between the parties.
- ~~C3.~~ The Department does not notify the existing permittee and the proposed new permittee, within thirty (30) days of receipt of notice or proposed transfer, of an intent to modify, revoke or revoke and reissue the permit. A modification under this paragraph may also be a minor modification under § 1.26 of this Part ~~Rule 25~~. If such notice is not received, the transfer is effective on the date specified in the agreement mentioned in ~~paragraph § 1.23(B)(2) of this Part~~ (b)(2) of this section.
- ~~D4.~~ Whenever the regulated discharge has ceased prior to the proposed permit transfer, any compliance schedule shall not be automatically reinstated but shall be subject to revision or complete withdrawal if circumstances leading to its imposition have been changed.

1.234 Modification, or Revocation and Reissuance of Permits

- A. When the Department receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit, receives a request for modification or revocation and reissuance, or conducts a review of the permit file) a determination may be made by the Department as to whether cause exists including but not limited to causes as provided under §§ 1.24(B) and § 1.24(C) ~~paragraphs (b) and (c) of this section of this Part,~~ for modification, or revocation and reissuance of the permit. If cause exists, the Department may modify, or revoke and reissue the permit accordingly, subject to the limitations of § 1.23(C) of this Part ~~paragraph (c) of this section~~, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision. The permit may be reissued for a new term. If a permit modification satisfies the criteria in § 1.26 of this Part ~~Rule 25~~ for "minor modifications" the permit may be modified without

a draft permit or public review. Otherwise, a draft permit must be prepared and other procedural steps followed.

B. The following are causes for modification, but not revocation and reissuance of permits except when the permittee requests or agrees:

1. Alterations. There are material and substantial alterations or additions to the permitted facility, activity, or discharge which occurred after a permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

2. Information. The Department has received new information. Permits may be modified, or revoked and reissued during their terms for this cause only if the information (other than revised regulations, guidance, or test methods) was not available at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance. For general permits, this cause shall include any information indicating that the cumulative effects on the environment are unacceptable.

3. New regulations or judicial decision. A permit or any condition thereof may be modified, or revoked and reissued after promulgation of new or amended water quality standards, effluent limitation guidelines by EPA, or by judicial decision, as follows:

a. If the permit or permit condition in question was based on a prior water quality standard or effluent limitations guidelines which has been altered or revoked; or

b. If a court of competent jurisdiction has remanded and stayed the new standards or regulations.

c. The procedures provided by § 1.37 of this Part~~Rule 36~~ for modification, or revocation and reissuance may be initiated by the Department or by any interested person (including the permittee) within 90 days of the new guideline or judicial remand. If such modification or revocation and reissuance is ordered, the Department may provide for a schedule of compliance in accordance with § 1.21 of this Part~~Rule 20~~ in order for the permittee to attain the new standards. If conditions of the permit are not contested, they shall go into effect notwithstanding the contesting of other conditions.

4. Compliance schedules. The Department determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has

little or no control and for which there is no reasonably available remedy. However, in no case shall a RIPDES compliance schedule be modified to extend beyond an applicable statutory deadline. This does not preclude the Department from the revocation and reissuance of a compliance schedule for cause.

5.E. The Department may also modify a permit:

- 4a. When the permittee has filed a timely request for a variance, or for "fundamentally different factors" under the Clean Water Act and the Department processes the request under the applicable provision of § 1.58 of this Part ~~Rule 57~~.
- 2b. When required to incorporate an applicable toxic effluent standard or prohibition under ~~307(a) of the Clean Water Act, 33 U.S.C. § 1317(a) (Section 307(a) of the Clean Water Act)~~.
- 3c. When required by the "reopener" conditions in a permit, which are established in the permit under § 1.16(A) of this Part ~~Rule 15.04~~ (for toxic effluent limitations) or ~~Rule 12 of the~~ Rhode Island Pretreatment Regulations, Part 2 of this Subchapter.
- 4d. Upon request of a permittee who qualifies for effluent limitations on a net basis.
- 5e. When a discharger is no longer eligible for net limitations.
- 6f. As necessary under 40 C.F.R. ~~Section §~~ 403.8(e), incorporated above at § 1.3(B) of this Part, ~~or Rule 10 of the~~ Rhode Island Pretreatment Regulations Part 2 of this Subchapter (compliance schedule for development of pretreatment program).
- 7g. Upon failure of the State to notify, as required by ~~Section 402(b)(3) of the Clean Water Act, 33 U.S.C. § 1342(b)(3) (Section 402(b)(3) of the Clean Water Act)~~, another state whose waters may be affected by a discharge from the State.
- 8h. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 C.F.R. ~~§Section~~ 125.3(c), incorporated above at § 1.3(B) of this Part.
- 9i. When the permittee begins or expects to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application.

- ~~40j.~~ To establish a "notification level" as provided in §§ 1.16(A) and §1.17(A) of this Part~~Rules 15.01 and 16.01.~~
- ~~41k.~~ To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under 33 U.S.C. § 1282(a)(3) (Section 202(a)(3) of the Clean Water Act) for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under ~~Section 202(a)(2) of the Clean Water Act~~, 33 U.S.C. § 1282(a)(2) (Section 202(a)(2) of the Clean Water Act). In no case shall the compliance schedule be modified to extend beyond an applicable Clean Water Act statutory deadline for compliance.
- ~~42l.~~ To include a plan or compliance schedule for the disposal of septage or sludge in accordance with "Rhode Island "Rules and Regulations for Sewage Sludge ManagementRhode Island Rules and Regulations Pertaining to the Disposal and Utilization of Wastewater Treatment Facility Sludge.", Part 3 of this Subchapter.
- ~~43m.~~ For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in § 1.32(E)(1)(b) of this Part ~~Rule 31(e)(3)~~ when:
- ~~(1)a.~~ The permit does not include such measure(s) based upon the determination that another entity was responsible for implementation of the requirement(s); and
- ~~(2)b.~~ The other entity fails to implement the measure(s) that satisfy the requirement(s).
- ~~56.~~ When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1) (Section 402(a)(1) of the Clean Water Act) and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).
- ~~1767.~~ ———Nutrient Management Plans. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit is not a cause for modification pursuant to the requirements of this section.
- ~~18.~~78. -Land application plans. When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge,

to revise an existing land application plan, or to add a land application plan.

~~3BC.~~ Cause for modification, or revocation and reissuance. The following are causes to modify or, alternatively, -revoke and reissue a permit:

~~1.A.~~ Cause exists for termination under § 1.25 of this Part ~~Rule 24~~ and the Department determines that modification, or revocation and reissuance is appropriate.

~~B2.~~ The Department has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

1.245 Termination of Permits

A. The following are causes for terminating a permit during its term, or for denying a permit renewal application:

1. Noncompliance by the permittee with any condition of the permit;

2. Failure to pay applicable fees;

~~32.~~ The permittee's failure in the application or during the issuance of a NPDES or RIPDES permit, a treatment works approval or Construct and Operate order to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

~~434.~~ A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

~~5-5.~~ A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit;

6. The nonconformance of the discharge with any applicable facility, basin or areawide plans; or

7. Inconsistency with any duly promulgated effluent limitation, permit, regulation, statute, or other applicable State or Federal Law.

B. -Permittees that wish to terminate their permit must submit a Notice of Termination (NOT) to their permitting authority. If requesting expedited permit termination procedures, a permittee must certify in the NOT that it is not subject to any pending State or Federal enforcement actions including citizen suits brought under State or Federal law.

1.256 Minor Modifications of Permits

~~A. Upon the consent of the permittee, the~~The Department may make Minor Modifications to modify a permits in accordance with the conditions in 40 C.F.R. § 122.63, incorporated above at § 1.3(B) of this Part.~~to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of § 1.37 of this Part~~Rule 36. Any permit modification not processed as a minor modification under this section shall be made for cause and with draft permit and public notice.

~~BA. Minor modifications may only:~~

- ~~1. Correct typographical errors;~~
- ~~2. Require more frequent monitoring or reporting by the permittee;~~
- ~~3. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;~~
- ~~4. Allow for a change in ownership or operational control of a facility where the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Department;~~
- ~~5. Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge;~~
- ~~6. Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.~~CB. ... § ... § DC. ... § ... § ED. ... of this Part

1.267 Noncompliance and Program Reporting by the Department

~~A. The Department shall prepare quarterly and annual reports~~ consistent with the reporting requirements from as detailed 40 C.F.R. § 122.45, incorporated above at § 1.3(B) of this Part. ~~below. Any reports required under this section shall be submitted to the Regional Administrator and to any facility listed in the report.~~

~~BA. Quarterly reports. The Department shall prepare quarterly narrative reports for major facilities as follows:~~

- ~~1. Format. The report shall use the following format:~~

- a. ~~Provide separate lists of each type of discharge and sub-categorize the permittee as non-POTWs, POTWs, and Federal permittees;~~
- b. ~~Alphabetize each list by permittee name. When two or more permittees have the same name, the lowest permit number shall be entered first;~~
- c. ~~For each entry on a list, include the following information in the following order:~~
 - (1) ~~Name, location, and permit number of the non-complying permittee.~~
 - (2) ~~A brief description and date of each instance of noncompliance for that permittee. Instances of noncompliance may include one or more of the kinds set forth in of this Part paragraph (a)(2) of this section. When a permittee has noncompliance of more than one kind, combine the information into a single entry for each such permittee.~~
 - (3) ~~The date(s) and a brief description of the action(s) taken by the Department to ensure compliance.~~
 - (4) ~~Status of the instance(s) of noncompliance with the date of the review of the status or the date of resolution.~~
 - (5) ~~Any details which tend to explain or mitigate the instance(s) of noncompliance.~~
- 2. ~~Instances of noncompliance to be reported. Any instances of noncompliance within the following categories shall be reported in successive reports until the noncompliance is reported as resolved. Once compliance is reported as resolved, it need not appear in subsequent reports.~~
 - a. ~~Failure to complete construction elements. When the permittee has failed to complete, by the date specified in the permit, an element of a compliance schedule involving either planning for construction (for example, award of a contract, preliminary plans), or a construction step (for example, begin construction, attain operation level), and the permittee has not returned to compliance by accomplishing the required element of the schedule within 30 days from the date a compliance schedule report is due under the permit.~~
 - b. ~~Modification of schedules of compliance. When a schedule of compliance in the permit has been modified under §§ 1.24 and 1.25 of this Part Rules 23 and 25 because of the permittee's noncompliance.~~
 - c. ~~Failure to complete or provide compliance schedule or monitoring reports: When the permittee has failed to complete or provide a report required in a permit compliance schedule (for example, progress report or notice of noncompliance or compliance) or a monitoring report, and the permittee has not submitted the complete report ~~within~~ report within 30 days 30 days from the date it is due under the permit for compliance schedules, or from the date specified in the permit for monitoring reports.~~

- d. ~~Deficient reports. When the required reports provided by the permittee are so deficient as to cause misunderstanding by the Department and thus impede the review of the status of compliance.~~
- e. ~~Noncompliance with other permit requirements. Noncompliance shall be reported in the following circumstances:~~
 - (1) ~~Whenever the permittee has violated a permit requirement (other than reported under § of this Part paragraphs (a)(2)(i) or (ii) of this section), and has not returned to compliance within 45 days from the date reporting of noncompliance was due under the permit; or~~
 - (2) ~~When the Department determines that a pattern of noncompliance exists for a major facility permittee over the most recent four consecutive reporting periods. This pattern of noncompliance is based on violations of monthly averages and excludes parameters where there is continuous monitoring. This pattern includes any violation of the same requirement in two consecutive reporting periods, and any violation of one or more requirements in each of four consecutive reporting periods; or~~
 - (3) ~~When the Department determines significant permit noncompliance or other significant event has occurred, such as a discharge of a toxic or hazardous substance.~~
- f. ~~All other. Statistical information shall be reported quarterly on all other instances of noncompliance by major facilities with permit requirements not otherwise reported under of this Part paragraph (a) of this section.~~
- B. ~~Annual reports. The Department shall prepare an annual report as required in this paragraph and shall submit an annual report to EPA.~~
 - 1. ~~Statistical reports shall be prepared by the Department on non-major permittees indicating the total number reviewed, the number of noncomplying non-major permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of noncompliance listed in of this Part paragraph (a) of this section.~~
 - 2. ~~A separate list of non-major discharges which are one or more years behind in construction phases of the compliance schedule shall also be prepared in alphabetical order by name and permit number.~~
- C. ~~Schedule~~
 - 1. ~~Quarterly Reports~~
 - a. ~~On the last working day of May, August, November and February, the Department shall submit to the Regional Administrator information concerning~~

~~noncompliance with permit requirements by major dischargers in the State in accordance with the schedule below.~~

- ~~b. The Department shall make noncompliance reports concerning all RIPDES permits available to the public in accordance with the schedule below.~~

~~Quarters Covered by Reports on Noncompliance by All Major Dischargers~~

~~January, February, and March.....May 31~~

~~April, May, and June.....Aug. 31~~

~~July, August, and September.....Nov. 30~~

~~October, November, and December.....Feb. 28~~

- ~~2. For all annual reports. The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later.~~

1.278 Concentrated Animal Feeding Operations

- A. Permit requirement. "Concentrated animal feeding operations" (as defined in § 1.34 of this Part Rule 3) are point sources subject to the RIPDES permit program.
- B. Case-by-case designation of concentrated animal feeding operations.
1. The Department may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the State. In making this designation the Department shall consider the following factors:
 - a. The size of the animal feeding operation and the amount of wastes reaching the waters of the State;
 - b. The location of the animal feeding operation relative to waters of the State;
 - c. The means of conveyance of animal wastes and process wastewaters into waters of the State;
 - d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal waste and process wastewaters into waters of the State; and
 - e. Other relevant factors.

2. No animal feeding operation with less than the numbers of animals set forth in § 1.676Appendix B of this Part shall be designated as a concentrated animal feeding operation unless:
 - a. Pollutants are discharged into waters of the State through a manmade ditch, flushing system, or other similar manmade device; or
 - b. Pollutants are discharged directly into waters of the State which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
3. A permit application shall not be required from a concentrated animal feeding operation designated under this paragraph until the Department has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

~~(d)~~C. -Permit authorization Permit Requirement. A CAFO must not discharge unless the discharge is authorized by an RIDES permit. In order to obtain authorization under a RIPDES permit, the CAFO owner or operator must either apply for an individual permit or submit a notice of intent for coverage under a general permit.

~~(e)~~D. -Land application discharges from a CAFO are subject to NRIPDES requirements. The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NRIPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. § 1362(14). For purposes of this paragraph, where the manure, litter or process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as specified in § 1.17(K) of this Part, a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge.

~~(1)~~1. -For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall be considered an agricultural storm water discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in § 1.17(K) of this Part.

~~(2)~~2. -Unpermitted Large CAFOs must maintain documentation specified in § 1.17(K) of this Part either on site or at a nearby office, or otherwise make

such documentation readily available to the ~~Director~~Department or Regional Administrator upon request.

E. (f)-A CAFO must be covered by a permit at the time that it discharges.

1.289 Concentrated Aquatic Animal Production Facilities

~~A. Permit requirements.~~ "Concentrated aquatic animal production facilities" (as defined in § 1.324 of this PartRule 3) are point sources subject to the requirements of 40 C.F.R. § 122.24, incorporated above at § 1.3(B) of this Part. ~~RIPDES permit program.~~

~~B.C. Case-by-case designation of concentrated animal production facilities.~~

~~1. The DepartmentDepartment may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the State. In making this designation the Department shall consider the following factors:~~

~~a. The location and quality of the receiving waters of the State;~~

~~b. The holding, feeding, and production capacities of the facility;~~

~~c. The quantity and nature of the pollutants reaching waters of the State; and~~

~~d. Other relevant factors.~~

~~2. A permit application shall not be required from a concentrated aquatic animal production facility designated under this paragraph until the Department has conducted an on-site inspection of the facility and has determined in accordance with the criteria in § 1.67 of this PartAppendix C that the facility should and could be regulated under the permit program.~~

1.2930 Aquaculture Projects

~~A. Permit requirements.~~ Discharges into "aquaculture projects" (as defined in § 1.4 of this PartRule 3) are subject to the RIPDES permit program in accordance with 40 C.F.R. Part § 125, Subpart 8-B, incorporated above at § 1.3(B) of this Part, and Chapter 46-12 of the R.I. Gen. Laws Chapter § 46-12~~General Laws of Rhode Island.~~

1.310 Silvicultural Activities

~~A. Permit requirements.~~ "Silvicultural point sources" (as defined in § 1.4 of this PartRule 3) are point sources subject to RIPDES permit program.

1.3~~12~~ Storm Water Discharges

A. Permit ~~R~~requirement:

1. The following discharges composed entirely of storm water shall be required to obtain a RIPDES permit:
 - a. A discharge with respect to which a permit has been issued prior to February 4, 1987;
 - b. A discharge associated with industrial activity ~~(see Rule 31(b)(15) §1.32 of this Part)~~;
 - c. A discharge from a large municipal separate storm sewer system;
 - d. A discharge from a medium municipal separate storm sewer system;
 - e. ~~A~~ discharge from a small municipal separate storm sewer system ~~(see Rule 31(a)(5))~~;
 - f. A discharge associated with small construction activity ~~(see Rule 31(b)(16) §1.32 of this Part)~~;
 - g. A discharge which the Department, or in States with approved NPDES programs, either the ~~Director~~ Department or the EPA Regional Administrator, determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under ~~§ 1.32 paragraph (Aa)(2) of this Part section~~ or agricultural storm water runoff which is exempted from the definition of point source at ~~§ 1.4(A)(78) of this Part. 122.2.~~

_____ The ~~Department Director~~ may designate discharges from municipal separate storm sewers on a system-wide basis. In making this determination the ~~Department Director~~ may consider the following factors:

- (1) The location of the discharge with respect to waters of the State as defined in ~~§ 1.34 of this Part Rule 3.~~
- (2) The size of the discharge;

- (3) The quantity and nature of the pollutants discharged to waters of the State; and
- (4) Other relevant factors.

h.h. A discharge for which the ~~Director~~Department or the EPA Regional Administrator determines that storm water controls are necessary to ensure implementation of wasteload allocations that are part of “total maximum daily loads” (TMDLs) that address the pollutant(s) that has been identified as the cause of impairment of the water body.

2. Mining and oil and gas exploration. The ~~Department~~Director may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.
3. Municipally owned or operated discharges of storm water associated with industrial activity. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that does not have an effective RIPDES permit authorizing the discharge other than an airport, power plant, or uncontrolled sanitary landfill, a permit application must be submitted by March 10, 2003.
4. Large and medium municipal separate storm sewer systems.
 - a. Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems. However, the owner or operator of a municipal separate storm sewer system may petition the ~~Department~~Director to reduce the Census estimates of the population served by such separate system to account for storm water discharged to combined sewers as defined by 40 C.F.R. § 35.2005(b)(11), incorporated above at § 1.3(B) of this Part, that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the RIPDES permit

number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

- b. The ~~Department Director~~ may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.
- c. The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either:
 - (1) Participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;
 - (2) Submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible; or
 - (3) A regional authority may be responsible for submitting a permit application under the following guidelines:
 - ~~((AA)AA)~~ The regional authority together with co-applicants shall have authority over a storm water management program that is in existence, or shall be in existence at the time ~~P~~art 1 of the application is due;
 - ~~((BB)BB)~~ The permit applicant or co-applicants shall establish their ability to make a timely submission of Part 1 and Part 2 of the municipal application;
 - ~~((CC)CC)~~ Each of the operators of municipal separate storm sewers within the systems described in ~~paragraphs §§ 1.432(Ab)(534)(ai), 1.4(A)(53)(b(ii), and 1.4(A)(53)(c)(iii) or (b)(7) (i), (ii), and (iii) of this Partsection~~, that are under the purview of the

designated regional authority, shall comply with the application requirements of ~~§~~paragraph 1.32(A)(4)(d) of this Part~~section~~.

- d. One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The ~~Department~~Director may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.
 - ~~e.~~ Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute storm water to the system.
 - f. Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewers for which they are operators.
5. Small municipal storm sewer systems~~;~~
- a. The following discharges from small municipal separate storm sewer systems must obtain permits:
 - (1) The small MS4, excluding systems operated by federal and State government, is located in an urbanized area as defined in § 1.324 of this Part~~Rule 31(b)(20)~~, unless a waiver is granted in accordance to § 1.32(G) of this Part~~Rule 31(g)(5)~~. If any portion of the small MS4 is not entirely located within an urbanized area, the portion that is within the urbanized area is regulated (see § -1.72 of this Part~~Appendix H~~).
 - (2) The small MS4, excluding systems operated by federal and State government, is located in a densely populated area as defined in § 1.324 of this Part~~Rule 31(b)(21)~~, unless a waiver is granted in accordance to § 1.32(G) of this Part~~Rule 31(g)(5)~~. If any portion of the small MS4 is not entirely located within a densely populated area, the portion that is within the densely populated area is regulated (see § 1.73 of this Part~~Appendix I~~).

- (3) The small MS4, operated by federal or State government serves a facility with an average daily population of equal to or greater than 1,000.
- (4) Any portion of the small MS4 operated by the Rhode Island Department of Transportation is located in an urbanized area as defined in § 1.4 of this Part ~~Rule 31(b)(20)~~ or a densely populated area, as defined in ~~Rule 31(b)(21)~~ § 1.324 of this Part, or serves a divided highway regardless of its location, only these portions are regulated (see § 1.73 of this Part ~~Appendix J~~).
- (5) The ~~Department Director~~ has determined that the system is contributing substantially to the pollutant loadings of a physically-interconnected regulated MS4.
- (6) The ~~Department Director~~ has determined that the information required for granting a waiver has substantially changed or upon consideration of a petition to review a waiver when the petitioner provides evidence that the information required for granting the waiver has substantially changed in accordance with ~~Rule 31(g)~~ § 1.32(G) of this Part.
- (7) On or after March 10, 2008, the small MS4 discharges to any Special Resource Protection Waters (SPRWs), Outstanding National Resource Waters (ONRWs), or impaired water bodies within its jurisdiction and a waiver has not been granted in accordance to ~~Rule 31(g)(5)(iii)~~ § 1.32(G) of this Part.
- (8) The ~~Department Director~~ has determined that the small MS4 discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State in accordance with ~~Rule 31(a)(1)(vii)~~ § 1.32 of this Part.
- (9) The ~~Department Director~~ has determined that storm water controls are needed for the small MS4 discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern in accordance with ~~Rule 31(a)(1)(viii)~~ § 1.32 of this Part.
- (10) The ~~Department Director~~ has designated the small MS4 based on a petition pursuant to § 1.32 of this Part ~~Rule 31(a)(5)(i)(E) or Rule 31(g)~~.

- b. The operator of a small MS4 may rely on another entity to satisfy the permit obligations to implement a minimum control measure as follows:
- (1) The other entity, in fact, implements the minimum control measure;
 - (2) The particular control measure, or component thereof, is at least as stringent as the corresponding permit requirements; and
 - (3) The other entity agrees to implement the control measure on the behalf of the operator of the regulated small MS4;
 - (4) If the operator of the small MS4 is relying on another governmental entity regulated under § 1.32 of this Part Rule 31(a)(5)(i) to satisfy all of the permit obligations, including the obligation to file periodic reports required in § 1.17(J) of this Part Rule 16.10(b), the operator of the small MS4 must note that fact in the Notice of Intent (NOI), but the operator is not required to file the periodic reports.
 - (5) The operator of the small MS4 remains responsible for compliance with the permit requirements if the entity fails to implement the control measure or component thereof.
 - (6) The Department Director may recognize, either in the individual permit or in a general permit, that the Department or another governmental entity is responsible under a RIPDES Permit for implementing one or more of the minimum control measures for the small MS4. In such cases, the operator is not required to include the minimum control measure implemented by that entity as required by § 1.32 of this Part Rule 31(e)(3).
 - (7) If the governmental entity identified in paragraph § 1.32(A)(5)(a)((6)-(F) of this Part section fails to implement a minimum control measure, the permit issued in accordance with § 1.32(E) of this Part Rule 31(e) may be reopened and modified in accordance with § 1.24 of this Part Rule 23 to include the requirement to implement a minimum control measure.
- c. Operators of regulated small MS4s shall fully implement the Storm Water Management Program Plan as defined in § 1.32(E)(3) of this Part Rule 31(e)(3) within the first permit term of five (5) years.

- d. The operator of the small MS4 must comply with other applicable permit requirements, standards and conditions established in the individual or general permit, developed consistent with the provisions of §§ 1.15 through 1.21 of this Part~~Rule 14 through Rule 20~~, as appropriate.
 - e. The operator of the small MS4 must comply with any more stringent effluent limitations of the permit, including permit requirements that modify, or are in addition to the minimum control measures in § 1.32(E)(3)(b) of this Part~~Rule 31(e)(3)(ii)~~ based on an approved total maximum daily load (TMDL) or equivalent analysis. The ~~Department~~Director may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.
 - f. If an existing qualifying local program requires the operator of the small MS4 to implement one or more of the minimum control measures of § 1.32(E)(3)(b) of this Part~~Rule 31(e)(3)(iii)~~, the Department may include conditions in the RIPDES permit that direct the operator of the small MS4 to follow that qualifying program's requirements rather than the requirements of § 1.32(E)(3) of this Part~~Rule 31(e)(3)~~. A qualifying local program is a local or State storm water management program that meets the requirements of § 1.16(A)(10) of this Part~~Rule 15.01(i)~~.
6. Discharges through large and medium municipal separate storm sewer systems. In addition to meeting the requirements of § 1.32~~paragraph (De)~~ of this Part~~section~~, an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge thirty (30) days after the effective date of these Regulations, or for a new discharge, 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing RIPDES permit number.
7. Other municipal separate storm sewers. The ~~Department~~Director may issue permits for municipal separate storm sewers that are designated under ~~paragraphs §§ 1.32-(Aa)(1)(gvii) and (hvi)~~ of this Part~~section~~ on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.
8. Non-municipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer

system, the ~~Department~~Director, in his or her discretion, may issue: a single RIPDES permit to the operator of the portion of the system that discharges into waters of the State, with each contributing discharger listed as a co-permittee or; individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.

