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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

The authority for these regulations is vested in the Director by R.I. Gen. Laws Chapters 46-12, Water Pollution, 42-17.1, Environmental Management, and 42-17.6, Administrative Penalties for Environmental Violations of the General Laws of Rhode Island. 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.

1.3 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 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.

1.4 Definitions

- A. For the purposes of these rules, the following words and phrases shall have the following meanings:

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 "Affected person" means a person who has asserted (and not waived or withdrawn) a confidentiality claim covering information submitted to the Department.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 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. § 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.
9. "Areawide plan" means any water quality management plan adopted pursuant to 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.
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.
14. "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.
15. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
16. "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.
- 17. "CFR" means the Code of Federal Regulations.
 - 18. "Clean Water Act" means the Federal law enacted under 33 U.S.C. § 125 *et seq.* and any amendments thereto.
 - 19. "Concentrated animal feeding operation" means an animal feeding operation which meets the criteria in § 1.67 of this Part.
 - 20. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in § 1.68 of this Part.
 - 21. "Confidentiality claim" means a claim or allegation that information is entitled to confidential treatment because such information constitutes a trade secret.
 - 22. "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.
 - 23. "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.
 - 24. "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.
 - 25. "Conventional pollutant" means those pollutants designated under the authority of 33 U.