- a. All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the State, with each discharger to the non-municipal conveyance a co-permittee to that permit.
 - b. Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.
 - c. Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.
9. Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain RIPDES permits in accordance with the procedures § 1.11 of this Part of ~~Rule 10~~ and are not subject to the provisions of this section.
10. Effect on Eligibility for Federal Funding. Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section shall have no bearing on whether the owner or operator of the discharge is eligible for funding under ~~Title II, Title III or Title VI of the Clean Water Act, 33 U.S.C. Subchapter II, Subchapter III or Subchapter VI (Title II, Title III or Title VI of the Clean Water Act).~~ See 40 C.F.R. § Part 35, Subpart I (incorporated above at § 1.3(B) of this Part), Appendix § 1.6??? of this Part A(b)H.2.j.

B.- Definitions – See § 1.4 of this Part.

~~"Co-permittee" means a permittee to a RIPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.~~

~~"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a RIPDES permit (other than the RIPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.~~

~~"Incorporated place" means a city, town, or other definable place that is incorporated under the laws of the State.~~

~~"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:~~

- ~~1. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of Census (Appendix G); or~~
- ~~2. Located in the counties listed in Appendix I, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or~~
- ~~3. Owned or operated by a municipality other than those described in paragraph (b)(4)(i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(4) (i) or (ii) of this section. In making this determination the Director may consider the following factors:
 - ~~(a) Physical interconnections between the municipal separate storm sewers;~~
 - ~~(b) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(4)(i) of this section;~~
 - ~~(c) The quantity and nature of pollutants discharged to waters of the State;~~
 - ~~(d) The nature of the receiving waters; and~~
 - ~~(e) Other relevant factors.~~~~
- ~~4. The Director may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraph (b)(4)(i), (ii), (iii) of this section.~~

~~"Major municipal separate storm sewer outfall" (or "major outfall") means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for~~

~~industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).~~

~~"Major outfall" means a major municipal separate storm sewer outfall.~~

~~Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:~~

- ~~1. Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of Census (Appendix H); or~~
- ~~2. Located in the counties listed in Appendix J, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or~~
- ~~3. Owned or operated by a municipality other than those described in paragraph (b)(4)(i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(4)(i) or (ii) of this section. In making this determination the Director may consider the following factors:~~
 - ~~a. Physical interconnections between the municipal separate storm sewers;~~
 - ~~b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in paragraph (b)(7)(i) of this section;~~
 - ~~c. The quantity and nature of pollutants discharged to waters of the State;~~
 - ~~d. The nature of the receiving waters; or~~
 - ~~e. Other relevant factors.~~
- ~~4. The Director Department may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraphs (b)(7)(i), (ii), (iii) of this section.~~

~~"Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):~~

1. ~~Owned or operated by a city or town or the State district association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the State;~~
2. ~~Designed or used for collecting or conveying storm water;~~
3. ~~Which is not a combined sewer; and~~
4. ~~Which is not part of a Publicly Owned Treatment Works (POTW) as defined in Rule §13.~~

~~"Outfall" means a point source as defined by Rule 3 at the point where a municipal separate storm sewer discharges to waters of the State and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.~~

~~"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.~~

~~"Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.~~

~~"Section 313 Water Priority Chemical" means a chemical or chemical categories which are:~~

1. ~~Listed at 40 CFR 372.65 pursuant to section 313 of Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986, also entitled the "Emergency Planning and Planning and Community Right-to-Know Act of 1986"; (42 U.S.C. 11001 et seq).~~
2. ~~Present at or above threshold levels at a facility subject to SARA Title III, section 313 reporting requirements; and~~
3. ~~Meet at least one of the following criteria:~~
 - a. ~~Are listed in appendix D of 40 CFR part 122 on either Table II (Organic priority pollutants), Table III (certain metals, cyanides, and phenols), or Table V (certain toxic pollutants and hazardous substances);~~
 - b. ~~Are listed as a hazardous substance pursuant to section 311(b)(2)(A) of the CWA at 40 CFR 116.4; or~~

c. ~~Are pollutants for which EPA has published acute or chronic water quality criteria.~~

~~"Significant materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.~~

~~"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.~~

~~"Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water to separate storm sewers and/or directly to a water body and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the RIPDES program under 40 CFR Part 122. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State, or municipally owned or operated that meet the description of the facilities listed in this paragraph (b)(15)(i) through (xi) of this section) include those facilities designated under the provisions of paragraph (a)(1)(vi) of this section. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:~~

- ~~1. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) in paragraph (b)(15) of this section);~~

- ~~2. Heavy industry. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;~~
- ~~3. Mining operations. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990), and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);~~
- ~~4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;~~
- ~~5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;~~
- ~~6. Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junk yards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;~~
- ~~7. Steam electric power generating facilities, including coal handling sites;~~
- ~~8. Transportation facilities. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (b)(15)(i)-(vii) or (ix)-(xi) of this section are associated with industrial activity;~~
- ~~9. Treatment works. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage~~

~~treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved pretreatment program under 40 CFR Part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA.~~

~~10. Construction activity. Construction activity including clearing, grading and excavations except: operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;~~

~~11. Light industry. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25, (and which are not otherwise included within categories (ii) (x));~~

~~"Storm water discharge associated with small construction activity" means the discharge of storm water from:~~

~~1. Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan of development or sale will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.~~

~~2. Any other construction activity designated by the Director based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States or through a TMDL in accordance with Rule 31(a)(1)(vii) and Rule 31(a)(1)(viii).~~

~~"Small municipal separate storm sewer system" (small MS4) means all separate storm sewers that are:~~

~~1. Owned and operated by the United States, state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law, such a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the United States.~~

2. ~~Not defined as “large” or “medium” municipal separate storm sewer systems pursuant to Rule 31(b)(4) and (b)(7).~~

3. ~~This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.~~

~~Regulated small municipal separate storm sewer system" (regulated small MS4) means a small MS4 that meets the requirements of Rule 31(a)(5)(i). Once a small MS4 is designated into the Phase II storm water program based on an urbanized area (UA) calculation for any given census year, the MS4 will remain regulated regardless of the results of subsequent UA area calculations.~~

~~"Municipal separate storm sewer system" (MS4) means all separate storm sewers that are defined as “large” or “medium” or “small” municipal separate storm sewer systems pursuant to Rule 31(b)(4), (b)(7), and (b)(17) of this section, or designated under Rule 31(a)(1)(vii) and (a)(1)(viii).~~

~~"Urbanized Areas" (UAs) means those areas that consist of contiguous, densely settled census block groups, and census blocks, that meet minimum population density requirements, along with adjacent densely settled census blocks that together encompass a population of at least 50,000 people. Minimum population density requirements consists of core census block groups or blocks that have a population density of at least 1,000 people per square mile, and, surrounding census blocks that have an overall density of at least 500 people per square mile. The complete criteria are available from the Chief, Geography Division, U.S. Bureau of the Census, Washington, DC 20233. For the purposes of these regulations, any subsequent UA calculated area will be added to any previous UA calculated area as shown in Appendix J.~~

~~"Densely Populated Area" (DPA) means a census designated place(s) as defined by the latest Decennial Census that is located outside the urbanized area and meets all of the following criteria:~~

1. ~~The population density within the census designated place is equal to or greater than 1,000 people per square mile; and~~

2. ~~The census designated place has or is part of a block of contiguous census designated places with a total population of at least 10,000 people.~~

~~"Census Designated Places" (CDPs) means those that are delineated for the decennial census as the statistical counterparts of incorporated places. CDPs are comprised of densely settled concentrations of population that are identifiable by name, but are not legally incorporated places. To qualify as a CDP, an unincorporated community must meet the following criteria:~~

- ~~1. 1,000 or more persons if outside the boundaries of an urbanized area (UA) delineated for the subsequent special census;~~
- ~~2. 2,500 or more persons if inside the boundaries of an urbanized area (UA) delineated for subsequent census;~~
- ~~3. 250 or more persons if outside the boundaries of an urbanized area (UA) delineated for the subsequent special census, and within the official boundaries of an American Indian reservation recognized for the 1990 census.~~

~~"Special Resource Protection Waters" (SRPWs) means surface waters identified by the Director as having significant ecological or recreational uses, as defined in the State of Rhode Island Water Quality Regulations and listed in Appendix D of those regulations.~~

~~"Outstanding National Resource Waters" (ONRWs) means water of National and State Parks, Wildlife Refuges, and other such waters designated as having special recreational or ecological value as defined in the State of Rhode Island Water Quality Regulations.~~

~~"Impaired Waters," for the purpose of Rule 31, means those waters within the State, which do not currently meet Rhode Island Water Quality Standards as identified in the latest list of Impaired Waters compiled by the Office of Water Resources (OWR) of the Rhode Island Department of Environmental Management and is referred to as the State of Rhode Island's 303(d) list.~~

~~"Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on or run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act.~~

C. Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity. Dischargers of storm water associated with industrial activity and small construction activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a promulgated storm water general permit as follows:

1. Individual permit application. Facilities that are required to obtain an individual permit, or any discharge of storm water which the ~~Department~~Director is evaluating for designation (see 40 C.F.R. § 124.52(c)) incorporated above at 1.3(B) of this Part, under §§ 1.32 paragraph (Aa)(1)(qvii) and 1.32(Aa)(1)(hviii) of this ~~Part~~Rule and is not a municipal separate storm sewer, and which is not part of a group application described under § 1.32 paragraph (Ce)(3) of this ~~Part~~section, shall submit a RIPDES application in accordance with the requirements of § 1.11 of this Part Rule 10 as modified and supplemented by the

provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Form 1 and Form 2F. Applicants for discharges composed of storm water and non-storm water shall submit Form 1, Form 2C, and Form 2F. Applicants for new sources or new discharges (as defined in § 1.4 of this Part~~Rule 3 of these regulations~~) composed of storm water and non-storm water shall submit Form 1, Form 2D, and Form 2F.

a. Discharges of storm water associated with industrial activity, excluding construction activity and small construction activity. Except as provided in ~~part §§ 1.32-(C)(1)(bii) through -(div)~~ of this Part~~section~~, the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

- (1) A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water runoff, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 C.F.R. § 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;
- (2) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural

and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

- (3) A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a RIPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;
- (4) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;
- (5) Quantitative data based on samples collected during storm events and collected in accordance with § 1. Rule 11.02(Ba)(14)(n) of this Part from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:
 - (AA) Any pollutant limited in an effluent guideline to which the facility is subject;
 - (BB) Any pollutant listed in the facility's RIPDES permit for its process wastewater (if the facility is operating under an existing RIPDES permit);
 - (CC) Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;
 - (DD) Any information on the discharge required under §§ 1. Rule 11.02-(1a)(n14))((3)iii) and ((4)iv) of this Part;
 - (EE) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

(FF) The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours).

6. Operators of a discharge which is composed entirely of storm water are exempt from the requirements of ~~§§ 1. Rule 11(B).02-(1a)(i9), 1.11(B)(1a)(i10), 1.11(B)(1a)(k11), through 1.11(B)(1a)(l12), 1.11(B)(1a)(n14)((1)i), 1.11(B)(1a)(n14)((2)ii), and 1.11(B)(1a)(n14)((5)v) of this Part~~; and

7. Operators of new sources or new discharges (as defined in ~~§ 1.4 Rule 3 of this Part~~) which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in ~~paragraph § 1.32-(Ce)(1)(ai)((5)E) of this Part~~ instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in ~~§ 1.32 paragraph-(Ce)(1)(ai)((5)E) of this Part~~ within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the RIPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of ~~§§ 1. Rule 11(B).02-(1a)(i9), 1.11(B)(a1)(k11), and 1.11(B)(1a)(n14) of this Part~~.

b. Discharges of storm water associated with construction activity and small construction activity. The operator of an existing or new storm water discharge that is associated with industrial activity solely under ~~§ 1.4 Rule 34(Ab)(1115)(ix) of this Part~~ (construction sites with five or more acres of land disturbance), associated with small construction activity solely under ~~Rule § 1.434(Ab)(1126) of this Part~~, or any discharge of storm water associated with construction activity, which the ~~Department Director~~ is evaluating for designation under ~~§§ 1. Rule 324(Aa)(1)(gvii) and 1.32(Aa)(1)(hviii) of this Part~~, is exempt from the requirements ~~of of §§ 1. Rule 11 and 1.32 and paragraph-(Ce)(1)(ai) of this Part~~ section. Such operator shall provide a narrative description of:

(1) The location (including a map) and the nature of the construction activity;

- (2) The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;
- (3) Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements, guidance, ordinances or any related requirements imposed upon the site by the State or local authority.
- (4) Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable State or local erosion and sediment control requirements;
- (5) An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and
- (6) The name of the receiving water.

c. Discharges of storm water associated with oil or gas exploration. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with § 1.32-paragraph (Ce)(1)(ai) of this Partsection, unless the facility:

- (1) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 C.F.R. § 117.21 or 40 C.F.R. § 302.6- at anytimeany time since November 16, 1987; or
- (2) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 C.F.R. § 110.6- at any time since November 16, 1987; or
- (3) Contributes to a violation of a water quality standard.

d. Discharges of storm water associated with mining activity. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the storm water has come into contact with, any overburden, raw material, intermediate products, finished

product, byproduct or waste products located on the site of such operations.

- e. Additional information. Applicants shall provide such other information the Department Director may reasonably require under Rule § 1.11.02(B)(1a)(i20) of this Part to determine whether to issue a permit and may require any facility subject to paragraph §§ 1.32-(Ce)(1)(bii) and of this section to comply 1.32 with paragraph (Ce)(1)(ai) of this Part section.

2. General permit application:

- a. Notice of intent requirements. The requirements for the contents of the notice of intent to be covered by a general permit for storm water discharges associated with industrial activity may include the information required in paragraph § 1.32-(Ce)(1) of this Part Section. Specific notice of intent requirements shall be specified in the general permit in accordance with § 1. Rule-323(Bb)(2)(bii) of this Part. Portions of the Notice of Intent requirements may be waived, if the Department Director determines that this information has been provided to, and will be reviewed by, either the Coastal Resources Management Council, the Division of Freshwater Wetlands, or a local Conservation District, established by Chapter 2-4 of the R.I. Gen. Laws Chapter § 2-4 General Laws of Rhode Island, in accordance with a community Soil Erosion and Sediment Control Ordinance, pursuant to Chapter 45-46 of the R.I. Gen. Laws Chapter § 45-46 General Laws of Rhode Island.
- b. Granting of authorization. Authorization to discharge under a storm water general permit may be automatic or upon notice of authorization as specified in the general permit in accordance with § 1. Rule-332(Bb)(2)(ai) of this Part. Regardless of the means of authorization, the permittee is still responsible for compliance with all the terms of the permit and any other applicable state or federal regulations and/or requirements. The Department will be held harmless for any failure of the permittee to comply with the terms of the permit.

- 3. Group permit application. In lieu of individual applications or notice of intent to be covered by a general permit for storm water discharges associated with industrial activity, a group application may be filed by an entity representing a group of applicants (except facilities that have existing individual RIPDES permits for storm water) that are part of the same subcategory (see 40 C.F.R. Chapter I, Ssubchapter N, part §§ 405 to 471) or, where such grouping is inapplicable, are sufficiently similar as to be appropriate for general permit coverage under § 1.33 of this Part Rule

~~32~~ (40 C.F.R. § 122.28, incorporated above at § 1.3(B) of this Part). The Part 1 application shall be submitted to the Office of Water Enforcement and Permits, U.S. EPA, 401 M Street, SW., Washington, DC 20460(EN-336) for approval in accordance with the Federal storm water group application requirements. Once a Part 1 application is approved, group applicants are to submit Part 2 of the group application to the Office of Water Enforcement and Permits in accordance with the Federal storm water group application requirements.

- 4D. Application requirements for large and medium municipal separate storm sewer discharges. The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the ~~Department Director~~ under §§ 1.32(A)(1)(g) and 1.32(A)(1)(h) of this Part Rule 31(a)(1)(vii) and (viii) if required to apply under this section, may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a co-applicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under §§ 1.32(A)(1)(g) and 1.32(A)(1)(h) of this Part Rule 31(a)(1)(vii) and (viii) and required to apply under this section shall include:

a1. Part 1 of the application shall consist of:

- ~~(1)~~a. General Information. The applicants' name, address, telephone number of contact person, ownership status and status as a state or local government entity.
- ~~(2)~~b. Legal Authority. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in § 1.32(D)(2)(a) of this Part paragraph (d)(2)(i) of this section, the description shall list additional authorities as will be necessary to meet the criteria and shall include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.
- ~~(3)~~c. Source Identification
 - ~~(AA1)~~ A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

~~(BB2)~~ A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

~~(AAi)~~ The location of known municipal storm sewer system outfalls discharging to waters of the State;

~~(BB)iii)~~ A description of the land use activities (e.g., divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied with estimates of population densities and projected growth for a ten year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

~~(CC)iii)~~ The location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

~~(DD)iv)~~ The location and the permit number of any known discharge to the municipal storm sewer that has been issued a RIPDES permit;

~~(EE)v)~~ The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and

~~(viFF)~~ The identification of publicly owned parks, recreational areas, and other open lands.

~~(4d.)~~ Discharge Characterization

~~(AA1.)~~ Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

~~(BB2.)~~ Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

~~(CC3.)~~ A list of water bodies that receive discharges from the municipal separate storm sewer system, including

downstream segments, lakes and estuaries, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts shall include a description of whether the water bodies receiving such discharges have been:

~~(AA)(iAA)~~ Assessed and reported in the ~~Section 305(b)~~, 33 U.S.C. § 1315(b) (Section 305(b) of the Clean Water Act) State of the State's Waters report the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

~~(i)(BB)iBB)~~ Listed under ~~section 304(l)(1)(A)(i), section 304(l)(1)(A)(ii), or section 304(l)(1)(B) of the CWA, 33 U.S.C. § 1314(l)(1)(A)(i), § 1314(l)(1)(A)(ii), or § 1314(l)(1)(B) (Section 304(l)(1)(A)(i), Section 304(l)(1)(A)(ii), or Section 304(l)(1)(B) of the Clean Water Act)~~ that is not expected to meet water quality standards or water quality goals;

~~(ii)(CC)iCC)~~ Listed in State Nonpoint Source Assessments required by ~~Section 319(a) of the CWA, 33 U.S.C. § 1329(a) (Section 319(a) of the Clean Water Act)~~ that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

~~(iv)(DD)iDD)~~ Identified and classified according to eutrophic condition of publicly owned lakes listed in State reports required under ~~Section 314(a) of the CWA, 33 U.S.C. § 1324(a) (Section 314(a) of the Clean Water Act)~~ (include the following: A description of those publicly owned lakes for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes; and a description of methods and procedures to restore the quality of such lakes);

~~(v)(EE)EE)~~ Designated estuaries under the National Estuary Program under ~~Section 320 of the CWA;~~ 33 U.S.C. § 1330 (Section 320 of the Clean Water Act);

~~(vi)(FF)FF)~~ Recognized by the applicant as highly valued or sensitive waters;

~~(vii)(GG)GG)~~ Defined by the State or U.S. Fish and Wildlife Services's National Wetlands Inventory as wetlands; and

~~(vii)(HH)HH)~~ Found to have pollutants in bottom sediments, fish tissue or bio-survey data.

~~(DD)4~~) Field Screening. Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods (at least 72 hours from the previous 0.1 inch, or greater, rainfall event). If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 C.F.R. § ~~Part~~ 136, incorporated above at § 1.3(B) of this Part, the applicant shall provide a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

~~((iAA))~~ A grid system consisting of perpendicular north-south and east-west lines spaced -1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells;

~~((iiBB))~~ All cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

~~((iiiCC))~~ Field screening points should be located downstream of any sources of suspected illegal or illicit activity;

~~-(DD)iv)~~ Field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

~~((vEEE))~~ Hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

~~((FF)vi)~~ For medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

~~((viiGG))~~ Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in §§ 1.32(D)(1)(d)((4))((aaAA)) through ((FF)ff) of this Part~~paragraphs (d)(1)(iv)(D) (1) through (6) of this section~~, because a sufficiently detailed map of the separate storm sewer systems is

unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

~~(5)(E-E5.)~~ Characterization Plan. Information and a proposed program to meet the requirements of § 1.32(D)(2)(c) of this Part~~paragraph (d)(2)(iii) of this section.~~ Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under § 1.32(D)(2)(c)(1) of this Part~~paragraph (d)(2)(iii)(A) of this section~~, a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see § 1.32(D)(1)(d)(3) of this Part~~paragraph (d)(1)(iv)(C) of this section~~) to the extent practicable.

~~e.(5)E.~~ Management Programs

~~((AA)1):~~ A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to: procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under State law as well as local requirements.

~~((BB)2):~~ A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection

procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

~~f(6)~~F. Fiscal Resources. A description of the financial resources currently available to the municipality to complete Part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs.

~~(b)~~2. Part 2 of the application shall consist of:

~~(1)~~a. Adequate legal authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

~~(AA)~~1) Control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by storm water discharges associated with industrial activity and the quality of storm water discharged from sites of industrial activity;

~~(BB)~~2) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

~~(CC)~~3) Control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than storm water;

~~(DD)~~4) Control through interagency agreements among co-applicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

~~(EE)~~5) Require compliance with conditions in ordinances, permits, contracts or orders; and

~~(FF)~~6) Carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

~~(2b)~~2. Source Identification. The location of any major outfall that discharges to waters of the State that was not reported under ~~§~~

~~1.32(D)(1)(c)((2))((AA)aa) of this Part~~~~paragraph (d)(1)(iii)(B)(1) of this section.~~ Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, storm water associated with industrial activity;

~~(3)c.~~ Characterization Data. When "quantitative data" for a pollutant are required under ~~§ 1.32(D)(2)(c)((1))((CC)ee) of this Part~~~~paragraph (d)(2)(iii)(A)(3) of this paragraph~~, the applicant must collect a sample of effluent in accordance with ~~§ 1.11(B)(1)(n) of this Part~~~~Rule 11.02 (a)(14) (40 C.F.R. § 122.21(g)(7), incorporated above at § 1.3(B) of this Part)~~ and analyze it for the pollutant in accordance with analytical methods approved under 40 C.F.R. ~~§ Part 136, incorporated above at § 1.3(B) of this Part.~~ When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

~~(AA)1)~~ Quantitative data from representative outfalls designated by the ~~Department Director~~ (based on information received in Part 1 of the application, the ~~Department Director~~ shall designate between five and ten outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls covered in the application, the ~~Department Director~~ shall designate all outfalls) developed as follows:

~~(AA)(iAA)~~ For each outfall or field screening point designated under this subparagraph, samples shall be collected of storm water discharges from three storm events occurring at least one month apart in accordance with the requirements in ~~§ 1.11(B)(1)(n) of this Part~~~~Rule 11.02 (a)(14) (40 C.F.R. § 122.21(g)(7), incorporated above at § 1.3(B) of this Part)~~ (the ~~Department Director~~ may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

~~(ii)(BB)BB)~~ A narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous

measurable (greater than 0.1 inch rainfall) storm event;

~~(iii)(CC)GG~~ For samples collected and described under §§ 1.32(D)(2)(c)((1))(AA)aa and ((bb)BB) of this Part~~paragraphs (d)(2)(iii) (A)(1) and (A)(2) of this section~~, quantitative data shall be provided for: the organic pollutants listed in § 1.632 of this Part~~Table II~~; the pollutants listed in § 1.63 of this Part~~Table III~~ (toxic metals, cyanide, and total phenols) of RIPDES Regulations (~~Appendix A~~ (Appendix D of 40 C.F.R. § Part 122, incorporated above at § 1.3(B) of this Part), and for the following pollutants:

Total Suspended Solids (TSS)

Total Dissolved Solids (TDS)

Chemical Oxygen Demand (COD)

Biochemical Oxygen Demand, 5-day (BOD5)

Oil and Grease

Fecal Coliform

Fecal Streptococcus

pH

Total Kjeldahl Nitrogen

Nitrate Plus Nitrite

Dissolved Phosphorus

Total Ammonia Plus Organic Nitrogen

Total Phosphorus

~~(iv)(DD)~~ Additional limited quantitative data required by the ~~Department~~Director for determining permit conditions (the ~~Department~~Director may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness);

~~_____((BB)2):~~ Estimates of the annual pollutant load of the cumulative discharges to waters of the State from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the State from all identified municipal outfalls during a storm event (as described under 40 C.F.R. § 122.21(c)(7), incorporated above at § 1.3(B) of this Part) for BOD5, COD, TSS, TDS, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modeling, data analysis, and calculation methods;

~~_____((GG)3):~~ A proposed schedule to provide estimates for each major outfall identified in either §§ 1.32(D)(1)(c)((3))((AA)aa) or § 1.32(D)(2)(b) of this Part ~~paragraph (d)(1)(iii)(B)(1) or (d)(2)(ii) of this section~~ of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under § 1.32(D)(2)(c)((1)) of this Part ~~paragraph (d)(2)(iii)(A) of this section~~; and

~~_____((DD)4):~~ A proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

~~_____d.5.4.~~ Proposed Management Program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are

appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each co-applicant. Proposed programs may impose controls on a system-wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Department Director when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

~~_____ (1)(AA)a.~~ A description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

~~_____ (i)(AA)(AA1)~~ A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

~~_____ (ii) _____ ((BB)BB2)~~ A description of planning procedures including ~~a comprehensive~~ comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant re-development. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. (Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in § 1.32(D)(2)(d)((4)) of this Part~~paragraph (d)(2)(iv)(D) of this section~~;

~~_____ (iii)((CC)CC3)~~ A description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of de-icing activities;

~~_____ (iv) — ((DD)DD4)~~ A description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from storm water is feasible;

~~(v)(EE)(EE5)~~ A description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and implementing control measures for such discharges (this program can be coordinated with the program developed under § 1.32(D)(2)(d)((3)) of this Part~~paragraph (d)(2)(iv)(C) of this section~~); and

~~(vi)(6(F)F))~~ A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right~~s~~-of-way~~s~~ and at municipal facilities.

~~_____ (2)(BB)h.~~ A description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate RIPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

~~(i)((AA)1AA)~~ A description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however, the following category of non-storm water discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to waters of the State: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined

at 40 C.F.R. § 35.2005(20), incorporated above at § 1.3(B) of this Part) to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to waters of the State);

~~(ii)(BB)(2BB)~~ A description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

~~(iii)(CC)(3CC)~~ A description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-storm water (such procedures may include: sampling procedures for constituents such as fecal coliform, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

~~(iv)(DD)(4DD)~~ A description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

~~(v)(EE)(5EE)~~ A description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

~~(vi)(FF)(FF)~~ f.—A description of educational activities, public information activities, and other appropriate

activities to facilitate the proper management and disposal of used oil and toxic materials; and

~~(GG)(GG)~~ ~~(vii)g.~~ A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

~~(3)(GG)3.~~ A description of a program to monitor and control pollutants in storm water discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to section 313 of Title III of the Superfund Amendments and Re-Authorization Act of 1986 (SARA), 42 U.S.C. § 11001 et seq., and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

~~(AA)(AA)(i)a.~~ Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

~~(BB)(BB)(ii)b.~~ Describe a monitoring program for storm water discharges associated with the industrial facilities identified in § 1.32(D)(2)(d)((3)) of this Part~~paragraph (d)(2)(iv)(C) of this section~~, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing RIPDES permit for a facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under § 1.11(B)(1)(n) of this Part~~Rule 11.02(a)(14)~~ (40 C.F.R. § 122.21(g)(7) (iii) and (iv), incorporated above at § 1.3(B) of this Part).

~~((DD)4.)~~ ——— A description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in storm water runoff from construction sites to the municipal storm sewer system, which shall include:

~~((AA)AA)(i)a.~~ A description of procedures for site planning which incorporate consideration of potential water quality impacts;

~~((BB)BB)(ii)b.~~ A description of requirements for nonstructural and structural best management practices;

~~(CC)(CC)(iii)c.~~ A description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

~~(DD)(DD)(iv)d.~~ A description of appropriate educational and training measures for construction site operators.

~~5e.~~ Assessment of Controls. Estimated reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal storm water quality management program. The assessment shall also identify known impacts of storm water controls on ground water.

~~6f.~~ Fiscal Analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under §§ 1.32(D)(2)(c) and (D)(2)(d) of this Part~~paragraphs (d)(2)(iii) and (iv) of this section~~. Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

~~g.~~

~~714.~~ Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination.

~~h.~~

~~815.~~ Where requirements under §§ 1.32(D)(1)(d)((5)), (D)(2)(b), (D)(2)(c)((2)), and (D)(2)(d) of this Part~~paragraph (d)(1)(iv)(E), (d)(2)(ii), (d)(2)(iii)(B) and (d)(2)(iv) of this section~~ are not practicable or are not applicable, the Department Director~~may~~ exclude any operator of a discharge from a municipal separate storm sewer which is designated under §§ 1.32(A)(1)(e), 1.4(A)(53)(b), and 1.4(A)(59)(b) of this Part~~paragraph (a)(1)(v), (b)(4)(ii) or (b)(7)(ii) of this section~~ from such requirements. The Department Director~~shall not~~ exclude the operator of a discharge from a municipal separate storm sewer identified in the RIPDES

Regulations, ~~Appendix §§ 1.70F, 1.71G, 1.72H or 1.73 of this Part~~, from any of the permit application requirements under this paragraph except where authorized under this section.

~~E. 5.~~ Application requirements for small municipal separate storm sewer discharges. The operator of a regulated small MS4 must obtain permit coverage under a General or Individual Permit as follows:

~~a1.~~ General Permit Application. The operator of a small MS4 seeking coverage under a general permit must submit a Notice of Intent (NOI) and a copy of the Storm Water Management Program Plan that meets the requirements of ~~Rule 31(e)(3) § 1.32(5E)(3)(e) of this Part~~. The operator of the small MS4 may file an individual NOI or the operator of the MS4 and other municipalities or governmental entities may jointly submit an NOI. When a joint NOI is filed, it must describe which minimum measures the operator of the MS4 will implement and identify the entities that will implement the other minimum measures within the area served by the MS4.

~~(1)a.~~ Notice of Intent requirements. The requirements for the contents of the notice of intent to be covered by a general permit for storm water discharges may include the information required in ~~Rule and § 1.32-(5E)(3e) of this Part~~ ~~31(e)(3)~~. Specific notice of intent requirements shall be specified in the general permit in accordance with ~~Rule 32(b)(2)(ii) § 1.32 of this Part~~.

~~(2)b.~~ Granting of authorization. Authorization to discharge under a storm water general permit may be automatic or upon notice of authorization as specified in the general permit in accordance with ~~§ 1.32 of this Part~~ ~~Rule 32(b)(2)(i)~~. Regardless of the means of authorization, the permittee is still responsible for compliance with all terms of the permit and any other applicable State or federal regulations and/or requirements. The Department will be held harmless for any failure of the permittee to comply with the terms of the permit.

~~b2.~~ Individual Permit Application. The operator of a regulated small MS4 and another regulated entity may jointly apply under either ~~§§ 1.32 (5E)(2b)(a1) or (b2) of this Part~~ ~~Rule 31(e)(2)(i) or (ii)~~ to be co-permittees under an individual permit. The ~~Department~~ ~~Director~~ may require the operator of a small MS4 designated under ~~Rule 31(a)(1)(vii) or (viii) §§ 1.32-(A)(1)(gf) or (hg) of this Part~~ to seek coverage under an individual permit. The operator of a small MS4 seeking or required to obtain authorization to discharge under an individual permit must meet program requirements as follows:

~~(1)a.~~ Operators of small MS4s seeking authorization to implement a program under ~~Rule 31(e)(3)~~ § 1.32-(E5)(3e) of this Part, must submit an application that includes the following:

(AA1) Information required under §§ 1.32(D)(1)(a) through (d) of this Part Rule 31(d)(1)(i) through -(iii) and § 1.32-(E5)(3e) of this Part. Rule 31(e)(3);

(BB2) An estimate of the square mileage served by the small MS4; and

(CC3) Any additional information that the Department requests.

~~(2)b.~~ Operators of small MS4s seeking authorization to implement a program that is different from the program under ~~Rule 31(e)(3) and § 1.32-(E5)(3e) of this Part~~ must comply with the permit application requirements of ~~Rule 31(d)~~ § 1.32(4D) of this Part. The operator of the MS4 must submit both Parts of the application requirements in §§ 1.32(4D)(1a) of this Part Rule 31(d)(1) and (d)(2)(D4)(2b) of this Part by March 10, 2003. The applicant is exempt from submitting information required by ~~Rule 31(d)(1)(ii) and (d)(2)(i) §§ 1.32(4D)(1a)(b2) and (D4)(2b)(a4) of this Part~~ regarding legal authority unless the applicant intends for the Department to take such information into account when developing other permit conditions. If the operator intends to demonstrate permit coverage for all discharges to Special Resource Protection Waters (SRPWs), Outstanding National Resource Waters (ONRWs), and impaired water bodies as required in § 1.32-(A)(5)(a)((7)) of this Part Rule 31(a)(5)(i)(G), the application required by § 1.32(4D) of this Part Rule 31(d) must document coverage for all such discharges.

~~63.~~ Storm Water Management Program Requirements. Unless seeking coverage in accordance to § 1.32(E)(2)(b) of this Part Paragraph (2)(ii) of this section, the operator of a small MS4 must develop, implement and enforce a Storm Water Management Program designed to reduce the discharge of pollutants from the MS4 to the Maximum Extent Practicable (MEP), to protect water quality and to satisfy the appropriate water quality requirements of the Clean Water Act through the implementation of Best Management Practices (BMPs), for each of the minimum control measures. If the operator intends to demonstrate permit coverage to all discharges to Special Resource Protection Waters (SRPWs), Outstanding National Resource Waters (ONRWs), and impaired water bodies as required in § 1.32-(A)(5)(a)((7)) of this Part Rule 31(a)(5)(i)(G), the Storm Water Management Program Plan required by § 1.32(E)(3)(a) of this Part Rule 31(e)(3)(i) must document coverage for all such discharges.

~~(1)~~a. Storm Water Management Program Plan. At a minimum the storm water management program plan must include all of the following:

~~(AA1)~~ Information of the Best Management Practices (BMPs) that will be implemented for each of the minimum control measures identified in § 1.32(DE)(32)(ba) of this Part~~paragraph (3)(ii) of this section~~;

~~(BB2)~~ Information of the Measurable Goals for each of the BMPs, including as appropriate:

~~(i)(AA)AA)~~ Months and years in which the operator will undertake required actions,

~~(i)(BB)BB)~~ Interim milestones, and

~~(CC)(iii)CC)~~ Frequency of action(s);

~~(i)(DD)DD)~~ The person(s) responsible for implementing or coordinating the storm water management program plan.

~~(2)~~b. Minimum Control Measures.

~~(AA1)~~ Public Education and Outreach: The operator must implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps the public can take to reduce pollutants in storm water runoff.

~~(BB2)~~ Public Involvement/Participation: The operator must, at a minimum, comply with State and local public notice requirements when implementing a public involvement/participation program.

~~(CC3)~~ Illicit Discharge Detection and Elimination: At a minimum, the operator must develop, implement and enforce a program to detect and eliminate illicit discharges or flows into the sSmall MS4 that includes the following:

~~(AA)(i)AA)~~ Development of a storm sewer map showing the location of all outfalls and names and locations of all receiving State waters;

~~(BB)(ii)BB)~~ To the extent allowable under State or local law, effectively prohibit through ordinance, or other regulatory mechanism, non-storm water discharges to

MS4 and implement appropriate enforcement procedures and actions;

~~(iii)(CC)G~~ Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to the MS4;

~~(iv)(DD)DD~~ Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste to the MS4.

~~((EE)EE)~~ The operator of the small MS4 must address the following categories of non-storm water discharges if these discharges are identified as significant contributors of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to waters of the State).

~~(DD4)~~ Construction Site Storm Water Runoff Control: The operator of the regulated small MS4 must develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the small MS4 from construction activities that result in a land disturbance of greater than or equal to one (1) acre including construction activity disturbing less than one (1) acre if that construction activity is part of a larger common plan of development or sale that would disturb one or more acre. At a minimum, the storm water management program plan must include the development and implementation of the following:

~~(AA)(iAA)~~ An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as

sanctions to ensure compliance, to the extent allowable under State or local law;

~~(BB)(iiBB)~~ Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

~~(ii(CC)CC)~~ Requirements for construction site operators to control construction wastes, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

~~(iv(DD)DD)~~ Procedures for site plan review which incorporate consideration of potential water quality impacts;

~~(v(EE)EE)~~ Procedures for receipt and consideration of information submitted by the public; and

~~(vi(FF)FF)~~ Procedures for site inspection and enforcement of control measures.

~~(EE5)~~ Post Construction Storm Water Management in New Development and Redevelopment: The operator of the small MS4 must develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts. The operator of the small MS4 must:

~~(i(AA)AA)~~ Develop and implement strategies which include a combination of structural methods such as detention basins, wet basins, infiltration basins and trenches, dry wells, galleys, vegetated swales and vegetated filter strips and/or non-structural best management practices (BMPs) appropriate for the community;

~~(ii(BB)BB)~~ Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under State or local law;

~~(iii)(CC)GG)~~ Ensure adequate long-term operation and maintenance of BMPs; and

~~(3)(DD)DD)~~ Develop and implement strategies to reduce runoff volume which may include minimizing impervious surface areas such as roads, parking, paving or other surfaces, encouraging infiltration of non-contaminated runoff, preventing channelization, encouraging sheet flow, and where appropriate, preserving, enhancing, or establishing buffers along surface waterbodies and their tributaries.

~~(FF6)~~ Pollution Prevention/Good Housekeeping for Municipal Operations: The operator of the small MS4 must develop and implement an operation and maintenance program that includes an employee training component and has the ultimate goal of preventing or reducing pollutant runoff and runoff volumes from municipal operations such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water systems maintenance.

~~D4.~~ Waiver applications. An operator of a regulated small MS4 seeking a waiver must submit an application, by the deadlines established in ~~Rule 31(f§ 1.32 of this Part)~~, which meets the following requirements:

~~(1)a.~~ An operator of a small MS4 seeking a waiver under ~~§ 1.32(7G)(5e)(a4) of this Part Rule 31(g)(5)(i)~~ must submit the following:

~~(AA1)~~ A map indicating the location of all outfalls and receiving water bodies within the urbanized area or densely populated area and the drainage area of any areas within the urbanized area or densely populated area physically interconnected to another regulated MS4.

~~(BB2)~~ Any other additional information that the ~~Department~~Director deems is necessary to make a determination.

~~(2)b.~~ An operator of a small MS4 seeking a waiver under ~~§ 1.32(7G)(5e)(b2) of this Part Rule 31(g)(5)(ii)~~ must submit the following:

~~(AA1)~~ A map indicating the location of all outfalls and receiving water bodies throughout the jurisdiction, including small streams, tributaries, lakes and ponds, and the drainage area of any areas physically-interconnected to another regulated MS4.

(~~BB~~2) A table which identifies the following information for each outfall:

(~~i~~(~~AA~~)AA) Any waters designated as impaired on the latest Rhode Island 303(d) list of impaired waters that receive a discharge from the outfall;

(~~ii~~(~~BB~~)BB) Any EPA approved or established TMDLs completed for impaired water bodies that receive a discharge from the outfall;

(~~iii~~(~~CC~~)CC) The pollutant(s) of concern addressed by the EPA approved or established TMDL;

(~~iv~~(~~DD~~)DD) Any storm water controls required by the EPA approved or established TMDL.

(~~GG~~3) For any outfalls that the Department determines discharge to waters that have not been evaluated to determine compliance with water quality standards for all the pollutants of concern, the operator will be required to submit additional information necessary to complete the evaluation.

(~~DD~~4) An analysis, equivalent to a TMDL, for any outfalls which discharge to impaired water bodies, as designated on the latest Rhode Island 303(d) list of impaired waters or upon review of the information required in ~~Rule 31(e)(4)(ii)(C)~~ § 1.32-(E5)(4d)(b2)((3)CC) of this Part, for which TMDLs have not been completed for all pollutants of concern; and

(~~EE~~5)- Any other additional information that the ~~Dir~~-Department Director deems is necessary to make a determination.

(~~3~~)c. An operator of a small MS4 seeking a waiver under § 1.32 (G7)(5E)(c3) of this Part ~~Rule 31(g)(5)(iii)~~ must submit the following:

(~~AA~~1) Documentation of the extent that the Storm Water Management Program Plan required under § 1.32(5E)(3) of this Part ~~Rule 31(e)(3)~~ provides permit coverage for all discharges to Special Resource Protection Waters (SRPWs), Outstanding National Resource Waters (ONRWs), and impaired water bodies; or

(~~BB~~2) A map indicating the location of all outfalls to Special Resource Protection Waters (SRPWs), Outstanding National Resource Waters (ONRWs), and impaired water bodies that receive a discharge from the MS4; and

(~~CC~~3) Description of effective programs, which the operator believes are implemented for the protection of Special Resource Protection Waters (SRPWs), Outstanding National Resource Waters (ONRWs), and the control of storm water discharges to impaired water bodies; and

(~~DD~~4) Any other additional information that the ~~Di~~Department ~~rector~~ deems is necessary to make a determination.

(~~F~~)E. Application Deadlines. Any operator of a point source required to obtain a permit under § 1.32 of this Part~~Rule 34~~, that does not have an effective RIPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

(~~1~~)1. Storm Water Discharges Associated with Industrial Activity.

(~~AA~~)a. Except as provided in §§~~Rule 1.32~~34(~~Ff~~)(1)(~~bii~~) and 1.32(~~Ff~~)(5) of this Part, for any storm water discharge associated with industrial activity identified in §§ 1.4(A)(111)(a) through (1.4(A)(111)(k) of this Part ~~Rule 31(b)(15)(i) through (xi)~~, that is not part of a group application as described in § 1.32(C)(3) of this Part ~~Rule 31(e)(3) of this section~~ or which is not authorized by a general permit, a permit application ~~made pursuant to paragraph (e) of this section~~ shall be submitted to the Department Director by April 19, 1993. However, facilities that meet the definition of light industry in accordance to § 1.4(A)(111)(k) of this Part ~~Rule 31(b)(15)(xi)~~, where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery, were not exposed to storm water, were not required to obtain a permit for their storm water discharges from April 19, 1993 until 90 (ninety) days after the effective date of these Regulations. Within 90 (ninety) days of the effective date of these regulations, the operators of these facilities must submit to the Department a no exposure certification in accordance to § 1.32(H) of this Part ~~Rule 31(h)~~ or a permit application in accordance to § 1.32(C) of this Part~~Rule 31(e)~~.

(~~BB~~)b. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, power plant, or uncontrolled sanitary landfill, the permit application must be submitted to the Department Director by March 10, 2003.

(~~2~~)2. Group Permit Applications. Any group application submitted in accordance with § 1.32(C)(3) of this Part ~~paragraph (e)(3) of this section~~ Part shall comply with all Federal requirements.

- ~~(a)~~a. Except as provided in ~~paragraph § 1.32(F)(2)(b) of this Part (f)(2)(iii) of this Part~~section, facilities that are rejected as members of the group shall submit an individual application (or obtain coverage under an applicable general permit) no later than 12 months after the date of receipt of the notice of rejection or by April 19, 1993, whichever comes first.
- ~~(b)~~b. Facilities that are owned or operated by a municipality and that are rejected as members of the ~~Part 1~~ group application shall submit an individual application no later than 180 days after the date of receipt of the notice of rejection or by April 19, 1993, whichever is later.
- ~~(3)~~3. For any discharge from a medium municipal separate storm sewer system;
- ~~(a)~~a. Part 1 of the application shall be submitted to the ~~Director~~ Department by April 19, 1993.
- ~~(b)~~b. Based on information received in the Part 1 application the ~~Director~~ Department will approve or deny a sampling plan under § 1.32(D)(1)(d)((5)) of this Part ~~paragraph (d)(1)(iv)(E) of this section~~ within ninety (90) days after receiving the Part 1 application.
- ~~(c)~~c. Part 2 of the application shall be submitted to the ~~Director~~ Department by May 17, 1993.
- ~~(4)~~4. For the storm water discharges defined below, a permit application shall be submitted to the ~~Director~~ Department within sixty (60) days of notice for storm water discharges associated with industrial activity and small construction activity, and one hundred eighty (180) days for storm water discharges from a small municipal separate storm sewer system, unless permission for a later date is granted by the ~~Director~~ Department (see 40 C.F.R. § 124.52(c), incorporated above at § 1.3(B) of this Part):
- ~~(a)~~a. A storm water discharge which the ~~Director~~ Department, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State (see §§ 1.32(A)(1)(g) and 1.4(A)(112)(b) of this Part ~~Rule 31(a)(1)(vii) and (b)(16)(ii)~~) or is designated in accordance with § 1.32(A)(1)(h) of this Part ~~Rule 31(a)(1)(viii)~~;
- ~~(b)~~b. A storm water discharge subject to § 1.32(C)(1)(e) of this Part ~~paragraph (c)(1)(v) of this section~~.
- ~~(5)~~5. Existing discharges of storm water associated with industrial activity. Facilities with existing RIPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. Re-

applications shall be submitted in accordance with the requirements of §§ 1.11, 1.12, and 1.32(C) of this Part~~Rules 10, 11 and 31(e)~~, (40 C.F.R. § 122.21 and 40 C.F.R. § 122.26(c), incorporated above at § 1.3(B) of this Part) 180 days before the expiration of such permits. Facilities with expired permits or permits due to expire before May 18, 1992, shall submit applications in accordance with the deadline set forth under § 1.32(F)(1) of this Part~~paragraph (f)(1) of this section~~.

~~(6)~~6. New discharges of storm water associated with industrial activity. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application/notice of intent or a no exposure certification in accordance to § 1.32(H) of this Part~~Rule 31(h)~~, 180 days before that facility commences industrial activity which may reasonably be expected to result in a discharge of storm water associated with that industrial activity. Different submittal dates may be required under the terms of applicable general permits.

~~(7)~~7. Discharges of storm water associated with small construction activity. For any storm water discharge associated with small construction activity identified in § 1.4(A)(112)(a) of this Part~~Rule 31(b)(16)(i)~~, a permit application must be submitted to the Director~~Department~~ by March 10, 2003, unless designated for coverage before then.

~~(8)~~8. Discharges of storm water from small municipal separate storm water sewer systems. For any discharge from a regulated small MS4, the permit application made under § 1.32(E) of this Part~~Rule 31(e)~~ must be submitted to the Department~~Director~~ by:

~~(a.)~~ March 10, 2003 if subject to §§ 1.32(A)(5)(a)((1)) through ((--4)) of this Part~~Rule 31(a)(5)(i)(A-D)~~;

~~(b.)~~ March 10, 2008 if subject to § 1.32(A)(5)(a)((7)) of this Part~~Rule 31(a)(5)(i)(G)~~;

~~(c.)~~ Within one hundred eighty (180) days of notice, unless the Department grants a later date, if designated under §§ 1.32(A)(1)(g), 1.32(A)(1)(h), and 1.32(A)(5)(a)((5)), ((6)), ((8)) through ((--10)) of this Part~~Rule 31(a)(1)(vii), and (a)(1)(viii), or (a)(5)(E, F, H--J)~~.

~~(9)~~9. Waivers from permit requirement for discharges of storm water from small municipal separate storm sewer systems.

~~(a.)~~ An operator of a small MS4 eligible for a waiver under §§ 1.32(G)(5)(a) and 1.32(G)(5)(b) of this Part~~Rule 31(g)(5)(i) and (ii)~~ must submit an application for a waiver in accordance with § 1.32(E)(4) of this Part~~Rule 31(e)(4)~~ by June 19, 2002.

- ~~(b.)~~ An operator of a small MS4 seeking a waiver under § 1.32(G)(5)(c) of this Part Rule 31(g)(5)(iii) must submit an application for a waiver in accordance with § 1.32(E)(4) of this Part Rule 31(e)(4) by March 10, 2007.

~~(g)~~G. Petitions

- ~~(1)~~1. Any operator of a municipal separate storm sewer system may petition the ~~Director~~Department to require a separate RIPDES permit for any discharge or category of discharges into the municipal separate storm sewer system.
- ~~(2)~~2. Any person may petition the ~~Director~~Department to require a RIPDES permit for a discharge or category of discharges which are composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.
- ~~(3)~~3. The owner or operator of a municipal separate storm sewer system may petition the ~~Director~~Department to reduce the Census estimates of the population served by such separate system to account for storm water discharged to combined sewers as defined by 40 C.F.R. § 35.2005(b)(11), incorporated above at § 1.3(B) of this Part, that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the RIPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.
- ~~(4)~~4. Any person may petition the ~~Director~~Department for the designation of a large, medium or small municipal separate storm sewer system as defined by §§ 1.4(A)(53)(d), 1.4(A)(59)(d), or 1.4(A)(105) of this Part paragraphs (b)(4)(iv), (b)(7)(iv) or (b)(17) of this Part section. Final determination on any petition will be made in accordance to § 1.32(G)(8) of this Part Rule 31(g)(8).
- ~~(5)~~5. The Department may waive the requirement to obtain a permit for small municipal separate storm sewer systems under the following circumstances:
- ~~(1)~~a. The small MS4 is located within a jurisdiction with only urbanized areas that contain a total population of less than 1,000 or a jurisdiction with only densely populated areas (See §§ 1.72 and

1.73~~Appendix of this Part H—J~~), and the MS4 meets the following criteria:

- (a~~1~~) The small MS4 is not contributing substantially to the pollutant loadings of a physically interconnected regulated MS4;
- (b~~2~~) The small MS4 does not discharge to an impaired water body, within the urbanized area or densely populated area;
- (c~~3~~) If the small MS4 does discharge to an impaired water body within the urbanized area or densely populated area, the operator of the small MS4 has demonstrated that it does not discharge any pollutants that have been identified as the cause of impairment;
- (d~~4~~) If the small MS4 discharges any pollutant(s) that have been identified as a cause of impairment, to an impaired water body within the urbanized area or densely populated area, then it must be demonstrated that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) causing the impairment.

(2)~~b.~~ The small MS4 is located in a jurisdiction with urbanized areas or both urbanized areas and densely populated areas that contain a total population greater than or equal to 1,000 but less than 10,000 (See §§ 1.72 and 1.73 of this Part~~Appendix H—J~~), and the MS4 meets all of the following criteria:

- (a~~1~~) The Department has evaluated all waters of the State, including small streams, tributaries, lakes, and ponds, that receive a discharge from the small MS4, throughout the jurisdiction;
- (b~~2~~) For all such waters, the Department has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA approved or established TMDL that addresses the pollutant(s) of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocation for the pollutant(s) of concern;
- (c~~3~~) For the purpose of this paragraph, the pollutant(s) of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause

of impairment of any water body that will receive a discharge from the MS4, throughout the jurisdiction; and

- (d4) The operator of the MS4 has demonstrated to the satisfaction of the ~~Department~~Director that future discharges from the MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.
- (3)c. On or after March 2008, the operator of a small MS4, located outside urbanized areas and densely populated areas (See §§ 1.72 and 1.73 of this Part~~Appendix H—J~~), or previously waived in accordance with §§ 1.32(7G)(5e)(a4) and 1.32(G)(5)(b2) of this Part~~Rule 31(g)(5)(i) and (ii)~~ that discharges to Special Resource Protection Waters (SRPWs), Outstanding National Resource Waters (ONRWs) or impaired waters, will be required to obtain a permit, unless the operator has demonstrated effective protection of water quality to the satisfaction of the ~~Director~~Department by meeting the following criteria:

 - (a1) The operator has documented that the Storm Water Management Program Plan as defined in Rule 31(e)(3) § 1.32(5E) of this Part~~is applied to all Special Resource Protection Waters (SRPWs), Outstanding National Resource Waters (ONRWs), or impaired water bodies that receive a discharge from the small MS4; or~~
 - (b2) If the small MS4 discharges to Special Resource Protection Waters (SPRWs), Outstanding National Resource Waters (ONRWs), or impaired water bodies then it must be demonstrated that existing and future discharges from the MS4 do not have the potential to result in water quality impacts including habitat and biological impacts; and
 - (e3) If the small MS4 was previously waived in accordance to §§ 1.32(G)(5)(a) and 1.32(G)(5)(b) 1.32(7)(e)(1) and (2) of this Part~~Rule 31(g)(5)(i) or (ii)~~ the ~~Director~~Department must determine that those criteria for granting the waiver continue to be met.
- (6)6. Any person may petition the ~~Director~~Department to review a waiver when the petitioner provides evidence that the information required for granting the waiver have changed.
- (7)7. The ~~Director~~Department will periodically review any waivers granted in accordance to _____Rule 31(g)(5) § 1.32(G7)(5e) of this Part to

determine whether any of the information for granting the waiver has changed. At a minimum such review will be conducted once every five (5) years.

~~(8)~~8. The ~~Director~~Department shall make a final determination on any petition received under this section within a reasonable period of time after receiving the petition with the exception of petitions to designate a small MS4 in which case the ~~Director~~Department shall make a final determination on the petition within one hundred eighty (180) days after its receipt. Where the Department does not make a determination for a petition in accordance to these deadlines, EPA may make a determination on the petition. For any storm water discharge from a small MS4 that the ~~Director~~Department has designated, a permit application shall be submitted to the ~~Director~~Department within one hundred eighty (180) days of notice.

~~(h)~~H. Conditional exclusion for “no exposure” of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is “no exposure” of industrial materials and activities to rain, snow, snowmelt and/or runoff, and the discharger satisfies the conditions in §§ 1.32(H)(1) through 1.32(H)(4) paragraphs (h)(1) through (h)(4) of this Part~~section~~. “No exposure”, for purposes of this section, means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

~~(4)~~1. Qualification. To qualify for this exclusion, the operator of the discharge must:

- ~~(a.)~~ Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snowmelt, and runoff;
- ~~(b.)~~ Complete and sign (according to § 1.12 of this Part~~Rule 12~~) a certification, in accordance to § 1.32(8H)(4d) of this Part~~Rule 31(h)(4)~~, that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in § 1.32(H)(2) paragraph (h)(2) of this Part~~section~~;
- ~~(c.)~~ Submit the signed certification to the Department once every five years;

- ~~(d.)~~ Allow the ~~Director~~Department to inspect the facility to determine compliance with the “no exposure” conditions;
- ~~(e.)~~ Allow the ~~Director~~Department to make any “no exposure” inspection reports available to the public upon request; and
- ~~(f.)~~ For facilities that discharge through an MS4, upon request, submit a copy of the certification of “no exposure” to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.
- ~~(2)~~2. Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:

 - ~~(a.)~~ Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak (“Sealed”, for the purpose of this section, means banded or otherwise secured and without operational taps or valves);
 - ~~(b.)~~ Adequately maintained vehicles used in material handling; and
 - ~~(c.)~~ Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).
- ~~(3)~~3. Limitations.

 - ~~(a.)~~ Storm water discharges from construction activities identified in ~~Rule 31(b)(15)(x) and (b)(16)~~as defined in — §§ 1.4(A)(111)(i)-4 .32 and 1.4(A)(112) of this Part are not eligible for this conditional exclusion.
 - ~~(b.)~~ This conditional exclusion from the requirement for a RIPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be “no exposure” discharges, individual permit requirements should be adjusted accordingly.
 - ~~(c.)~~ If circumstances change and industrial materials or activities become exposed to rain, snow, snowmelt, and/or runoff, the conditions for this exclusion no longer apply. In such cases, the discharger becomes subject to enforcement for un-permitted discharges. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.
 - ~~(d.)~~ Notwithstanding the provisions of this paragraph, the Department retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream

excursion above an applicable water quality standard, including designated uses.

- ~~(e.)~~ The ~~Director~~Department retains the authority to require permit authorization (and deny this exclusion) on a case-by-case basis, based on the information provided in ~~—Rule 31(h)(4)–§ 1.32(H8)(4d) of this Part~~ or upon making a determination that the materials or activities listed in ~~Rule 31(h)(4)(iii)–§ 1.32(8H)(4d)(c3) of this Part~~ are or have been exposed to precipitation.

~~(4)~~4. Certification. The operator of a discharge seeking a conditional exclusion must submit to the Department a no exposure certification that contains the following information, at a minimum, to aid the Department in determining if the facility qualifies for the no exposure exclusion:

- ~~(a.)~~ The legal name, address and phone number of the discharger (see § 1.8(C) of this Part~~Rule 8(e)~~);
- ~~(b.)~~ The facility name and address, the county name and the latitude and longitude where the facility is located;
- ~~(c.)~~ The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:
 - (1) Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;
 - (2) Materials or residuals on the ground or in storm water inlets from spills/leaks;
 - (3) Materials or products from past industrial activity;
 - (4) Material handling equipment (except adequately maintained vehicles);
 - (5) Materials or products during loading/unloading or transport activities;
 - (6) Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutant);
 - (7) Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

- (8) Materials or products handled/stored on roads or railways owned or maintained by the discharger;
- (9) Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);
- (10) Application or disposal of process wastewater (unless otherwise permitted); and
- (11) Particulate matter or visible deposits of residuals from roof stack/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow;

(d.) All “no exposure” certifications must include the following certification statement, and be signed in accordance with the signatory requirements of § 1.12 of this Part~~Rule 12~~: “I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of “no exposure” and obtaining an exclusion from RIPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under § 1.32(H)(2) paragraph (g)(2)~~of this Part section~~. I understand that I am obligated to submit a no exposure certification form once every five (5) years to the Department and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable), I understand that I must allow the Department, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under a RIPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

(e.) Any other additional information that the ~~Director~~Department deems is necessary to make a determination.

1.323-General Permits

- A. Coverage. The Department may issue a general permit in accordance with the following:
1. Area. The general permit shall be written to cover a category of discharges described in the permit under § 1.33(A)(2) of this Part~~paragraph (a)(2) of this section~~, except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:
 - a. Designated planning areas under ~~Sections 208 and 303, 33 U.S.C. §§ 1288 (Sections 208, 303 and 1313~~ of the Clean Water Act);
 - b. Sewer districts or sewer authorities;
 - c. City, county, or state political boundaries;
 - d. State highway systems;
 - e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;
 - f. Urbanized areas as designated by the Bureau of Census according to criteria in 39 FR 15202 (May 1, 1974);
 - g. Densely populated area as defined under as defined in § 1.324 of this Part~~Rule 31(b)(20);~~ or
 - h. Any other appropriate division or combination of boundaries.
 2. Sources. The general permit shall be written to regulate, within the area described in ~~—§ 1.33(A)(1) of this Part~~paragraph (a)(1) of this section, either:
 - a. Storm Water discharges; or
 - b. A category of point sources other than storm water discharges if the sources all:
 - (1) Involve the same or substantially similar types of operations;
 - (2) Discharge the same type of wastes;
 - (3) Require the same effluent limitations or operating conditions;
 - (4) Require the same or similar monitoring; and

- (5) In the opinion of the Department, are more appropriately controlled under a general permit than under individual permits.

3. -Water quality-based limits. Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

4. Other requirements.

a. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

b. The general permit may exclude specified sources or areas from coverage.

B. Administration-

1. In general. General permits may be issued, modified, revoked, and reissued, or terminated in accordance with applicable requirements of these regulations. General permits shall be subject to review by EPA in accordance with the Memorandum of Agreement and 40 C.F.R. Section Part§ 123.44, incorporated above at § 1.3(B) of this Part.

2. Authorization to discharge, or authorization to engage in sludge use and disposal practices.

~~(4a.)~~ Except as provided in §§ 1.33(B)(2)(e) and §1.33(B)(2)(f) of this Part~~paragraphs (b)(2)(v) and (b)(2)(vi) of this section~~, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Department of Environmental Management, Office of Water Resources, 235 Promenade Street, Providence, Rhode Island 02908, a standardized notice of intent form to be covered by the general permit at least thirty (30) days prior to commencement of the discharge. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with § 1.33(B)(2)(e) of this Part~~paragraph (b)(2)(v) of this section~~, contains a provision that a notice of intent is not required or the ~~Director~~Department notifies a discharger (or treatment works treating domestic sewage) that it is

covered by a general permit in accordance with ~~paragraph § 1.33(B)(2)(f) of this Part(b)(2)(vi) of this section.~~ A complete and timely, notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of §§ 1.10, §1.13, and §1.32 of this PartRules 10, 13 and 31.

- ~~(2b.)~~ The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, the receiving stream(s), and such other information the ~~Director~~Department may reasonably require under § 1.11(A)(20) of this PartRule 11.02(a)(20). General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on Federal lands where an operator cannot be identified may contain alternative notice of intent requirements. All notices of intent shall be signed in accordance with § 1.12 of this PartRule 12 (40 CFR 122.22).
- ~~(3c.)~~ General permits shall specify the deadlines for submitting notices of intent to be covered and the date(s) when a discharger is authorized to discharge under the permit;
- ~~(4d.)~~ General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), in accordance with the permit either upon receipt of the notice of intent by the ~~Director~~Department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the ~~Director~~Department. Coverage may be terminated or revoked in accordance with § 1.33(C) of this Partparagraph (b)(3) of this section.
- ~~-(5e.)~~ Discharges other than discharges from publicly owned treatment works, combined sewer overflows, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the ~~Director~~Department, be authorized to discharge under a general permit without submitting a notice of

intent where the ~~Director~~Department finds that a notice of intent requirement would be inappropriate. In making such a finding, the ~~Director~~Department shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The ~~Director~~Department shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

~~(6f.)~~ The ~~Director~~Department may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so may notified request an individual permit under § 1.33(C) of this Part~~paragraph (b)(3)(iii) of this section.~~

~~(g) — A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in §122.23(h).~~

3. Small municipal separate storm sewer systems (MS4s). For general permits issued to small MS4s, the Department must establish the terms and conditions necessary to meet the requirements of § 122.342 of this Part using one of the two permitting approaches in —§§ 1.33(B)(3)(a) or §1.33(B)(3)(b) of this Part~~paragraph (d)(1) or (2) of this section.~~ The Department must indicate in the permit or fact sheet which approach is being used.

a. —Comprehensive general permit. The Department includes all required permit terms and conditions in the general permit; or

b. Two-step general permit. The Department includes required permit terms and conditions in the general permit applicable to all eligible small MS4s and, during the process of authorizing small MS4s to discharge, establishes additional terms and conditions not included in the general permit to satisfy one or more of the permit requirements in §122.34 for individual small MS4 operators.

(1a) The general permit must require that any small MS4 operator seeking authorization to discharge under the general permit submit a Notice of Intent (NOI) consistent with § 1.32 of this Part~~§122.33(b)(1)(ii).~~

(2b) -The Department must review the NOI submitted by the small MS4 operator to determine whether the information in the NOI is complete and to establish the additional terms and conditions necessary to meet the requirements of § 1.32 of this Part§122.34. The Department may require the small MS4 operator to submit additional information. If the Department makes a preliminary decision to authorize the small MS4 operator to discharge under the general permit, the Department must give the public notice of and opportunity to comment and request a public hearing on its proposed authorization and the NOI, the proposed additional terms and conditions, and the basis for these additional requirements. The public notice, the process for submitting public comments and hearing requests, and the hearing process if a request for a hearing is granted, must follow the procedures applicable to draft permits set forth in § 1.38 of this Part§§124.10 through 124.13 (excluding §124.10(c)(2)). The Department must respond to significant comments received during the comment period as provided in § 1.48 of this Part§124.17.

(3e) Upon authorization for the MS4 to discharge under the general permit, the final additional terms and conditions applicable to the MS4 operator become effective. The Department must notify the permittee and inform the public of the decision to authorize the MS4 to discharge under the general permit and of the final additional terms and conditions specific to the MS4.

C. Requiring an individual Permit.

1. The Department may require any person authorized by a general permit to apply for and obtain an individual RIPDES permit. Any interested person may petition the Department to take action under this subparagraph. Cases where an individual RIPDES permit may be required include the following:
 - a. The discharge(s) is a significant contributor of pollution as determined by the factors set forth in § 1.3Rule 32 of this Part4;
 - b. The discharger is not in compliance with the conditions of the general RIPDES permit;
 - c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

- d. Effluent limitation guidelines are promulgated for point source covered by the general RIPDES permit;
 - e. A Water Quality Management Plan containing requirements applicable to such point sources is approved; or
 - f. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
 - g. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general RIPDES permit; or
 - h. The discharge(s) is a significant contributor of pollutants. In making this determination, the Director-Department may consider the following factors:
 - (1) The location of the discharge with respect to waters of the State;
 - (2) The size of the discharge;
 - (3) The quantity and nature of the pollutants discharged to waters of the State; and
 - (4) Other relevant factors;
2. The Department may require any owner or operator authorized by a general permit to apply for an individual RIPDES permit as provided in § 1.33(C)(1) of this Part~~paragraph (b)(3)(i) of this section~~, only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual RIPDES permit the general permit as it applies to the individual permittee shall automatically terminate. The Department may grant additional time upon request of the applicant.
3. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the permit by applying for an individual permit. The owner or operator shall submit an application with reasons supporting the request to the Department no later than 90 days after public notice of the general permit. The request shall be granted by issuing of any individual permit if the reasons cited by the owner or operator are adequate to support the request.

4. When an individual RIPDES permit is issued to an owner or operator otherwise subject to a general RIPDES permit, the applicability of the general permit to the individual RIPDES permittee is automatically terminated on the effective date of the individual permit.
5. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

1.334 Criteria and Standards for the Rhode Island Pollutant Discharge Elimination System

- A. The criteria and standards for the imposition of technology-based treatment requirements in RIPDES permit shall be as set forth in 40 C.F.R. ~~§Part~~ 125, Subpart A, incorporated above at § 1.3(B) of this Part.
- B. The criteria for issuance of permit to aquaculture projects shall be as set forth in 40 C.F.R. ~~Part §~~ 125, Subpart B, incorporated above at § 1.3(B) of this Part.
- C. The criteria for extending compliance dates for facilities installing innovative technology shall be as set forth in 40 C.F.R. ~~§Part~~ 125, Subpart C, incorporated above at § 1.3(B) of this Part.
- D. The criteria and standards for determining fundamentally different factors shall be as set forth in 40 C.F.R. ~~§Part~~ 125, Subpart D, incorporated above at § 1.3(B) of this Part.
- E. The criteria for determining alternative effluent limitations for the thermal component of discharge shall be as set forth in 40 C.F.R. ~~§Part~~ 125, Subpart H, incorporated above at § 1.3(B) of this Part.
- F. The criteria applicable to cooling water intake structures shall be as set forth in 40 C.F.R. ~~Part §~~ 125, Subpart I, incorporated above at § 1.3(B) of this Part.
- G. Criteria for Extending Compliance Dates.
Extensions of the 1977 deadline in ~~33 U.S.C § 1311(i)(1) and (2)~~ (Section 301(i)(1) and (2) of the Clean Water Act) for compliance with certain treatment requirements may be granted as described in 40 C.F.R. ~~§Part~~ 125, Subpart J, incorporated above at § 1.3(B) of this Part.
- H. The criteria and standards for best management practices for ancillary industrial activities shall be as set forth in 40 C.F.R. ~~§Part~~ 125, Subpart K, incorporated above at § 1.3(B) of this Part.

- I. The criteria and standards for imposing conditions for the disposal of sewage sludge shall be as set forth in 40 C.F.R. ~~§Part~~ 125, Subpart L, incorporated above at § 1.3(B) of this Part.
- J. The criteria and standards for attaining effluent quality through the application of secondary treatment shall be as set forth in 40 C.F.R. ~~§Part~~ 133, incorporated above at § 1.3(B) of this Part.

1.345 Procedures for Issuing a RIPDES Permit

A. The permit issuance process involves the following seven major procedural stages:

- 1A. An application is made in proper form.
- 2B. The Department prepares a tentative decision to issue or deny a draft RIPDES permit. This decision shall be made available for public comment.
- 3C. Where the Department issues a draft RIPDES permit after consideration of any comments received during the public comment period the Department shall issue a final permit.
- 4D. The permittee may request an adjudicatory hearing to contest the final determination of the Department to grant, deny, modify, suspend or revoke a permit. The Department shall determine whether a hearing shall be granted.
- 5E. DEM shall hold a hearing in accordance with these regulations and the Department's "Administrative Rules of Practice and Procedure for the Department of Environmental Management" Part 20-00-1 of this Title.
- 6F. The ~~Director~~Department shall make all final decisions concerning the permit.
- 7G. A request for permit modification, revocation, reissuance, or termination shall be made in accordance with the procedures applicable to permit issuance, except for minor modifications which shall be made in accordance § 1.26 of this Part~~with Rule 25.~~

1.356 Application Review by the Department

A. Permit Application-

- 1. Any person who requires a RIPDES permit shall complete, sign and submit to the Department an application in accordance with these regulations. Applications are not required for general permits.

2. The Department shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit.

~~3.~~ Permit applications must comply with signature and certification requirements of § 1.12 of this Part.

~~Rule 12.~~

B. Completeness-

1. Upon receipt of a RIPDES application the Department shall have 60 days to review the application for completeness. Upon completing the review, the Department shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Department shall list the information necessary to make the application complete and shall specify in the notice of deficiency a date for submitting the necessary information. Where the Department has deemed an application to be deficient, the processing of the application will be suspended and the applicant given 30 days to correct said deficiencies to the satisfaction of the Department.
2. If the applicant fails or refuses to correct said deficiencies within the 30 day time period, and if an extension has not been granted by the Department, the permit may be denied and any appropriate enforcement action may be taken under the applicable statutory provisions.
3. After the application is completed, the Department may request additional information from an applicant but only when necessary to clarify, modify, or supplement previously submitted material. Requests for such additional information will not render an application incomplete, but if the applicant fails or refuses to submit such information, the permit may be denied and any appropriate enforcement action may be taken under the applicable statutory provision.

- C. The Department shall determine whether a site visit(s) and inspection are necessary requirements and part of the application in order to evaluate the discharge completely and accurately. If the Department decides that a site visit is necessary for any reason in conjunction with the processing of an application, the applicant shall be notified and a site visit shall be scheduled.
- D. Completed RIPDES applications shall be sent to the Regional Administrator by the Department prior to public notice of a draft permit in accordance with the terms of the Memorandum of Agreement.
- E. Draft permits shall be sent to the Regional Administrator prior to public notice in accordance with the terms of the Memorandum of Agreement.

1.367 Modification, Revocation and Reissuance, or Termination Procedures

- A. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Department's initiative. However, permits may usually only be modified, revoked and reissued, or terminated for the reasons specified in ~~Rule 23 or 24~~ §§ 1.234 or § 1.246 of this Part. Other basis for modification may only be found when consistent with the State Act so long as not for causes less stringent than required by the Clean Water Act and implementing regulations. All requests shall be in writing and shall contain facts or reasons supporting the request.
- B. If the Department decides the request is not justified, the Department shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment or hearings.
 - 1. If the Department tentatively decides to modify or revoke and reissue a permit under § 1.234 of this Part ~~Rule 23~~, a draft permit shall be prepared under § 1.38 of this Part ~~Rule 37~~ incorporating the proposed changes. The Department may request additional information and, in the case of a modified permit, may require the submission of an updated permit application. In the case of revoked and reissued permits, the Department shall require the submission of a new application.
 - 2. In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.
 - 3. "Minor modifications" as defined § 1.256 of this Part ~~in Rule 25~~ are not subject to the requirements of this section.
- C. If the Department tentatively decides to terminate a permit under ~~Rule 24~~ § 1.24 of this Part where the permittee objects, a notice shall be issued of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 1.38 of this Part ~~Rule 37~~.
- D. All draft permits (including notices of intent to terminate where the permittee objects) prepared under this section shall be based on the administrative record as defined in ~~Rule 40~~ § 1.41 of this Part.

1.378 Draft Permits

- A. All draft permits shall be issued in accordance with this section.
- ~~B.A.~~ Once an application is complete the Department shall tentatively decide whether to prepare a draft permit, or deny the application.
- ~~CBC.~~ If the Department tentatively decides to deny a permit application, a notice of intent to deny shall be issued. Notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit prepared under this section. If the Department's final decision is that the tentative decision to deny the permit application was incorrect, the notice of intent to deny shall be withdrawn and the Department shall proceed to prepare a draft permit under § 1.38(E) of this Part~~paragraph (e) of this section~~.
- ~~DGD.~~ If the Department tentatively decides to issue a general permit, the Department shall prepare a draft general permit under § 1.38(E) of this Part~~paragraph (e) of this section~~.
- ~~EDE.~~ If the Department decides to prepare a draft permit, the permit shall contain the following information:
1. All conditions under 40 C.F.R. § 122.41-122.43, incorporated above at § 1.3(B) of this Part.
 2. All conditions under ~~§ Rules § 1.14, § 1.15, § 1.16, and § 1.17~~46 of this Part.
 3. All monitoring requirements under §§ 1.15, § 1.16, and § 1.17 ~~§ 1.14 and 15 Rules 14 and 15 of this Part.~~
 4. All variances under §§ 1.57 through 1.60 of this Part~~Rules 56 through 59~~.
 5. All effluent limitations, standards, prohibitions and conditions under 40 C.F.R. § and 122.44, incorporated above at § 1.3(B) of this Part and the Rhode Island Pretreatment Regulations, Part 2 of this Subchapter.
- ~~FE.~~ All draft permits prepared under this section shall be accompanied by a statement of basis or fact sheet and shall be based on the administrative record publicly noticed and made available for public comment. The Department shall give notice of opportunity for a public hearing, issue a final decision and respond to comments. For RIPDES permits, an appeal may be taken under Rule 49 § 1.50 of this Part.

1.389 Statement of Basis

- ~~A.~~ The Department shall prepare a statement of basis for every draft permit for which a fact sheet under Rule 39 § 1.40 of this Part is not prepared. The statement of basis shall briefly describe the derivation of the conditions of the

draft permit and the reasons for them or, in the case of notices of intent to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent to the applicant and, on request, to any other person.

1.3940 Fact Sheet

- A. A fact sheet shall be prepared for every draft permit for a major facility or activity, for every general permit (§ 1.33 of this Part~~Rule 32~~), for every draft permit that incorporates a variance or requires an explanation, and for every draft permit which the Department finds is the subject of widespread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The Department shall send this fact sheet to the applicant and, on request, to any other person.
- B. The fact sheet shall include, when applicable:
1. A brief description of the type of facility or activity which is the subject of the draft permit~~;~~.
 2. The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged~~;~~.
 33. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record required by ~~Rule 40~~§ 1.41 of this Part.
 - 44~~;~~. Reasons why any requested variances or alternatives to required standards do or do not appear justified~~;~~.
 - 55~~;~~. A description of the procedures for reaching a final decision on the draft permit including:
 - a. The beginning and ending dates of the comment period under ~~Rule 41~~§ 1.42 of this Part and the address where comments will be received;
 - b. Procedures for requesting a hearing and the nature of that hearing; and
 - c. Any other procedures by which the public may participate in the final decision.

66. Name and telephone number of a person to contact for additional information.
7. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard provisions as required under Rule 16-§ 1.167 of this Part and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.
8. When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:
 - a. Limitations to control toxic pollutants;
 - b. Limitations on internal wastestreams; or,
 - c. Limitations on indicator pollutants under 40 C.F.R. § Section Part 125.3(g), incorporated above at § 1.3(B) of this Part.
9. A sketch or detailed description of the location of the discharge(s) described in the application.
10. For every permit to be issued to a treatment works owned by a person other than a state or municipality, an explanation of the Director/Department's decision on regulation of users under § 1.17(E) of this Part~~Rule 16-05.~~

1.401 Administrative Record for the Draft Permits

- A. The provisions of a draft permit shall be based on the administrative record defined in this section.
- B. For preparing a draft permit under Rule 37§ 1.398 of this Part, the record shall consist of:
 1. The application, if required, and any supporting data furnished by the applicant;
 2. The draft permit or notice of intent to deny the application or to terminate the permit;
 3. The statement of basis or fact sheet;
 4. All documents cited in the statement of basis or fact sheet; and
 5. Other documents contained in the supporting file for the draft permit.

- C. Material that is readily available in the offices of the Department, or published material that is generally available, and that is included in the administrative record under §§ 1.41(A) and §1.41(B) of this Part~~paragraphs (a) and (b) of this section~~, need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the fact sheet.

1.412 -- Public Notice of Permit Actions and Public Comment Period

A. Scope-

1. The Department shall give public notice that the following actions have occurred:
 - a. A permit application has been tentatively denied;
 - b. A draft permit (including a notice of intent to terminate a permit where the permittee objects and a tentative decision to modify or revoke and reissue a permit) has been prepared;
 - c. A hearing has been scheduled under Rule 43§ 1.44 of this Part; and
2. No public notice is required when a request for permit modification, revocations and reissuance or termination is denied under Rule 36§ 1.37 of this Part. Written notice of that denial shall be given to the requester and to the permittee.
3. Public notices may describe more than one type of discharge, or permit action.

B. Timing

1. Public notice of the preparation of a draft permit (including a notice of intent to deny a permit application) required under § 1.42(A) of this Part~~paragraph (a) of this section~~ shall allow at least 30 days for public comment.
2. Public notice of a permit hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)

C. Methods. Public notice of activities described in § 1.42(A)(1) of this Part~~paragraph (a)(1) of this section~~ shall be given by the following methods:

1. By mailing a copy of a notice to the following persons (any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits):

- a. The applicant;
 - b. Any other agency which the Department knows has issued or is required to issue an environmental permit for the same facility or activity (including EPA);
 - c. Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, and Advisory Council on Historic Preservation, State Historic Preservation Officers, and other appropriate government authorities, including any affected states;
 - d. Any State agency responsible for plan development under ~~Sections 208(b)(2), 208(b)(4) or 303(e) of the Clean Water Act, 33 U.S.C. §§ 1288(b)(2), 1288(b)(4) or 1313(e) (Sections 208(b)(2), 208(b)(4) or 303(e) of the Clean Water Act)~~ and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service;
 - e. Any user identified in the permit application of a privately owned treatment works;
 - f. The affected mayor, municipal clerk, planning board, sewerage authority, health officer, and environmental commission;
 - g. Persons on a mailing list developed by:
 - (1) Including those who request in writing to be on the list;
 - (2) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and
 - (3) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publication as State funded newsletters, environmental bulletins, or State law journals. (The Department may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Department may delete from the list the name of any person who fails to respond to such a request.)
2. For major permits and general permits, publication of a notice in a daily or weekly newspaper within the area affected by the facility or activity;
 3. Such notice shall be published in any manner constituting legal notice to the public under State law for all other actions described in ~~Rule 41(a)(1) § 1.42(A)(1) of this Part~~; and

4. Any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.

D. Contents

1. All public notices issued under this Rule shall contain the following minimum information:
 - a. Name and address of the office processing the permit action for which notice is being given;
 - b. Name and address of the permittee or permit applicant and if different, of the facility or activity regulated by the permit, except in the case of draft general permit;
 - c. A brief description of the business conducted at the facility or activity described in the permit application or draft permit;
 - d. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit or draft general permit, as the case may be, statement of basis or fact sheet, and the application;
 - e. A brief description of the comment procedures required by ~~Rule 42 and 43 §§ 1.43 and §1.444 of this Part~~ and the time and place of any hearing that will be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled) and other procedures by which the public may participate in the final permit decision;
 - f. The location of the administrative record required by ~~Rule 40§ 1.41 of this Part~~, the times at which the record will be open for public inspection, and a statement that all data submitted by the applicant is available as part of the administrative record;
 - g. A general description of the location of each existing or proposed discharge point and the name of the receiving water. For draft general permits, this requirement will be satisfied by a map or description of the permit area;
 - h. Any additional information considered necessary or proper; and
 - i. Where a request under ~~Section 316(a) of the Clean Water Act, 33 U.S.C. § 1326(a) (Section 316(a) of the Clean Water Act)~~ has been filed under ~~§ 1.60 of this Part, Rule 59~~, the public notice shall include:

- (1) A statement that the thermal component of the discharge is subject to effluent limitations under ~~Section 301 and 306 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1316 (Section 301 and 306 of the Clean Water Act)~~ and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under ~~Section 301 and 306 of the Clean Water Act, 33 U.S.C. §§ 1311 and 1316 (Section 301 and 306 of the Clean Water Act)~~;
 - (2) A statement that a Section 316(a) ~~(33 U.S.C. § 1326(a))~~ request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under ~~Section 316(a) (33 U.S.C. § 1326(a) (Section 316(a) of the Clean Water Act))~~ and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and
 - (3) If the applicant has filed an early screening request pursuant to 40 C.F.R. ~~Section §~~ 125.72, incorporated above at § 1.3(B) of this Part, for a Section 316(a) variance, a statement that the applicant has submitted such information.
2. Public notices for hearings. In addition to the general public notice described in ~~§ 1.42(D)(1) of this Part~~~~paragraph (d)(1) of this section~~, the public notice of a hearing under ~~§ 1.44 of this Part~~~~Rule 43~~ shall contain the following information:
- a. Reference to the date of previous public notice relating to the permit;
 - b. Date, time and place of the hearing; and
 - c. A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.
- E. In addition to the general public notice described in ~~paragraph § 1.42(D)(1) of this Part (d)(1) of this section~~, all persons identified in ~~§ 1.42(C) of this Part paragraphs (c)(1)(i), (ii), (iii), (iv), and (v) of this section~~ shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any), and the draft permit (if any).

1.423 Public Comment and Request for Public Hearings

During the public comment period provided under ~~§ 1.42 of this Part~~~~Rule 41~~, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request

for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in ~~Rule 48~~ § 1.498 of this Part.

1.434 Public Hearings

- A. Whenever the Department finds on the basis of requests, a significant degree of public interest in a draft permit, the Department shall hold a public hearing. The Department also may hold a public hearing at its discretion, whenever, for instance, such a hearing might clarify one or more issues involved in the permit. Public notice of the hearing shall be given as specified in ~~Rule 41~~ § 1.42 of this Part.
- B. Whenever a public hearing will be held, the Department shall designate a hearing officer for the hearing who shall be responsible for its scheduling and orderly conduct.
- ~~C.~~ Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under § 1.42 of this Part ~~Rule 41~~ shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.
- D. A tape recording or written transcript of the hearing shall be made available to the public.

1.445 Obligation to Raise Issues and Provide Information During the Public Comment Period

~~A.~~ All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Department's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period (including any public hearing) under § 1.42 of this Part ~~Rule 41~~. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the administrative record available at the request of the Department. (A

comment period longer than 30 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and these should be freely established under § 1.42 of this Part ~~Rule 41~~ to the extent they appear necessary.)

1.456 Reopening of the Public Comment Period

- A. If any data, information or arguments submitted during the public comment period, including information or arguments required under ~~Rule 44~~ § 1.45 of this Part, appear to raise substantial new questions concerning a permit, the Department may take one or more of the following actions:
1. Prepare a new draft permit appropriately modified under ~~Rule 36~~ § 1.378 of this Part;
 2. Prepare a revised statement of basis under ~~Rule 38~~ § 1.4039 of this Part, a fact sheet or revised fact sheet under ~~Rule 39~~ § 1.40 of this Part and reopen the comment period; or
 3. Reopen or extend the comment period under ~~Rule 41~~ § 1.42 of this Part to give interested persons an opportunity to comment on the information or arguments submitted.
- B. Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under ~~Rule 41~~ § 1.42 of this Part shall define the scope of the reopening.
- C. Public notice of any of the above actions shall be issued under ~~Rule 41~~ § 1.42 of this Part.

1.467 Issuance and Effective Date of Permit

- A. After the close of the public comment period under ~~Rule 41~~ § 1.42 of this Part on a draft permit, the Department shall issue a final permit. The Department shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. This notice shall include reference to the procedures for contesting a decision on a permit. For the purposes of this section, a final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit.
- B. A final permit decision shall become effective 30 days after the service of notice of the decision under § 1.47(A) paragraph (a) of this ~~Part~~ section, unless:
1. A later effective date is specified in the decision; or
 2. An adjudicatory hearing is requested under ~~Rule 49~~ § 1.50 of this Part; or

3. No comments requested a change in the draft permit, in which case the final permit shall become effective immediately upon issuance.

1.478 Response to Comments

- A. At the time that any final permit is issued, pursuant to ~~Rule 46~~ § 1.47 of this Part, the Department shall issue a response to comments. This response shall:
 1. Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
 2. Briefly describe and respond to all significant comments on the draft permit or raised during the public comment period, or during any hearing.
- B. The response to comments shall be available to the public.

1.489 Administrative Record for Final Permit

- A. The Department shall base final draft permit and final permit decisions under § 1.47 of this Part ~~Rule 46~~ on the administrative record defined in this section.
- B. The administrative record for any final draft permit and final permit shall consist of the administrative record for the draft and:
 1. All comments received during the public comment period provided under Rule 41 § 1.42 of this Part (including any extension or reopening under Rule 45 § 1.46 of this Part);
 2. The tape or transcript of any hearing(s) held under Rule 43 § 1.44 of this Part;
 3. Any written materials submitted at such hearing;
 4. The response to comments required under Rule 47 § 1.48 of this Part and any new material placed in the record under that section;
 5. Other documents contained in the supporting file for the permit; and
 6. The final permit.
- C. The additional documents required under § 1.49(B) of this Part ~~paragraph (b) of this section~~ should be added to the record as soon as possible after their receipt or publication by the Department. The record shall be complete on the date the final draft permit or final permit is issued.
- D. Material readily available at the issuing Department office, or published materials which are generally available and which are included in the administrative record under the standards of this section or of Rule 47 § 1.48 of this Part ("Response to

Comments"), need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the statement of basis or fact sheet or in the response to comments.

1.4950 Request for an Adjudicatory Hearing

- A. Within 30 calendar days following the service of notice of the Department's issuance of a final draft permit or final permit (where a final draft permit does not precede the final permit) under ~~Rule 46~~ § 1.47 of this Part, any interested person may submit a request to the Department under § 1.50(B) of this Part ~~paragraph (b) of this Rule~~ for an adjudicatory hearing to reconsider or contest the conditions of that permit. If such a request is submitted by a person other than the permittee, that person shall simultaneously serve a copy of the request on the permittee.
- B. Such requests shall state each legal or factual question alleged to be at issue, and their relevance to the permit decision, together with a designation of the specific factual areas to be adjudicated and the hearing time estimated to be necessary for that adjudication. Information supporting the request or other written documents relied upon to support the request shall be submitted unless it is already in the administrative record.
- C. Such request shall also contain:
1. The name, mailing address or telephone number of the person making such requests;
 2. A clear and concise factual statement of the nature and scope of the interest of the requester;
 3. The names and addresses of the persons who the requester represents; and
 4. A statement by the requester that, upon motion of any party, or upon order of the Administrative Hearing Officer or Officer's own motion and without cost or expense to any other party, the requester shall make available to appear and testify, the following:
 - a. The requester;
 - b. All persons represented by the requester; and
 - c. All officers, ~~director~~ Departments, employees, consultants and agents of the requester and the persons represented by the requester.

5. ~~5.~~ Specific references to the contested permit conditions, as well as suggested revised or alternative permit conditions (including permit

denial) which, in the judgment of the requester, would be required to implement the purposes and policies of the State and Federal Acts.

6. In the case of challenges to the application of control or treatment technologies identified in the statement of basis or fact sheet, identification of the basis for the objection, and the alternative technologies or combination of technologies which the requester believes are necessary to meet the requirements of the State and Federal Acts.
 7. Identification of the permit obligations that are contested or are inseparable from contested conditions and should be stayed if the request is granted by reference to the particular contested conditions warranting the stay.
- D. If the Department grants an adjudicatory hearing request in whole or in part, the Department shall identify the permit conditions which have been contested by the requester and for which the adjudicatory hearing has been granted. Permit conditions which are not contested or for which the Department has denied the hearing request shall not be affected by, or considered at, the adjudicatory hearing and the Department shall specify these conditions in writing.
- E. The Department must grant or deny all requests for an adjudicatory hearing on a particular permit. All requests that are granted for a particular permit shall be combined in a single adjudicatory hearing.
- F. The Department may extend the time allowed for submitting hearing requests under this section for good cause.

1.501 Stays of Contested Permit Conditions

- A. If a request for an adjudicatory hearing of a permit under ~~Rule 49~~ § 1.50 of this Part is granted, an appeal from any effluent limitation, water quality standard or other applicable standard shall not automatically result in staying the conditions challenged. During the duration of such an appeal, the contested condition shall remain in full force and effect unless a stay is granted by the Chief of the ~~Division~~ Office of Water Resources on formal application by the permittee. In exercising his/her discretion on such stay requests the Chief shall consider the following factors:
1. Pollution source and impacted ecosystem(s);
 2. Technological impediments to either immediate or phased-in compliance; or
 3. Economic impacts of immediate or phased-in compliance including the benefits of capital purchases and employment increases required for such compliance.

- B. Where the Chief of the Office of Water Resources determines that immediate compliance would result in irreparable economic dislocation, while not required to preserve irreplaceable environmental resources, he/she shall direct that compliance with the effluent limitation, water quality standard or other applicable standard be phased into effect, partially stayed or entirely stayed pending resolution of the permittee's appeal.
- C. Any facility or activity holding an existing permit must:
1. Comply, at minimum, with the conditions of that permit during any modification or revocation and reissuance proceeding under ~~Rule 36~~ § 1.37 of this Part; and
 2. To the extent conditions of any permit are stayed under this section, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed, as determined by the Director~~Department~~ in accordance with §§ 1.51(A) and §1.51(B) of this Part~~paragraphs (a) and (b) above~~.
- D. If a request for an adjudicatory hearing of a permit regarding the initial permit issued for a new source, a new discharger, or a recommencing discharger is granted under ~~Rule 49~~ § 1.50 of this Part, the applicant shall be without a permit pending final Departmental action. Wherever a source subject to this paragraph has received a final permit which is the subject of a hearing request, the Administrative Hearing Officer, on motion by the source, may issue a temporary order authorizing it to begin operation before final Departmental action if it complies with all conditions of that final permit during the period until final Departmental action. The Administrative Hearing Officer may grant such a motion in any case where:
1. No party opposes it; or
 2. If a party opposes the motion but the source demonstrates that: (i) it is likely to prevail on the merits; (ii) irreparable harm to the environment will not result pending final agency action if it is allowed to commence operations before final agency action; and (iii) the public interest requires that the source be allowed to commence operations. All the conditions of any permit covered by that order shall be fully effective and enforceable.

1.512 Decision on Request for Hearing

- A. Following the expiration of the time allowed by § 1.50 of this Part ~~Rule 49~~ for submitting a request for an adjudicatory hearing, the Department shall decide the extent to which the request shall be granted. The Department shall grant a request either in whole or in part ordinarily only when the request conforms to the

requirements of ~~§ 1.50 of this Part Rule 49~~ and sets forth material issues of fact relevant to the issuance of the permit.

- B. If the Department grants a request for an adjudicatory hearing, the Department shall identify those contested permit conditions for which an adjudicatory hearing has been granted ~~and whether such conditions are stayed~~. The Department shall specify these conditions in writing and serve notice in accordance with ~~§ 1.53 of this Part Rule 52~~. Permit conditions which are not contested or for which the Department has denied the hearing request shall not be affected by or considered at the adjudicatory hearing.
- C. If the Department grants a request for an adjudicatory hearing, in whole or in part, in regard to a particular proposed permit, then any other request for an adjudicatory hearing in regard to that permit shall be treated as a request to be a party and the Department shall grant any such request which meets the requirements of ~~§ 1.52(A) of this Part paragraph (a) of this section~~.
- D. If a request for a hearing is denied in whole or part, the Department shall briefly state the reasons. Such denial shall be considered the final action of the Department.

1.523 Notice of Hearing

Public notice of the grant of an adjudicatory hearing regarding a permit shall be given by mailing a copy to all persons who commented on the draft permit, testified at the public hearing, or submitted a request for a hearing.

1.534 Conduct of Adjudicatory Hearing

Adjudicatory hearings on permit conditions (including denial of variance requests) shall be governed by procedures described in "Administrative Rules of Practice and Procedure for the Department of Environmental Management", ~~Part 20-00-1 of this Title~~ and in accordance with the Rhode Island Administrative Procedures Act.

1.554 Individual Permits Required on a Case-by-Case Basis

Whenever the Department decides that an individual permit should be required for certain Concentrated Animal Feeding Operations (~~Rule 27~~ § 1.28 of this Part), Concentrated Aquatic Animal Production Facilities (~~Rule 28~~ § 1.29 of this Part), Separate Storm Sewers (~~Rule 31~~ § 1.32 of this Part) and certain other facilities covered by a General Permit (~~Rule 32~~ § 1.33 of this Part), the Department shall notify the discharger in writing of the reasons for that decision and shall include an application form in such notice. The discharger shall apply for a permit within 60 days of such notice. The question whether the initial designation was proper will remain open for consideration during the public comment period and in any subsequent hearing.

1.556 Conditions Requested by the Corps of Engineers and Other Governmental Agencies Concerning RIPDES Permits

- A. The Department shall address any comments made by the Corps of Engineers or other government agencies on draft permits in accordance with the requirements of 40 C.F.R. § 1242.59, incorporated above at § 1.3(B) of this Part~~If during the comment period a draft RIPDES permit, the District Engineer advises the Department in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a point source surface water discharge permit, the permit shall be denied and the applicant so notified.~~
- ~~1. If the District Engineer advises the Department that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Department shall include the specified conditions in the permit. Review of appeal of a denial of a permit or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, and may not be made through the procedures provided in these regulations. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the permit for the duration of that stay.~~
- B. ~~If during the comment period, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other State or Federal Agency, with jurisdiction over fish, wildlife, or public health advises the Department in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resources, the Department may include the specified conditions in the permit to the extent they are determined necessary to carry out provisions of 40 C.F.R. § 122.12 and the State and Federal Acts.~~
- C. ~~In appropriate cases the Department may consult with one or more of the agencies referred to in this section before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.~~
- D. When affected states make recommendations to draft permits, the Department shall either accept such recommendations or submit a response to the affected states describing in detail the Department's reasons for not accepting the recommendations.

RULE 1.567 Variances Under the State and Federal Acts

- A. An applicant for a renewal of a RIPDES permit may apply for the following variances:

1A. Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this paragraph:

a1. Fundamentally different factors. A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be made by the close of the public comment period under § 1.42 of this Part~~Rule 41~~. The request shall explain how the requirements of Rule 44 § 1.45 of this Part and 40 C.F.R. § ~~Part~~ 125, Subpart D, incorporated above at § 1.3(B) of this Part, have been met.

b2. Non-conventional pollutants. A request for a variance from the BAT requirements for ~~the Clean Water Act Section 301(b)(2)(F)~~, 33 U.S.C. § 1311(b)(2)(F) (Section 301(b)(2)(F) of the Clean Water Act), pollutants (commonly called "non-conventional" pollutants) pursuant to 33 U.S.C. § 1311(c) (Section 301(c) of the Clean Water Act) because of the economic capability of the owner or operator, or pursuant to 33 U.S.C. § 1311(g) (Section 301(g) of the Clean Water Act) because of certain environmental considerations, when those requirements were based on effluent limitation guidelines, must be made by:

(1)a- Submitting an initial request to the Regional Administrator, as well as to the Department, stating the name of discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a Section 301(c), 33 U.S.C. § 1311(c) or Section 301(g), 33 U.S.C. § 1311(g), modification or both. This request must have been filed not later than:

(AA)(1) September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline, promulgated before December 27, 1977; or

(BB)(2) 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977; and

b(2)- Submitting a completed request no later than the close of the public comment period under Rule 41 § 1.42 of this Part demonstrating that the requirements of Rule 44 § 1.45 of this Part and the applicable requirements of 40 C.F.R. § ~~Part~~ 125, incorporated above at § 1.3(B) of this Part, have been met.

~~_____ (3) e.~~ Requests for variance from effluent limitations not based on effluent limitation guidelines, need only comply with ~~_____ § 1.57(A)(2)(b) paragraph (a)(2)(ii) of this Parts section~~ and need not be preceded by an initial request under ~~§ 1.57(A)(2)(a) paragraph (a)(2)(i) of this Parts section.~~

~~dc~~3. Delay in construction of POTW. An extension under ~~the Clean Water Act Section 301(i)(2), 33 U.S.C. § 1311(i)(2) (Section 301(i)(2) of the Clean Water Act),~~ of the statutory deadlines in ~~Sections 301(b)(1)(A) or (b)(1)(C) of the Clean Water Act, 33 U.S.C. § 1311(b)(1)(A) or (b)(1)(C) (-Sections 301(b)(1)(A) or (b)(1)(C) of the Clean Water Act)~~ -based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978, or 180 days after the relevant POTW requested an extension under ~~§ 1.57(B)(2) of this Part paragraph (b)(2) of this section,~~ whichever is later, but in no event may this date have been later than December 25, 1978. The request shall explain how the requirements of 40 C.F.R. ~~§ Part 125, Subpart J,~~ incorporated above at § 1.3(B) of this Part, have been met.

~~ed~~4. Innovative technology. An extension under ~~the Clean Water Act Section 301(k), 33 U.S.C. § 1311(k) (Section 301(k) of the Clean Water Act)~~ from the statutory deadline of Section 301(b)(2)(A) for best available technology based on the use of innovative technology may be required no later than the close of the public comment period under ~~§ 1.42 of this Part Rule 44~~ for the discharger's initial permit requiring compliance with ~~Section 301(b)(2)(A), 33 U.S.C. § 1311(b)(2)(A) (Section 301(b)(2)(A) of the Clean Water Act).~~ The request shall demonstrate that the requirements of ~~§ 1.45 of this Part Rule 44 and 40 C.F.R. § Part 125, Subpart C,~~ incorporated above at § 1.3(B) of this Part, have been met.

~~fe~~5. Water quality related effluent limitations. A modification under ~~Section 302(b)(2), 33 U.S.C. § 1312(b)(2) (Section 302(b)(2) of the Clean Water Act),~~ of requirements under ~~Section 302(a), 33 U.S.C. § 1312(a), (Section 302(a) of the Clean Water Act),~~ pursuant to the ~~Clean Water Act~~ for achieving water quality related effluent limitations may be requested no later than the close of the public comment under ~~Rule 44-§ 1.42 of this Part~~ on the permit from which the modification is sought.

~~gf~~6. Thermal discharges. A variance under ~~the Clean Water Act Section 316(a), 33 U.S.C. § 1326(a) (Section 316(a) of the Clean Water Act)~~ for the thermal component of any discharge must be filed with a timely application for a permit under this section, except

that if thermal effluent limitations are established under 33 U.S.C. § 1342(a)(1) (Section 402(a)(1) of the Clean Water Act) or are based on water quality standards the request for a variance may be filed by the close of the public comment period under Rule 41 § 1.42 of this Part. A copy of the request as required under 40 C.F.R. ~~§ Part~~ 125, Subpart H, shall be sent simultaneously to the Department as required under 40 C.F.R. ~~Part §~~ 125, incorporated above at § 1.3(B) of this Part.

2B. Variance requests by POTWs. A discharger which is a publicly owned treatment works (POTWs) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

a1. Dischargers into marine waters. A preliminary request for a modification under the Clean Water Act Section 301(h), 33 U.S.C. § 1326(a) (Section 301(h) of the Clean Water Act), of requirements of the Clean Water Act Section 301(b)(1)(B), 33 U.S.C. § 1311(b)(1)(B) (Section 301(b)(1)(B) of the Clean Water Act) for dischargers into marine waters must have been submitted to the EPA no later than December 29, 1982. A final request must be submitted in accordance with the filing requirements of 40 C.F.R. ~~Part §~~ 125, Subpart G, and shall demonstrate that all the requirements of 40 C.F.R. ~~§ Part~~ 125, Subpart G, incorporated above at § 1.3(B) of this Part, have been met.

b.2. Delay in construction. An extension under the Clean Water Act Section 301(i)(1), 33 U.S.C. § 1311(i)(1) (Section 301(i)(1) of the Clean Water Act), of the statutory deadlines in the Clean Water Act Sections 301(b)(1)(B) or (b)(1)(C), 33 U.S.C. § 1311(b)(1)(B) or (b)(1)(C) (Sections 301(b)(1)(B) or (b)(1)(C) of the Clean Water Act), based on delay in the construction of the POTW must have been requested on or before June 26, 1978.

c3. Water quality based effluent limitation. A modification under the Clean Water Act Section 302(b)(2), 33 U.S.C. § 1312(b)(2) (Section 302(b)(2) of the Clean Water Act), of the requirements under Section 302(a), 33 U.S.C. § 1312(a); (Section 302(a) of the Clean Water Act) for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under Rule 41 § 1.42 of this Part on the permit from which the modification is sought.

G3. Expedited variance procedures and time extensions.

a4. Notwithstanding the time requirements in §§ 1.57(A) and §1.57(B) of this Part ~~paragraphs (a) and (b) of this section~~, the

Department may notify a permit applicant before a draft permit is issued under ~~Rule 37-§ 1.38 of this Part~~ that the draft permit will likely contain limitations which are eligible for variances. In the notice the Department may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 C.F.R. ~~§ Part 125, incorporated above at § 1.3(B) of this Part,~~ applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

~~b2.~~ A discharger who cannot file a complete request required under ~~§§ 1.57(A)(2)(a) paragraphs (a)(2)(ii) or §1.57(A)(2)(b) (a)(2)(iii) of this Part~~ section may request an extension. The extension may be granted or denied at the discretion of the Department. Extensions shall be no more than 6 months in duration.

~~4D.~~ Modifications to water quality based effluent limitations for POTWs and Non-POTWs Applications for a modification to a water quality based effluent limitation imposed by EPA ~~under Section 302 of the Clean Water Act, under 33 U.S.C. § 1312 (Section 302 of the Clean Water Act)~~ shall be made prior to the close of the public comment period under ~~Rule 41§ 1.42 of this Part.~~

RULE 1.57-58 Decisions on Variances

- A. The Department may grant or deny request for the following variances (subject to EPA objection under 40 C.F.R. ~~§ 123.44, incorporated above at § 1.3(B) of this Part~~):
1. Extensions under ~~Section 301(i) of the Clean Water Act, 33 U.S.C. § 1311(i) (Section 301(i) of the Clean Water Act)~~ for delay in completion of a publicly owned treatment works;
 2. After consultation with Regional Administrator, extensions under ~~Section 301(k) of the Clean Water Act, 33 U.S.C. § 1311(k) (Section 301(k) of the Clean Water Act)~~ based on the use of innovative technology; or
 3. Variances under ~~Section 316(a) of the Clean Water Act, 33 U.S.C. § 1326(a) (Section 316(a) of the Clean Water Act)~~ for thermal pollution.
- B. The Department may deny, or forward to the Regional Administrator with a written concurrence, or submit to EPA without recommendation a completed request for:

1. A variance based on the presence of "fundamentally different factors" from those on which an effluent limitations guideline was based;
 2. A variance based on the economic capability of the applicant under ~~Section 301(c) of the Clean Water Act, 33 U.S.C. § 1311(c)~~ (Section 301(c) of the Clean Water Act).
 3. A variance based upon certain water quality factors under ~~Section 301 (g) of the Clean Water Act, 33 U.S.C. § 1311(g)~~ (Section 301 (g) of the Clean Water Act); or
 4. A variance based on water quality related effluent limitations under ~~Section 302 (b)(2) of the Clean Water Act, 33 U.S.C. § 1312(b)(2)~~ (Section 302 (b)(2) of the Clean Water Act)
- C. The Regional Administrator may deny, forward, or submit a request for a variance listed in § 1.58(B) of this Part paragraph (b) which is forwarded by the Department with a recommendation for approval, to the EPA Office ~~Director~~Director for Permits and Enforcement of Water.
- D. The EPA Office ~~Director~~Director for Permits and Enforcement of Water may approve or deny any variance request submitted under § 1.58(C) paragraph (c) of this Part. If the EPA Office Director approves the variance, the Department may prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that determination under 40 C.F.R. § 124.64, incorporated above at § 1.3(B) of this Part.

RULE 1.589 Procedures for Variances

- A. When a request for a variance is filed as required under § 1.57 of this Part~~Rule 56~~, the request shall be processed as follows:
- 1A. If at the time that a request for a variance is submitted the Department has received an application for issuance or renewal of that permit but has not yet prepared a draft permit covering the discharge in question, the Department shall, subject to EPA review pursuant to 40 C.F.R. § 124.62, incorporated above at § 1.3(B) of this Part, give notice of a tentative decision on the request at the time the notice of the draft permit is prepared as specified in ~~Rule 42~~§ 1.432 of this Part, unless this would significantly delay the processing of the permit. In that case the processing of the variance request may be separated from the permit in accordance with § 1.59(C) of this Part~~paragraph (c) of this section~~, and the processing of the permit shall proceed without delay.
 - 2B. If at the time that a request for a variance is filed the Department has given notice under ~~Rule 41~~§ 1.42 of this Part of the draft permit covering

the discharge in question, but that permit has not yet become final, administrative proceedings concerning that permit may be stayed and the Department shall prepare a new draft permit including a tentative decision on the request, and the fact sheet required by ~~Rule 39~~ § 1.40 of this Part. However, if this will significantly delay the processing of the existing draft permit or the Department, for other reasons, considers combining the variance request and the existing draft permit inadvisable, the request may be separated from the permit in accordance with § 1.59(C) of this Part ~~paragraph (c) of this section~~, and the administrative disposition of the existing draft permit shall proceed without delay.

- 3C. If the permit has become final and no application concern it is pending or if the variance request has been separated from a draft permit as described in §§ 1.59(A) paragraphs (a) and 1.59(B) (b) of this Part ~~section~~, the Department may prepare a new draft permit and give notice of it under Rule 44 § 1.42 of this Part. This draft permit shall be accompanied by the fact sheet required by § 1.40 of this Part ~~Rule 39~~ except that the only matters considered shall relate to the requested variance.

RULE 1.6059 Special Procedures for Decision on Thermal Variance Under Section 316(A), 33 U.S.C. § 1326(A)

- A. Except as provided in 40 C.F.R. ~~§Section~~ 124.65, ~~incorporated above at § 1.3(B) of this Part~~ the only issues connected with issuance of a particular permit on which the Department will make a final decision before the final permit is issued under ~~Rules 46 and 55~~ §§ 1.47 and 1.56 of this Part are whether alternative effluent limitations would be justified under ~~Section 316(a) of the Clean Water Act~~, 33 U.S.C. § 1326(a) (Section 316(a) of the Clean Water Act) and whether cooling water intake structures will use the best available technology under ~~Section 316(b) of the Clean Water Act~~, 33 U.S.C. § 1326(b) (Section 316(b) of the Clean Water Act). Permit applicants who wish an early decision on these issues should request it and furnish supporting reasons at the time their permit applications are filed. The Department will then decide whether or not to make an early decision. If it is granted, the balance of the permit shall be considered permit issuance under these regulations, and shall be subject to the same requirements of public notice and comment and the same opportunity for an adjudicatory hearing.
- B. If the Department, on review of the administrative record, determines that the information necessary to decide whether or not ~~the Clean Water Act Section 316(a)~~, 33 U.S.C. § 1326(a) (Section 316(a) of the Clean Water Act) issue is not likely to be available in time for a decision on permit issuance, the Department may issue a permit under ~~Rule 46~~ § 1.47 of this Part for a term up to 5 years. This permit shall require achievement of the effluent limitations initially proposed for the thermal component of the discharge no later than the date otherwise required by State or Federal law. However, the permit shall also afford the permittee an opportunity to file a demonstration under 33 U.S.C. § 1326(a)

~~(Section 316(a) of the Clean Water Act)~~ after conducting such studies as are required under 40 C.F.R. ~~§Part 125, Subpart H, incorporated above at § 1.3(B) of this Part.~~ A new discharger may not exceed the thermal effluent limitation which is initially proposed unless and until ~~its Clean Water Act Section 316(a), 33 U.S.C. § 1326(a) (Section 316(a) of the Clean Water Act)~~ variance request is finally approved.

- C. Any proceeding held under ~~§ 1.60(A) of this Part paragraph (a) of this section~~ shall be publicly noticed as required by ~~Rule 41-§ 1.42 of this Part~~ and shall be conducted at a time allowing the permittee to take necessary measures to meet the final compliance date in the event its request for modification of thermal limits is denied.
- D. Whenever the Department defers the decision under ~~Section 316(a) of the Clean Water Act, 33 U.S.C. § 1326(a) (Section 316(a) of the Clean Water Act)~~ any decision under ~~Section 316(b), 33 U.S.C. § 1326(b) (Section 316(b) of the Clean Water Act)~~ may be deferred.

1.61 Consistency with Federal Regulations

In the event that any of the requirements set forth in this Part conflict with the Federal regulations that are incorporated under § 1.3 of this Part, then the more stringent standard shall apply.

RULE 1.601 Incorporation by Reference

~~The following Federal regulations which are cited in whole or in part in these regulations are hereby incorporated by reference. In the event that any of the requirements set forth in Rule 1 through 59 §1.1 through 60 of this Part shall conflict with the following Federal regulations, then the more stringent standard shall apply. All future amendments to the following Federal regulations are also hereby incorporated by reference in so far as they may be necessary to assure that Rhode Island maintains an approved RIPDES program and continues to secure to this State the benefits of that program:~~

~~33 CFR Part 153~~

~~40 CFR Parts 122, 123, 124, 125, 133, 136, 300, 403, and Subchapter N~~

~~39 Federal Register 15202 (May 1, 1974)~~

RULE 1.612 Superseded Rules and Regulations

~~On the effective date of these Rules and Regulations, all previous Rules and Regulations, and any policies regarding the administration and enforcement of Chapter 46-12 of the General Laws of Rhode Island of 1956, as amended, shall be superseded. However, any enforcement action taken by, or application submitted to, the Department~~

~~prior to the effective date of these Rules and Regulations shall be governed by the Rules and Regulations in effect at the time the enforcement action was taken.~~

~~RULE 1.623~~ Effective Date

~~The foregoing Rules and Regulations for the Rhode Island Pollutant Discharge Elimination System, after due notice and hearing, are hereby adopted and filed with the Secretary of State this _____ day of _____, 200_, to become effective twenty (20) days thereafter, in accordance with the provisions of Chapter 46-12, 42-35, 46-17.1, 42-17.6 of the General Laws of Rhode Island, 1956, as amended.~~

~~Jan Reitsma~~Janet Coit, Director

Department of Environmental Management

Notice Given on: ~~August 9, 2002~~

Public Hearing held: ~~N/A~~

Effective Date: _____, 2003

1.612 Appendix PPENDIX A -- Table ABLE 1 -

TestingESTING RequirementsEQUIREMENTS forFOR OrganicRGANIC ToxicOXIC PollutantsOLLUTANTS IndustryNDUSTRY Category

The organic pollutant testing requirements from Table I in Appendix D to 40 C.F.R. § 122.22, incorporated above at § 1.3(B) of this Part, shall apply to the industrial categories identified in the appendices. ATEGORY

INDUSTRY CATEGORY	*GC/MS FRACTION [†]			
	Volatile	Acid	Base/Neutral	Pesticide
Adhesives and Sealants	—x	—x	—x	—
Aluminum Forming	—x	—x	—x	—
Auto and Other Laundries	—x	—x	—x	—x
Battery Manufacturing	—x	—	—x	—
Coal Mining	—x	—x	—x	—x
Coil Coating	—x	—x	—x	—
Copper Forming	—x	—x	—x	—
Electric and Electronic Compounds	—x	—x	—x	—x
Electroplating	—x	—x	—x	—
Explosives Manufacturing	—	—x	—x	—
Foundries	—x	—x	—x	—
Gum and Wood Chemicals	—x	—x	—x	—x
Inorganic Chemicals Manufacturing	—x	—x	—x	—
Iron and Steel Manufacturing	—x	—x	—x	—
Leather Tanning and Finishing	—x	—x	—x	—x
Mechanical Products Manufacturing	—x	—x	—x	—
Nonferrous Metals Manufacturing	—x	—x	—x	—x
Ore Mining	—x	—x	—x	—x
Organic Chemicals Manufacturing	—x	—x	—x	—x
Paint and Ink Formulation	—x	—x	—x	—x
Pesticides	—x	—x	—x	—x
Petroleum Refining	—x	—x	—x	—x
Pharmaceutical Preparations	—x	—x	—x	—
Photographic Equipment and Supplies	—x	—x	—x	—x
Plastic & Synthetic Materials Mfg.	—x	—x	—x	—x
Plastic Processing	—x	—	—	—
Porcelain Enameling	—x	—	—x	—x
Printing and Publishing	—x	—x	—x	—x
Pulp and Paperboard Mills	—x	—x	—x	—x

Rubber Processing	—x	—x	—x	—
Soap and Detergent Manufacturing	—x	—x	—x	—
Steam Electric Power Plants	—x	—x	—x	—
Textile Mills	—x	—x	—x	—x
Timber Products Processing	—x	—x	—x	—x

¹~~The pollutants in each fraction are listed in Table II.*Gas Chromatographic/Mass Spectrometric~~¹~~The pollutants in each fraction are listed in Table II.~~

~~x = Testing Required~~

~~- = Testing Not Required~~

~~—*Gas Chromatographic/Mass Spectrometric~~

~~1.623AppendixPPENDIX A - TableABLE II -~~

~~Organic ToxicRGANIC TOXIC PollutantsOLLUTANTS inIN Each ofEACH OF FourFOUR (4) FractionsRACTIONS inIN AnalysisNALYSIS byBY GasAS ChromatographyHROMATOGRAPHY/MassASS SpectroscopyPECTROSCOPY (GC/MS)~~

~~The organic toxic pollutants in each of the four fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GS/MS) testing is specified in Table II in Appendix D to 40 C.F.R. § 122.22, incorporated above at § 1.3(B) of this Part.~~

Volatiles		Base/Neutral		Pesticides	
-1V	Acrolein	-1B	Acenaphthene	-1P	Aldrin
-2V	Acrylonitrile	-2B	Acenaphthylene	-2P	alpha-BHC
-3V	Benzene	-3B	Anthracene	-3P	beta-BHC
-4V	Bis(chloromethyl) Ether	-4B	Benzidine	-4P	gamma-BHC (Lindane)
-5V	Bromoform	-5B	Benz[n]anthracene	-5P	delta-BHC
-6V	Carbon Tetrachloride	-6B	Benzo[a]pyrene	-6P	Chlordane

-7V	Chlorobenzene	-7B	3,4-Benzofluoranthene	-7P	4,4'-DDT
-8V	Chlorodibromomethane	8B	Benzo[ghi]perylene	-8P	4,4'-DDE
-9V	Chloroethane	-9B	Benzo[k]fluoranthene	-9P	4,4'-DDD
10V	2-Chloroethylvinyl Ether	10B	Bis(2-chloroethoxy)methane	10P	Dieldrin
11V	Chloroform	11B	Bis(2-chloroethyl) Ether	11P	alpha-Endosulfan
12V	Dichlorobromomethane	12B	Bis(2-chloroisopropyl) Ether	12P	beta-Endosulfan
13V	Dichlorodifluoromethane	13B	Bis(2-ethylhexyl) Phthalate	13P	Endosulfan Sulfate
14V	1,1-Dichloroethane	14B	4-Bromophenyl-Phenyl Ether	14P	Endrin
15V	1,2-Dichloroethane	15B	Butylbenzyl Phthalate	15P	Endrin-Aldehyde
16V	1,1-Dichloroethylene	16B	2-Chloronaphthalene	16P	Heptachlor
17V	1,2-Dichloropropane	17B	4-Chlorophenyl-Phenyl Ether	17P	Heptachlor-Epoxide
18V	1,3-Dichloropropylene	18B	Chrysene	18P	PCB-1242
19V	Ethylbenzene	19B	Dibenz[a,h]anthracene	19P	PCB-1254
20V	Methyl-Bromide	20B	1,2-Dichlorobenzene	20P	PCB-1221
21V	Methyl-Chloride	21B	1,3-Dichlorobenzene	21P	PCB-1232
22V	Methylene-Chloride	22B	1,4-Dichlorobenzene	22P	PCB-1248
23V	1,1,2,2-Tetrachloroethane	23B	3,3'-Dichlorobenzidine	23P	PCB-1260
24V	Tetrachloroethylene	24B	Diethyl-Phthalate	24P	PCB-1016
25V	Toluene	25B	Dimethyl-Phthalate	25P	Toxaphane
26V	1,2-Trans-Dichloroethylene	26B	Di-n-butyl-Phthalate		
27V	1,1,1-Trichloroethane	27B	2,4-Dinitrotoluene		
28B	1,1,2-Trichloroethane	28B	2,6-Dinitrotoluene		
29V	Trichloroethylene	29B	Di-n-octyl-Phthalate		
30V	Trichlorofluoromethane	30B	1,2-Diphenylhydrazine (as-azobenzene)		
31V	Vinyl-Chloride	31B	Fluoranthene		
Acid-Compounds		32B	Fluorene		
-1A	2-Chlorophenol	33B	Hexachlorobenzene		
-2A	2,4-Dichlorophenol	34B	Hexachlorobutadiene		
-3A	2,4-Dimethylphenol	35B	Hexachlorocyclopentadiene		

4A	4,6-Dinitro-o-cresol	36B	Hexachloroethane		
5A	2,4-Dinitrophenol	37B	Indeno[1,2,3-cd]pyrene		
6A	2-Nitrophenol	38B	Isophorone		
7A	4-Nitrophenol	39B	Naphthalene		
8A	p-Chloro-m-cresol	40B	Nitrobenzene		
9A	Pentachlorophenol	41B	N-Nitrosodimethylamine		
10A	Phenol	42B	N-Nitrosodi-n-propylamine		
11A	2,4,6-Trichlorophenol	43B	N-Nitrosodiphenylamine		
		44B	Phenanthrene		
		45B	Pyrene		
		46B	1,2,4-Trichlorobenzene		

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Appendix PPENDIX A — Table ABLE III _

OtherTHER ToxicOXIC PollutantsOLLUTANTS, MetalsETALS, CyanideYANIDE, and AND TotalTOTAL Phenols

The other toxic pollutants (metals and cyanide) testing is specified in Table III in Appendix D to 40 C.F.R. § 122.22, incorporated above at § 1.3(B) of this Part.
HENOLS

Antimony, Total

Nickel, Total

Arsenic, Total

Selenium, Total

Beryllium, Total

Silver, Total

~~Cadmium, Total~~

~~Thallium, Total~~

~~Chromium, Total~~

~~Zinc, Total~~

~~Copper, Total~~

~~Cyanide, Total~~

~~Lead, Total~~

~~Phenols, Total~~

~~Mercury, Total~~

~~Dioxin 2, 3, 7, 8-Tetra-Chlorodibenzo-P-Dioxin~~

~~See Rule 11.02(a)(14)(v)~~

1.645AppendixPPENDIX A -- TableABLE IV -

ConventionalONVENTIONAL andAND NonON- ConventionalONVENTIONAL PollutantsOLLUTANTS RequiredEQUIRED to beTO BE TestedESTED byBY ExistingXISTING DischargersISCHARGERS ifIF ExpectedXPECTED to beTO BE Present

The Conventional and Nonconventional Pollutants Required To Be Tested by
Existing Dischargers if Expected to be Present is specified in Table IV in
Appendix D to 40 C.F.R. § 122.22, incorporated above at § 1.3(B) of this Part.
RESENT

Bromide	Sulfite
Chlorine, Total Residual	Surfactants
Color	Aluminum, Total
Fecal Coliform	Barium, Total
Fluoride	Boron, Total
Nitrate-Nitrite	Cobalt, Total
Nitrogen, Total Organic	Iron, Total
Oil and Grease—	Magnesium, Total
Phosphorus, Total	Molybdenum, Total
Radioactivity—	Manganese, Total
Sulfate—	Tin, Total
Sulfide—	Titanium, Total

**ToxicOXIC PollutantsOLLUTANTS andAND HAazardousZARDOUS
SubstancesUBSTANCES RequiredEQUIRED to beTO BE
Identified by Applicants if Expected to be PresentIDENTIFIED BY
APPLICANTS IF EXPECTED TO BE PRESENT**

The Toxic Pollutants and Hazardous Substances Required To Be Identified by
Existing Dischargers if Expected To Be Present is specified in Table V in
Appendix D to 40 C.F.R. § 122.22, incorporated above at § 1.3(B) of this Part.
Toxic PollutantOXIC POLLUTANT: AbestosAsbestos

HazardousAZARDO US SubstancesU BSTANCES: 1. Acetaldehyde	61. Butylamine	121. Dinitrophenol
2. Acetic acid	62. Butyric acid	122. Dinitrotoluene
3. Acetic anhydride	63. Cadmium acetate	123. Diquat
4. Acetone cyanohydrin	64. Cadmium bromide	124. Disulfoton
5. Acetyl bromide	65. Cadmium chloride	125. Diuron
6. Acetyl chloride	66. Calcium arsenate	126. Dodecylbenzenesulfonic acid
7. Acrolein	67. Calcium arsenite	127. Endosulfan
8. Acrylonitrile	68. Calcium carbide	128. Endrin
9. Adipic acid	69. Calcium chromate	129. Epichlorohydrin
10. Aldrin	70. Calcium cyanide	130. Ethion
11. Allyl alcohol	71. Calcium dodecylbenzenesulfonate	131. Ethylbenzene
12. Allyl chloride	72. Calcium hypochlorite	132. Ethylenediamine
13. Aluminum sulfate	73. Captan	133. Ethylene dibromide

14. Ammonia	74. Carbaryl	134. Ethylene dichloride
15. Ammonium acetate	75. Carbofuran	135. Ethylene diaminetetracetic acid (EDTA)
16. Ammonium benzoate	76. Carbon disulfide	136. Ferric ammonium citrate
17. Ammonium bicarbonate	77. Carbon tetrachloride	137. Ferric ammonium oxalate
18. Ammonium bichromate	78. Chlordane	138. Ferric chloride
19. Ammonium bifluoride	79. Chlorine	139. Ferric fluoride
20. Ammonium bisulfite	80. Chlorobenzene	140. Ferric nitrate
21. Ammonium carbamate	81. Chloroform	141. Ferric sulfate
22. Ammonium carbonate	82. Chloropyrifos	142. Ferrous ammonium sulfate
23. Ammonium chloride	83. Chlorosulfonic acid	143. Ferrous chloride
24. Ammonium chromate	84. Chromic acetate	144. Ferrous sulfate
25. Ammonium citrate	85. Chromic acid	145. Formaldehyde
26. Ammonium fluoroborate	86. Chromic sulfate	146. Formic acid
27. Ammonium fluoride	87. Chromous chloride	147. Fumaric acid
28. Ammonium hydroxide	88. Cobaltous bromide	148. Forfural
29. Ammonium oxalate	89. Cobaltous formate	149. Guthion

30. Ammonium
silicofluoride

31. Ammonium
sulfamate

32. Ammonium
sulfide

33. Ammonium
sulfite

34. Ammonium
tartrate

35. Ammonium
thiocyanate

36. Ammonium
thiosulfate

37. Amyl acetate

38. Aniline

39. Antimony
pentachloride

40. Antimony
potassium
tartrate

41. Antimony
tribromide

42. Antimony
trichloride

43. Antimony
trifluoride

44. Antimony
trioxide

90. Cobaltous sulfamate

91. Coumaphos

92. Cresol

93. Crotonaldehyde

94. Cupric acetate

95. Cupric acetoarsenite

96. Cupric chloride

97. Cupric nitrate

98. Cupric oxalate

99. Cupric sulfate

100. Cupric sulfate ammoniated

101. Cupric tartrate

102. Cyanogen chloride

103. Cyclohexane

104. 2,4-D acid (2,4-
Dichlorophenoxyacetic acid)

150. Heptachlor

151. Hexachlorocyclopentadiene

152. Hydrochloric acid

153. Hydrofluoric acid

154. Hydrogen cyanide

155. Hydrogen sulfite

156. Isoprene

157. Isopropanolamine
dodecylbenzenesulfonate

158. Kelthane

159. Kepone

160. Lead acetate

161. Lead arsenate

162. Lead chloride

163. Lead fluoborate

164. Lead flourite

45. Arsenic disulfide	105. 2,4-D esters (2,4-Dichlorophenoxyacetic acid esters)	165. Lead iodide
46. Arsenic pentoxide	106. DDT	166. Lead nitrate
47. Arsenic trichloride	107. Diazinon	167. Lead stearate
48. Arsenic trioxide	108. Dicamba	168. Lead sulfate
49. Arsenic trisulfide	109. Dichlobenil	169. Lead sulfide
50. Barium cyanide	110. Dichlone	170. Lead thiocyanate
51. Benzene	111. Dichlorobenzene	171. Lindane
52. Benzoic acid	112. Dichloropropane	172. Lithium chromate
53. Benzonitrile	113. Dichloropropene	173. Malathion
54. Benzoyl chloride	114. Dichloropropene-dichloropropane mix	174. Maleic acid
55. Benzyl chloride	115. 2,2-Dichloropropionic acid	175. Maleic anhydride
56. Beryllium chloride	116. Dichlorvos	176. Mercaptodimethur
57. Beryllium fluoride	117. Dieldrin	177. Mercuric cyanide
58. Beryllium nitrate	118. Diethylamine	178. Mercuric nitrate
59. Butylacetate	119. Dimethylamine	179. Mercuric sulfate
60. n-Butylphthalate	120. Dinitrobenzene	180. Mercuric thiocyanate

APPENDIX A—TABLE V, Cont.

181. Mercurous nitrate	221. Propargite	261. Tetraethyl pyrophosphate
182. Methoxychlor	222. Propionic acid	262. Thallium sulfate
183. Methyl mercaptan	223. Propionic anhydride	263. Toluene
184. Methyl methacrylate	224. Propylene oxide	264. Toxaphene
185. Methyl parathion	225. Pyrethrins	265. Trichlorofen
186. Mevinphos	226. Quinoline	266. Trichloroethylene
187. Mexacarbate	227. Resorcinol	267. Trichlorophenol
188. Monoethylami ne	228. Selenium oxide	268. Triethanolamine dodecyl benzenesulfonate
189. Monomethyla mine	229. Silver nitrate	269. Triethylamine
190. Naled	230. Sodium	270. Trimethylamine
191. Napthalene	231. Sodium arsenate	271. Uranyl acetate
192. Napthenic acid	232. Sodium arsenite	272. Uranyl nitrate
193. Nickel ammonium sulfate	233. Sodium bichromate	273. Vanadium pentoxide
194. Nickel chloride	234. Sodium bifluoride	274. Vanadyl sulfate
195. Nickel hydroxide	235. Sodium bisulfite	275. Vinyl acetate
196. Nickel nitrate	236. Sodium chromate	276. Vinylidene chloride

197. Nickel sulfate	237. Sodium cyanide	277. Xylene
198. Nitric acid	238. Sodium dodecylbenzenesulfonate	278. Xylenol
199. Nitrobenzene	239. Sodium fluoride	279. Zinc acetate
200. Nitrogen dioxide	240. Sodium hydrosulfide	280. Zinc ammonium chloride
201. Nitrophenol	241. Sodium hydroxide	281. Zinc borate
202. Nitrotoluene	242. Sodium hypochlorite	282. Zinc bromide
203. Paraformaldehyde	243. Sodium methylate	283. Zinc carbonate
204. Parathion	244. Sodium nitrite	284. Zinc chloride
205. Pentachlorophenol	245. Sodium phosphate (dibasic)	285. Zinc cyanide
206. Phenol	246. Sodium phosphate (tribasic)	286. Zinc fluoride
207. Phosgene	247. Sodium selenite	287. Zinc formate
208. Phosphoric acid	248. Strontium chromate	288. Zinc hydrosulfonate
209. Phosphorus	249. Strychnine	289. Zinc nitrate
210. Phosphorus oxychloride	250. Styrene	290. Zinc phenolsulfonate
211. Phosphorus pentasulfide	251. Sulfuric acid	291. Zinc phosphide
212. Phosphorus trichloride	252. Sulfur monochloride	292. Zinc silicofluoride
213. Polychlorinated biphenyls (PCB)	253. 2,4,5-T acid (2,4,5-Trichlorophenoxy acetic acid)	293. Zinc sulfate
214. Potassium arsenate	254. 2,4,5-T amines (2,4,5-Trichlorophenoxy acetic acid amines)	294. Zirconium nitrate

215. Potassium arsenite	255. 2,4,5-T esters (2,4,5-Trichloro- phenoxy-acetic-acid-esters)	295. Zirconium-potassium flouride
216. Potassium bichromate	256. 2,4,5-t salts (2,4,5-Trichloro- phenoxy-acetic-acid-salts)	296. Zirconium-sulfate
217. Potassium chromate	257. 2,4,5-TP acid (2,4,5- Trichlorophenoxy-propanoic-acid)	297. Zirconium tetrachloride
218. Potassium cyanide	258. 2, 4, 5-TP acid esters (2,4,5- Trichlorophenoxy-propanoic-acid esters)	
219. Potassium hydroxide	259. TDE (Tetrachlorodiphenyl-ethane)	
220. Potassium permanganate	260. Tetraethyl-lead	

1.67 Criteria for Determining A Concentrated Animal Feeding Operation

A. An animal feeding operation is a concentrated animal feeding operation for purposes of § 1.28 of this Part~~Rule 27 if either of the following criteria from 40 C.F.R. §§ 122.23(b)(4) – (6), incorporated above at § 1.3(B) of this Part,~~ are met.

~~A. —~~

~~1A. a1. 2b. c3. d4. e5. 1f6. g7. h8. i9.
j10. k11. l12. m13. 2B. 3C. Parta1.
(1)a. (2)b. (3)c. (4)d. (5)e. (6)f. (7)g. (8)h.
(9)i. (10)j. (11)k. (12)l. (13)m.b2. (1)a. (2)b.
More than the numbers of animals specified in any of
the following categories are confined:~~

- ~~1. — 1,000 slaughter and feeder cattle;~~
- ~~2. — 700 mature dairy cattle (whether milked or dry cows);~~
- ~~3. — 2,500 swine each weighing over 25 kilograms
(approximately 55 pounds);~~
- ~~4. — 500 horses;~~
- ~~5. — 10,000 sheep or lambs;~~
- ~~6. — 55,000 turkeys;~~
- ~~7. — 100,000 laying hens or broilers (if the facility has continuous
overflow watering);~~
- ~~8. — 30,000 laying hens or broilers (if the facility has a liquid
manure handling system);~~
- ~~9. — 5,000 ducks; or~~
- ~~10. — 1,000 animal units; or~~
- ~~11. — More than the following number and types of animals are
confined:~~
- ~~12. — 300 slaughter or feeder cattle;~~
- ~~13. — 200 mature dairy cattle (whether milked or dry cows);~~

- ~~14. 750 swine each weighing over 25 kilograms (approximately 55 pounds);~~
- ~~16. 150 horses;~~
- ~~17. 3,000 sheep or lambs;~~
- ~~18. 14,500 turkeys;~~
- ~~19. 30,000 laying hens or broilers (if the facility has continuous overflow watering);~~
- ~~20. 9,000 laying hens or broilers (if the facility has a liquid manure handling system);~~
- ~~21. 1,500 ducks; or~~
- ~~22. 300 animal units;~~

pendix B (Cont.)

~~and either one of the following conditions are met: pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar manmade device; or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.~~

~~Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25-year, 24-hour storm event.~~

~~The term "animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55~~

~~pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.~~

~~The term "manmade" means constructed by man and used for the purpose of transporting wastes.~~

1.678 Appendix C — Criteria for Determining Aa Concentrated Aquatic Animal Production Facility - A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of **§ 1.29 of this Part**~~Rule 28 if Part if~~ it contains, grows, or holds aquatic animals in either of the following categories.

~~An aquatic animal production operation is a concentrated aquatic animal production facility for purposes of § 1.29 of this Part if the criteria from Appendix C of 40 C.F.R. § 122.22, incorporated above at § 1.3(B) of this Part, are met.~~

~~A. — Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year but does not include:~~

~~1. — Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and~~

~~2. — Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.~~

~~B. — Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (30) days per year, but does not include:~~

~~1. — Closed ponds which discharge only during periods of excess runoff; or~~

~~2. — Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.~~

~~C. — "Cold water aquatic animals" include, but are not limited to, the Salmonidae family of fish; e.g., trout and salmon.~~

~~D. — "Warm water aquatic animals" include, but are not limited to, the Ameiuride, Centrarchidae and Cyprinidae families of fish; e.g., respectively, catfish, sunfish and minnows.~~

1.689 Appendix D**Primary Industry Categories**

	Inorganic Chemicals Manufacturing	Plastics Processing
Adhesives and Sealants		
Aluminum Forming	Iron and Steel Manufacturing	Plastic and Synthetic Materials Manufacturing
Auto and Other Laundries—	Leather Tanning and Finishing	Porcelain Enameling
Battery Manufacturing	Mechanical Products Manufacturing	Printing and Publishing
Coal Mining	Nonferrous Metals Manufacturing—	Pulp and Paper Mills
Coil Coating	Ore Mining	Rubber Processing
Copper Forming	Organic Chemicals Manufacturing	Soap and Detergent Manufacturing
Electrical and Electronic Components	Paint and Ink Formulation—	Steam Electric Power Plants
Electroplating	Pesticides	Textile Mills
Explosives Manufacturing	Petroleum Refining	Timber Products Processing
Foundries	Pharmaceutical Preparations	
Gum and Wood Chemicals	Photographic Equipment and Supplies	

Appendix D, (Cont.)

Sub-Categories of Primary Industries, Cont.

<p>11. Paint and Ink Formulation and Printing</p> <p>SIC 2711--Newspaper; Publishing, Publishing & Printing</p> <p>SIC 2721--Periodicals; Publishing, Publishing and Printing</p> <p>SIC 2731--Books; Publishing, Publishing and Printing</p> <p>SIC 2732--Book Printing</p> <p>SIC 2741--Miscellaneous Publishing</p> <p>SIC 2751--Commercial Printing, Letterpress and Screen</p> <p>SIC 2752--Commercial Printing, Letterpress and</p> <p>--Lithographic</p> <p>SIC 2753--Engraving and Plate Printing</p> <p>SIC 2754--Commercial Printing, Gravure</p> <p>SIC 2761--Mainfold Business Forms</p> <p>SIC 2771--Greeting Card Publishing</p>	<p>14. Plastic and Synthetic Materials Manufacturing</p> <p>SIC 282--Plastic Materials and Synthetic Resins, --Synthetic and Other Manmade Fibers, Except Glass</p> <p>15. Pump and Paperboard Mills; and Converted Paper Products</p> <p>SIC 2611--Pulp Mills</p> <p>SIC 2621--Paper Mills, Except Building Paper Mills</p> <p>SIC 2631--Paperboard Mills</p> <p>SIC 2641--Paper Coating and Glazing</p> <p>SIC 2642--Envelopes</p> <p>SIC 2643--Bags, Except Textile Bags</p> <p>SIC 2645--Die-Cut Paper and Paperboard and Cardboard</p> <p>SIC 2646--Pressed and Molded Pump Goods</p> <p>SIC 2647--Sanitary Paper Products</p> <p>SIC 2648--Stationery, Tablets and Related Products</p>	<p>17. Miscellaneous Chemicals</p> <p>SIC 2831--Biological Products</p> <p>SIC 2833--Medicinal Chemicals and Botanical Products</p> <p>SIC 2834--Pharmaceutical Preparations</p> <p>SIC 2861--Gum and Wood Chemicals</p> <p>SIC 2879--Pesticides and Agricultural Chemicals, Not --Elsewhere Classified</p> <p>SIC 2891--Adhesive and Sealants</p> <p>SIC 2893--Explosives</p> <p>SIC 2895--Carbon Black</p> <p>SIC 2899--Chemicals and Chemical Preparation, Not --Elsewhere Classified</p> <p>SIC 3861--Photographic Equipment and Supplies</p> <p>18. Machinery and Mechanical Products Manufacturing</p> <p>SIC 3021--Rubber and Plastics Footwear (Balance)</p>
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SIC 2793--Photoengraving	SIC 2649--Converted Paper and Paperboard Products, Not Elsewhere Classified	SIC 3041--Rubber and Plastics Hose and Belting
SIC 2794--Electrotyping and Stereotyping	SIC 2651--Folding Paperboard Boxes	—(Balance)
SIC 2795--Lithographic Platemaking and Related	SIC 2652--Set-up Paperboard Boxes	SIC 3079--Miscellaneous Plastics Products
—Services	SIC 2653--Corrugated and Solid Fiber Boxes	SIC 3293--Gaskets, Packing, and Sealing Devices
SIC 2851--Paints, Varnishes, Lacquers, Enamels, and	SIC 2654--Sanitary Food Containers	—(Balance)
—Allied Products	SIC 2655--Fiber Cans, Tubes, Drums, and Similar	SIC 3321--Gray Iron Foundries
SIC 2893--Printing Ink	—Products	SIC 3322--Malleable Iron Foundries
SIC 3951--Pens, Mechanical Pencils, and Parts and	SIC 2661--Building Paper and Building Board Mills	SIC 3324--Steel Investment Foundries
—Stamp Pads (Inked Materials Only)	SIC 2782--Blankbooks, Loose Leaf Binders and Dividers	SIC 3325--Steel Foundries, Not Elsewhere Classified
SIC 3952--Lead Pencils, Crayons, and Artists Materials	16. Rubber Processing	SIC 3351--Rolling, Drawing and Extruding of Copper
SIC 3955--Carbon Paper and Inked Ribbons	SIC 2822--Synthetic Rubber (Vulcanizable Customers)	SIC 3353--Aluminum Sheet, Plate and Foil
12. Soap and Detergent Manufacturing	SIC 2891--Rubber Cement	SIC 3354--Aluminum Extruded Products
SIC 2841--Soap and Other Detergents, Except Specialty	SIC 3011--Tires and Inner Tubes	SIC 3355--Aluminum Rolling and Drawing, Not Elsewhere Classified
—Cleaners	SIC 3021--Rubber and Plastics Footwear (Rubber Only)	SIC 3356--Rolling, Drawing and Extruding of Nonferrous
	SIC 3031--Reclaimed Rubber	—Metals, Except Copper and Aluminum
	SIC 3041--Rubber and Plastics Hose and Melting (Rubber Only)	SIC 3357--Drawing and Insulating of Nonferrereous Wire

<p>13. Auto and Other Laundries</p> <p>SIC 7211--Power Laundries, Family and Commercial</p> <p>SIC 7213--Linen Supply</p> <p>SIC 7214--Diaper Service</p> <p>SIC 7215--Coin-Operated Laundries and Dry Cleaning</p> <p>SIC 7216--Dry Cleaning Plants, Except Rug Cleaning</p> <p>SIC 7217--Carpet and Upholstery Cleaning</p> <p>SIC 7218--Industrial Launderers</p> <p>SIC 7219--Laundry and Garment Services, Not Elsewhere Classified</p> <p>None--Auto Wash Establishments</p>	<p>SIC 3069--Fabricated Rubber Products, Not Elsewhere</p> <p>--Classified</p> <p>SIC 3293--Gaskets, Packing and Sealing Devices (Rubber</p> <p>--Packing Only)</p>	<p>SIC 3361--Aluminum Foundries (Castings)</p> <p>SIC 3362--Brass, Bronze, Copper, Copper Base Alloy</p> <p>--Foundries (Castings)</p> <p>SIC 3369--Nonferrous Foundries (Castings), Not</p> <p>--Elsewhere Classified</p> <p>SIC 3398--Metal Meat Treating</p>
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~~Appendix D, Cont.~~

~~Sub-Categories of Primary Industries, Cont.~~

<p>18. Machinery and Mechanical Products Manufacturing, Cont.</p> <p>SIC 3399--Primary Metal Products, Not Elsewhere</p>	<p>SIC 3498--Fabricated Pipe and Fabricated Pipe Fittings</p> <p>SIC 3499--Fabricated Metal Products, Not Elsewhere Classified</p>	<p>SIC 3569--General Industrial Machinery and Equipment, Not Elsewhere Classified</p> <p>SIC 3572--Typewriters</p>
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<p>—Classified</p> <p>SIC 3411--Metal Cane</p> <p>SIC 3412--Metal Shipping Barrels, Drums, Kegs and</p> <p>—Pails</p> <p>SIC 3421--Cuttery</p> <p>SIC 3423--Hand and Edge Tools, Except Machine Tools</p> <p>—and Hand Saws</p> <p>SIC 3425--Hand Saws and Saw Blades</p> <p>SIC 3429--Hardware, Not Elsewhere Classified</p> <p>SIC 3431--Enameled Iron and Metal Sanitary Ware</p> <p>SIC 3432--Plumbing Fixture Fittings and Trim (Brass</p> <p>—Goods)</p> <p>SIC 3433--Heating Equipment, Except Electric and Warm</p> <p>Air Furnaces</p> <p>SIC 3441--Fabricated Structural Metal</p> <p>SIC 3442--Metal Doors, Bash, Frames, Molding and Trim</p> <p>SIC 3443--Fabricated Platework (Broiler Shops)</p>	<p>SIC 3511--Steam, Gas, and Hydraulic Turbines and</p> <p>—Turbine Generator Set Units</p> <p>SIC 3519--Internal Combustion Engines, Not Elsewhere</p> <p>—Classified</p> <p>SIC 3523--Farm Machinery and Equipment</p> <p>SIC 3524--Garden Tractors and Lawn and Garden Equipment</p> <p>SIC 3531--Construction Machinery and Equipment</p> <p>SIC 3532--Mining Machinery and Equipment, Except Oil</p> <p>—Field Machinery and Equipment</p> <p>SIC 3533--Oil Field Machinery and Equipment</p> <p>SIC 3534--Elevators and Moving Stairways</p> <p>SIC 3535--Conveyors and Conveying Equipment</p> <p>SIC 3536--Hoists, Industrial Cranes, and Monorail Systems</p> <p>SIC 3537--Industrial Trucks, Tractors, Trailers and Stackers</p> <p>SIC 3541--Machine Tools, Metal Cutting Types</p>	<p>SIC 3573--Electronic Computing Equipment</p> <p>SIC 3574--Calculating and Accounting Machines, Except Electronic Computing Equipment</p> <p>SIC 3576--Scales and Balances, Except Laboratory</p> <p>SIC 3579--Office Machines, Not Elsewhere Classified</p> <p>SIC 3581--Automatic Merchandising Machines</p> <p>SIC 3582--Commercial Laundry, Dry Cleaning, and Pressing Machines</p> <p>SIC 3585--Air Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment</p> <p>SIC 3586--Measuring and Dispensing Pumps</p> <p>SIC 3589--Service Industry Machines, Not Elsewhere Classified</p> <p>SIC 3592--Carburetors, Piston, Piston Rings, and Valves</p> <p>SIC 3599--Machinery, Except Electrical, Not Elsewhere Classified</p> <p>SIC--3612--Power, Distribution, and Specialty Transformers</p>
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SIC 3444--Sheet Metal Work	SIC 3542--Machine Tools, Metal Forming Types	SIC 3613--Switchgear and Switchboard Apparatus
SIC 3446--Architectural and Ornamental Metal Work	SIC 3544--Special Dies and Tools, Die Sets, Jigs and Fixtures and Industrial Molds	SIC 3621--Motors and Generators
SIC 3448--Prefabricated Metal Buildings and Components	SIC 3545--Machine Tool Accessories and Measuring Devices	SIC 3622--Industrial Controls
SIC 3449--Miscellaneous Metal Work	SIC 3546--Power Driven Hand Tools	SIC 3623--Welding Apparatus, Electric
SIC 3451--Screw Machine Products	SIC 3549--Metalworking Machinery, Not Elsewhere Classified	SIC 3624--Carbon and Graphite Products
SIC 3452--Bolts, Nuts, Screws Rivets and Washers	SIC 3551--Food Products Machinery	SIC 3629--Electrical Industrial Apparatus, Not Elsewhere Classified
SIC 3462--Iron and Steel Forgings	SIC 3552--Textile Machinery	SIC 3631--Household Cooking Equipment
SIC 3463--Nonferrous Forgings	SIC 3553--Woodworking Machinery	SIC 3632--Household Refrigerators and Home and Farm Freezers
SIC 3465--Automotive Stampings	SIC 3554--Paper Industries Machinery	SIC 3633--Household Laundry Equipment
SIC 3466--Crowns and Closures	SIC 3555--Printing Trades Machinery and Equipment	SIC 3634--Electric Housewares and Fans
SIC 3469--Metal Stampings, Not Elsewhere Classified	SIC 3559--Special Industry Machinery, Not Elsewhere Classified	SIC 3635--Household Vacuum Cleaners
SIC 3482--Small Arms Ammunition	SIC 3561--Pumps and Pumping Equipment	SIC 3639--Household Appliances, Not Elsewhere Classified
SIC 3483--Ammunition, Except for Small Arms, Not Elsewhere Classified	SIC 3562--Ball and Roller Bearings	SIC 3641--Electric Lamps
SIC 3484--Small Arms	SIC 3563--Air and Gas Compressors	SIC 3643--Current-Carrying Wiring Devices
	SIC 3564--Blowers and Exhaust and Ventilation Fans	SIC 3644--Noncurrent/Carrying Wiring Devices

SIC 3489--Ordinance and Accessories, Not Elsewhere --Classified SIC 3493--Steel Springs, Except Wire SIC 3494--Valves and Pipe Fittings, Except Plumbers' --Brass Goods SIC 3495--Wire Springs SIC 3496--Miscellaneous Fabricated Wire Products SIC 3497--Metal Poll and Leaf	SIC 3565--Industrial Pattern SIC 3566--Speed Changers, Industrial High Speed Drives, and Gears SIC 3567--Industrial Process Furnaces and Ovens SIC 3568--Mechanical Power Transmission Equipment, Not Elsewhere Classified	SIC 3645--Residential Electric Lighting Fixtures SIC 3645--Commercial, Industrial, and Institutional --Electric Lighting Fixtures
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Appendix D, Cont.

Sub-Categories of Primary Industries, Cont.

SIC 3647--Vehicular Lighting Equipment	SIC 3743--Railroad Equipment	SIC 3949--Sporting and Athletic Goods, Not Elsewhere Classified
SIC 3648--Lighting Equipment, Not Elsewhere Classified	SIC 3751--Motorcycles, Bicycles, and Parts	SIC 3951--Pens, Mechanical Pencils, and Parts
SIC 3651--Radio and Television Receiving Sets, Except Communication Types	SIC 3761--Guided Missiles and Space Vehicles	-(Balance)
SIC 3652--Phonograph Records and Pre-Recorded Magnetic Tape	SIC 3764--Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts	SIC 3961--Costume Jewelry and Costume Novelties, Except Precious Metal
SIC 3661--Telephones and Telegraph Apparatus	SIC 3769--Guided Missile and Space Vehicle Parts and Auxiliary Equipment, Not Elsewhere Classified	SIC 3991--Brooms and Brushes
SIC 3662--Radio and Television Transmitting, Signaling, and Detection Equipment and Apparatus	SIC 3792--Travel Trailers and Campers	SIC 3993--Signs and Advertising Displays
SIC 3671--Radio and Television Receiving Type Electron Tubes, Except Cathode Ray	SIC 3795--Tanks and Tank Components	SIC 3995--Burial Caskets
SIC 3672--Cathode Ray Television Picture Tubes	SIC 3799--Transportation Equipment, Not Elsewhere Classified	
SIC 3673--Transmitting, Industrial, and Special Purpose	SIC 3811--Engineering, Laboratory, Scientific, and Research Instruments and Associated Equipment	
--Electron Tubes	SIC 3822--Automatic Controls for Regulating Residential and Commercial Environments and Appliances	
SIC 3674--Semiconductors and Related Devices	SIC 3823--Industrial Instruments for Measurement, Display and	

SIC 3675--Electronic Capacitors	Control of Process Variables; and Related Products	
SIC 3676--Resistors, for Electronic Applications	SIC 3824--Totalizing Fluid Meters and Counting Devices	
SIC 3677--Electronic Coils, Transformers and Other Inductors	SIC 3825--Instruments for Measuring and Testing of Electricity and Electrical Signals	
SIC 3678--Connectors, for Electronic Applications	SIC 3829--Measuring and Controlling Devices, Not Elsewhere Classified	
SIC 3679--Electronic Components, Not Elsewhere Classified	SIC 3832--Optical Instruments and Lenses	
SIC 3691--Storage Batteries	SIC 3841--Surgical and Medical Instruments and Apparatus	
SIC 3692--Primary Batteries, Dry and Wet	SIC 3842--Orthopedic, Prosthetic, and Surgical Appliances and Supplies	
SIC 3693--Radiographic X-ray Fluoroscopic X-ray, Therapeutic X-ray, and Other X-ray Apparatus and Tubes;	SIC 3843--Dental Equipment and Supplies	
--Electromedical and Electrotherapeutic Apparatus	SIC 3851--Ophthalmic Goods	
SIC 3694--Electrical Equipment for Internal Combustion Engines	SIC 3873--Watches, Clocks, Clockwork Operated Devices and Parts	
SIC 3699--Electrical Machinery, Equipment, and Sup-	SIC 3911--Jewelry, Precious Metal	
	SIC 3914--Silverware, Plated Ware, and Stainless Steel Ware	
	SIC 3915--Jewelers' Findings and Materials, and Lapidary Work	

plies, Not Elsewhere Classified	SIC 3931--Musical Instruments	
SIC 3711--Motor Vehicles and Passenger Car Bodies	SIC 3942--Dolls	
SIC 3713--Truck and Bus Bodies	SIC 3944--Games, Toys, and Children's Vehicles; Except Dolls and Bicycles	
SIC 3714--Motor Vehicle Parts and Accessories		
SIC 3715--Truck Trailers		
SIC 3721--Aircraft		
SIC 3724--Aircraft Engines and Engine Parts		
SIC 3728--Aircraft Parts and Auxiliary Equipment, Not		
Elsewhere Classified		
SIC 3731--Ship Building and Repairing		
SIC 3722--Boat Building and Repairing		

~~Appendix D, Cont.~~

~~Sub-Categories of Primary Industries, Cont.~~

19. Electroplating SIC 347--Coating, Engraving and Allied Services 20. Ore Mining and Dressing SIC 1011--Iron Ores SIC 1021--Copper Ores SIC 1031--Lead and Zinc Ores SIC 1041--Gold Ores SIC 1044--Silver Ores SIC 1051--Bauxite and Other Aluminum Ores SIC 1061--Ferroalloy Ores, Except Vanadium SIC 1092--Mercury Ores SIC 1094--Uranium- Radium-Vanadium Ores SIC 1099--Metal Ores, Not Elsewhere Classified 21. Coal Mining SIC 1111--Anthracite		
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~~SIC 1112--Anthracite
Mining Services~~

~~SIC 1211--Bituminous Coal
and Lignite~~

~~SIC 1213--Bituminous Coal
and Lignite Mining
Services~~

Appendix E

EPA Water Quality Criteria for the 64 Priority Pollutants

(Units are in Micro Grams Per Liter)

COMPOUND	AQUATIC LIFE CRITERIA ^{1/}		HUMAN HEALTH CRITERIA ^{2/}	ANALYTIC IDENTIFICATION ^{3/}	DETECTION LIMIT ^{4/}
	FRESHWATER	SALTWATER			
Acenaphthene			20.0/-	B.N.E.O.	3
Acrolein			320 T/780 T	V.O.	2
Acrylonitrile			0.58 G/6.5 G	V.O.	100
Aldrin/Dieldrin					
Aldrin	3 Max.	1.3 Max.	0.00074 G/0.00079 G		0.003
Dieldrin	0.0019 24-Hr.	0.0019 24-Hr.	0.00074 G/0.00076 G	P.	0.006
	2.5 Max.	0.74 Max.			

Antimony	(9,000) (1,600)	---	146 T/45,000 T	M.	3
Arsenic	(440) (40)	(508) (--)	0.022 G/175 G	M.	53
Asbestos			300,000 Fibers ^{4/} G/ --	O.	100,000 Fibers^{4/}
Benzene			6.6 G/400 G	V.O.	0.2
Benzidine			0.0012 G/O.0053 G	B.N.E.O.	0.05
Beryllium	(130) (5.3)	---	0.068 G/1.17 G	M.	0.3
Cadmium	0.012 24-Hr. 1.5 Max	4.5 24- Hr. 59 Max.	*10 T-	 M.	 4
Carbon Tetrachloride			4.0 G/69.4 G	V.O.	0.007
Chlordane	0.0043 24-Hr.	0.004 24-Hr.	0.0046 G/0.0048 G	P.	0.04

	2.4 Max.	0.09 Max.			
Chlorinated Benzenes			488 T (20 0)/-		0.03
Monochlorobenzene			38 T/48 T		0.001
1,2,4,5- Tetrachlorobenene			74 T/85 T	V.O.	
Pentachlorobenzene			0.0072 G/0.0074 G		
Hexachlorobenzene					
Chlorinated Ethanes					
1,2-Dichloroethane			9.4 G/2,430 G	V.O.	0.006
1,1,1- Trichloroethane			18,400 T/1,030,000 T		0.005
1,1,2- Trichloroethane			6.0 G/418 G		0.006
1,1,2,2- Tetrachloroethane			1.7 G/107 G		0.001
Hexachloroethane					

			19 C/87.4 C		
Chloroalkyl Ethers					
-bis(2-chloroisopropyl) ether			34.7 T		0.9
-bis(chloromethyl) ether			0.000038 C	B.N.E.O.	0.4
-bis(2-chloroethyl) ether			0.3 C		0.5

Appendix E, Cont.

EPA Water Quality Criteria for the 64 Priority Pollutants

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COMPOUND	AQUATIC LIFE CRITERIA ^{4/}		HUMAN HEALTH CRITERIA ^{2/}	ANALYTIC IDENTIFICATION ^{3/}	DETECTION LIMIT ^{4/}
	FRESHWATER	SALTWATER			
Chlorinated Naphthalenes				B.N.E.O.	0.015
Chlorinated Phenols					

3-monochlorophenol			0.1 0/-		
4-monochlorophenol			0.1 0/-		
2,3-dichlorophenol			0.04 0/-		
2,5-dichlorophenol			0.5 0/-		
2,6-dichlorophenol			0.2 0/-		
3,4-dichlorophenol			0.3 0/-		
2,4,5-trichlorophenol			2,600 T (10)/-		
2,4,6-trichlorophenol			12 C (20)/36 C		5
2-methyl-4-chlorophenol			1 0/-		
3-methyl-4-chlorophenol			1,800 0/-		8.3
3-methyl-6-chlorophenol			3,000 0/-		
			20 0/-		
Chloroform			1.90 G/157 G	V.O.	0.006
2-Chlorophenol			0.1 0/-	A.E.O.	2
Chromium					
Chromium VI			*50 T/-	M.	7

Chromium III	0.29 24- Hr. 21 Max. 2,200 Max.	18 24- Hr. 1,260 Max.	170,000 T/3,433,00 0-T		7
Copper	5.6 24- Hr. 12 Max.	4.0 24- Hr. 23 Max.	1,000 0/-	M.	6
Cyanide	3.5 24- Hr. 52 Max.		200 T/-	O.	5
DDT	0.001 24- Hr. 1.1 Max.	0.001 24-Hr. 0.13 Max.	0.00024 G/0.00024 G	P.	0.016
Dichlorobenzenes			400 T/2,600 T	B.N.E.O.	0.009
Dichlorobenzidines			0.103 G/.204 G	B.N.E.O.	0.1
Dichloroethylenes 1,1-Dichloroethylene				V.O.	0.006

			0.33 C/18.5 C		
2,4-Dichlorophenol			3,090 T (0.3 0)/-	A.E.O.	2.1
Dichloropropanes/propene s -Dichloropropene			87 T/1,410 T	V.O.	0.006
2,4-Dimethylphenol			400 0/-	A.E.O.	1.7
Dinitrotoluene -2,4-Dinitrotoluene			1.1 C/91 C	B.N.E.O.	0.06

Appendix E, Cont.

EPA Water Quality Criteria for the 64 Priority Pollutants

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COMPOUND	AQUATIC LIFE CRITERIA ^{4/}		HUMAN HEALTH CRITERIA ^{2/}	ANALYTIC IDENTIFICATION ^{3/}	DETECTION LIMIT ^{4/}
	FRESHWATER R	SALTWATER			

Diphenylhydrazine 1,2-Diphenylhydrazine			0.422 C/5.6 G	B.N.E.O.	10
Endosulfan	0.056 24-Hr. → 0.22 Max.	0.0087 24-Hr. → 0.034 Max.	74 T/159 T	P.	0.005
Endrin	0.0023 24-Hr. → 0.18 Max.	0.0023 24-Hr. → 0.037 Max.	1 T/ →	P.	0.009
Ethylbenzene			1,400 T/3,280 T	V.O.	10
Fluoranthene			42 T/54 T	B.N.E.O.	0.05
Haloethers			-/-	B.N.E.O.	0.06
Halomethanes			1.9 C/157 C	V.O.	0.01
Heptachlor	0.0038 24-Hr. → 0.52 Max.	0.0036 24-Hr. → 0.053 Max	0.00278 G/0.00285 G	P.	0.002
Hexachlorobutadiene			4.47 C/500 C	B.N.E.O.	0.001
Hexachlorocyclohexane				P.	

alpha-BHC			0.092 C/0.310 C		0.002
beta-BHC					0.004
gamma-BHC (lindane)	0.080 24 Hr. 2.0 Max.	0.16 Max	0.163 C/0.547 C		0.002
tech-BHC			0.186 T/.625 T		0.004
			0.123 C/0.414 C		
Hexachlorocyclopentadiene			206 T (1.0)/-	B.N.E.O.	0.001
Isophorone			520,000 T	B.N.E.O.	5
Lead	.75 24- Hr. 74 Max.	(668) (25)	*50 T/-	M.	42
Mercury	0.20 24- Hr. 4.1 Max.	0.10 24 Hr. 3.7 Max.	0.144 T/.146 T	M.	0.4
Napthalene			-/-	B.N.E.O.	2.5
Nickel	56 24- Hr. 1,100 Max.	7.1 24 Hr. 140 Max.	13.4 T/100 T	M.	15

Nitrobenzene			19,800 T (300)/-	B.N.E.O.	5
Nitrophenols				A.E.O.	7
2,4-dinitro-o-cresol			13.4 T/765 T		
-dinitrophenol			70 T/14,300 T		
Nitrosamines				B.N.E.O.	0.3
N-nitrosodimethylamine			0.014 C/160 G		
N-nitrosodiethylamine			0.008 C/12.4 G		
N-nitrosodi-n-butylamine			0.064 C/5.868 G		
N-nitrosopyrrolidine			0.160 C/919 G		
N-nitrosodiphenylamine			49 C/161 G		

Appendix E, Cont.

EPA Water Quality Criteria for the 64 Priority Pollutants

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COMPOUND	AQUATIC LIFE CRITERIA ^{1/}		HUMAN HEALTH CRITERIA^{2/}	ANALYTIC IDENTIFICATION ^{3/}	DETECTION LIMIT ^{4/}
	FRESHWATER	SALTWATER			
Pentachlorophenol			1,010 T (30 0)/ —	A.E.O.	10
Phenol			3,500 T (300 0)/ —	A.E.O.	1.4
Phthalate esters				B.N.E.O.	
—dimethyl-phthalate			313,000 T/2,900,000 T		0.11
—diethyl-phthalate					0.13
—dibutyl-phthalate			350,000 T/1,800,000 T		0.02
—di-2-ethylhexyl-phthalate			34,000 T/154,000 T		0.04
			15,000 T/50,000 T		

Polychlorinated biphenyls (PCB's)	0.014 24-Hr.	0.030 24-Hr.	0.00079 C/0.00079 C	P.	0.04
Polynuclear Aromatic Hydrocarbons(PAH's)			0.028 C/0.311 C	B.N.E.O.	0.04
Selenium Selenite	35 24-Hr. 260 Max.	54 24-Hr. 410 Max.	*10 T/-	M.	75
Silver	1.2 Max.	2.3 Max.	*50 T/-	M.	7
Tetrachloroethylene			8 C/88.5 C	V.O.	0.007
Thallium	(1,400) ————(40)	(2,130) ————— (-)	13 T/48 T	M.	1
Toluene			14,300 T/424,000 T	V.O.	10
Toxaphene	0.013 24-Hr. 1.6 Max.	0.070 Max.	0.0071 C/0.0073 C	P.	0.4
Trichloroethylene			27 C/807 C	V.O.	0.005
Vinyl Chloride			20 C/5,246 C	V.O.	0.01

Zinc	47 24-Hr. 180 Max.	52 24-Hr. 170 Max.	————,000 0/-	M.	2
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The Primary Industry Categories are identified in Appendix A to 40 C.F.R. § 122.22, incorporated above at § 1.3(B) of this Part.

Appendix D, Cont.

AB. Sub-Categories of Primary Industries

<p>1. Timber Products Processing</p> <p>SIC 2411--Logging Camps and Logging Contractors (Camps Only)</p> <p>SIC 2421--Saw Mills and Planing Mills, General</p> <p>SIC 2426--Hardwood Dimension and Flooring Mills</p> <p>SIC 2429--Special Purpose Sawmills, Not Elsewhere</p> <p>--Classified</p> <p>SIC 2431--Mill Work</p> <p>SIC 2434--Wood Kitchen Cabinets</p> <p>SIC 2435--Hardwood Veneer and Plywood</p> <p>SIC 2436--Softwood Veneer and Plywood</p> <p>SIC 2439--Structural Wood Members, Not Elsewhere</p> <p>--Classified</p> <p>SIC 2491--Wood Preserving</p>	<p>4. Iron and Steel Manufacturing</p> <p>SIC 3312--Blast Furnaces (Including Coal Ovens), Steel Works and Rolling Mills</p> <p>SIC 3313--Electrometallurgical Products</p> <p>SIC 3315--Steel Wire Drawing and Steel Nails and Spikes</p> <p>SIC 3316--Cold Rolled Steel Sheet, Strip and Bars</p> <p>SIC 3317--Steel Pipe and Tubes</p> <p>5. Petroleum Refining</p> <p>SIC 2911--Petroleum Refining (Including: (1) Topping</p> <p>--Plant; (2) Topping and Cracking Plants; (3) Topping,</p> <p>--Cracking and Petrochemical Plants; (4) Integrated</p> <p>--Plants; and (5) Integrated and Petrochemical Plants)</p>	<p>8. Organic Chemicals Manufacturing</p> <p>SIC 2865--Cyclic (Coal Tar) Crudes, and Cyclic Intermediates, Dyes, and Organic Pigments (Lakes and Toners)</p> <p>SIC 2869--Industrial Organic Chemicals, Not Elsewhere</p> <p>--Classified</p> <p>9. Nonferrous Metals Manufacturing</p> <p>SIC 2819--Industrial Inorganic Chemicals, Not Elsewhere</p> <p>--where Classified (Baunite Refining Only)</p> <p>SIC 3331--Primary Smelting and Refining of Copper</p> <p>SIC 3332--Primary Smelting and Refining of Lead</p> <p>SIC 3333--Primary Smelting and Refining of Zinc</p> <p>SIC 3334--Primary Production of Aluminum</p>
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SIC 2499--Wood Products, Not Elsewhere Classified --(Furniture Mills)	6. Inorganic Chemicals Manufacturing SIC 2812--Alkalies and Chlorine	SIC 3339--Primary Smelting and Refining of Nonferrous --Metals, Not Elsewhere Classified
SIC 2661--Building Paper and Building Board Mills --(Hardboard Only)	SIC 2813--Industrial Gases SIC 2816--Inorganic Pigments	SIC 3341--Secondary Smelting and Refining of Nonferrous Metals
2. Steam Electric Power Plants SIC 4911--Electric Services (Limited to Steam Electric --Power Plants)	SIC 2819--Industrial Inorganic Chemicals, Not Elsewhere --Classified	10. Paving and Roofing Materials (Tars and Asphalt) SIC 2951--Paving Mixtures and Blocks
3. Leather Tanning and Finishing SIC 31--Leather and Leather Products	7. Textile Mills SIC 22--Textile Mill Products	SIC 2952--Asphalt Pelts and Coatings
	SIC 33--Apparel and Other Finished Products Made from --Fabrics and Similar Materials	SIC 3996--Linoleum, Asphalted Pelt Base, and Other --Hard Surface Floor Coverings, Not Elsewhere Classified

NOTES: 1/ Criteria as published at 45 FR 79318 and 46 FR 40919. Criteria for hardness-related metals assumes 50 mg/l CaCO₃ most stringent criteria. Data in () is best available for acute and chronic toxicity.

2/ Criteria as published at 45 FR 79318 and 46 FR 40919. Basis for criteria designated as follows:

O = Organoleptic effect

T = Toxicity

C = Carcinogenicity at the 10⁻⁵ risk level for lifetime exposure level

_____ First Value: Ingestion of contaminated water and contaminated aquatic organism.

_____ Second Value: Ingestion of contaminated aquatic organism alone.

_____ 3/ VOC = Volatile Organic Compounds

_____ B.N.E.O. = Base-Neutral Extractable Organic Compounds

_____ A.E.O. = Acid Extractable Organic Compounds

_____ P. = Pesticides and PCB's

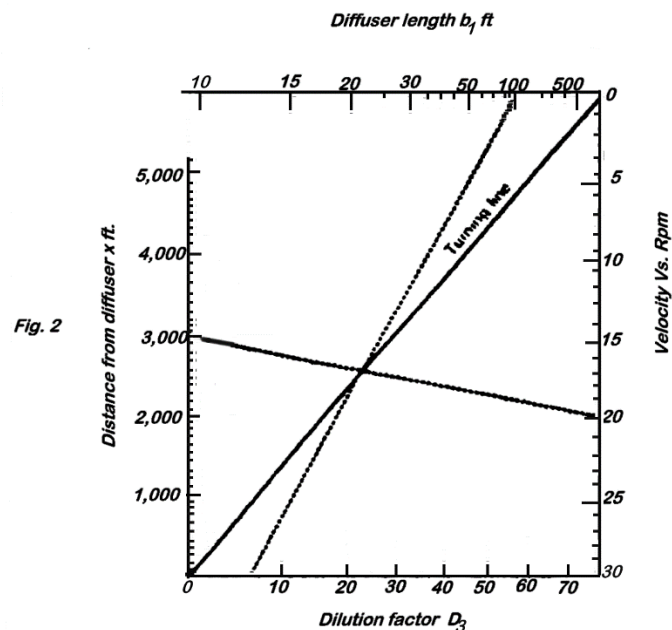
_____ M. = Metals

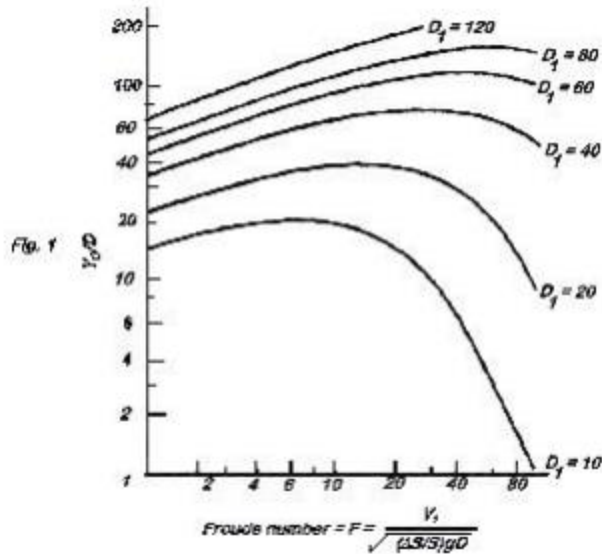
_____ O. = Other

_____ 4/ Detection Limits as published at 44 FR 64464.

_____ *Ambient water quality criterion recommended to be identical to existing drinking water standards.

1.6970 Appendix EF - Nomographs for Calculating Froude Numbers and Dilution Factor





1.701 ~~Appendix F G~~ Incorporated Places in Rhode Island with Populations Greater than 100,000 According to 1990 Decennial Census by Bureau of Census (40 C.F.R. § 122-, § 1.71 of this Part ~~Appendix G~~)

State	Incorporated Place
Rhode Island	Providence

1.712 ~~Appendix GH~~ Incorporated ~~P~~laces in Rhode ~~I~~island ~~L~~located ~~F~~fully or ~~P~~artially within an ~~U~~rbanized ~~A~~area and ~~D~~densely ~~P~~opulated ~~A~~area

(This is a reference list only, not a list of all operators of small MS4s subject to ~~§ 1.32(A)(5) of this Part~~~~Rule 31(a)(5)~~). For example, a listed governmental entity is only regulated if it operates a small MS4 within an “urbanized area” boundary as determined by the Bureau of the Census. Furthermore, entities such as military bases, large hospitals, prison complexes, universities, sewer districts, and highway departments that operate a small MS4 within an urbanized area are also subject to the permitting regulations but are not individually listed here. This reference list reflects populations within regulated areas as shown in ~~§ Appendix 1.734 of this Part~~~~J~~. Regulated areas include the areas determined by the 1990 UA and 2000 US and 2000 densely populated area (DPA) from the Bureau of the Census. See ~~§ 1.4 of this Part~~~~Rule 31(b)(17)~~ for the definition of a small MS4

and ~~31(a)(5)(i) for~~ the definition of a regulated small MS4). (Source: 1990 and 2000 Census of Population and Housing, U.S. Bureau of the Census. This list is subject to change with the Decennial Census).

City or Town	Population Within -Regulated Area ¹
Barrington (Town)	16,806
Bristol (Town)	22,308
Burrillville (Town)	8,862
Central Falls (City)	18,725
Coventry (Town)	28,423
Cranston (City)	79,526
Cumberland (Town)	30,029
East Greenwich (Town)	10,656
East Providence (City)	48,505
Exeter (Town)	1,360
Glocester (Town)	1,617
Jamestown (Town)	5,202
Johnston (Town)	27,163
Lincoln (Town)	20,687
Middletown (Town)	16,933
Narragansett (Town)	16,350
Newport (City)	26,282

North Kingstown (Town)	23,306
North Providence (Town)	32,549
North Smithfield (Town)	7,887
Pawtucket (City)	72,912
Portsmouth (Town)	16,769
Providence (City)	173,356
Scituate (Town)	2,468
Smithfield (Town)	18,911
South Kingstown (Town)	20,503 ²
Tiverton (Town)	10,912
Warren (Town)	11,103
Warwick (City)	85,922
West Greenwich (Town)	997
West Warwick (Town)	29,509
Westerly (Town)	16,612 ³
Woonsocket (City)	43,224

¹Regulated Area includes both 1990 and 2000 Bureau of Census UA and as indicated, the 2000 DPA

²Population includes both 1990 and 2000 Bureau of Census UA and 2000 DPA

³Population of 2000 DPA

~~⁴Regulated Area includes both 1990 and 2000 Bureau of Census UA and as indicated, the 2000 DPA~~

~~²Population includes both 1990 and 2000 Bureau of Census UA and 2000 DPA~~

~~³Population of 2000 DPA~~1.723 Appendix H

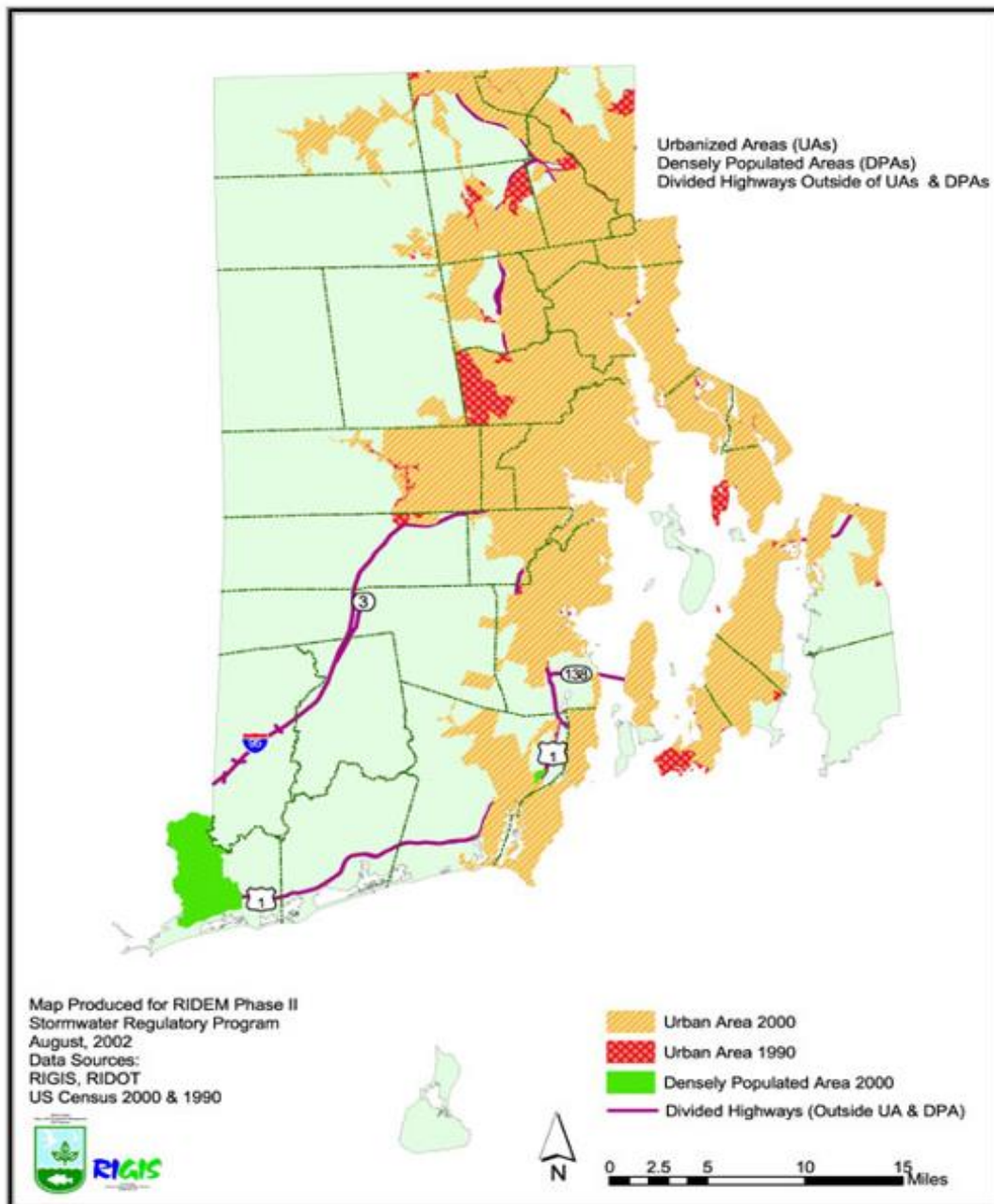
Census Designated Places Completely Outside of
Urbanized Area in Rhode Island

(This is a reference list only, not a list of all operators of small MS4s subject to § 1.32(A)(5)Rule 31(a)(5) of this Part. This list represents the populations in Census Designated Places outside of Urbanized Areas used to determine areas that meet the definition of a Densely Populated Area in accordance with § 1.4 of this PartRule 31(b)(21). See § 1.4 of this Part Rule 31(b)(17) for the definition of a small MS4 and 31(a)(5)(i) for the definition of a regulated small MS4).

(Source: 2000 U.S. Census Data).

Census Designated Place (CDP)	Population Within CDP
Ashaway CDP	1,624
Bradford CDP	1,469
Hope Valley	1,445
Westerly CDP	16,612

Appendix I



TO BE DELETED



Appendix J:

Urbanized Areas (UAs)
Densely Populated Areas (DPAs)
Divided Highways Outside of UAs & DPAs

TO BE DELETED



Map Produced for RIDEM Phase II
Stormwater Regulatory Program
August, 2002
Data Sources:
RIGIS, RIDOT
US Census 2000 & 1990



0 2.5 5 10 15 Miles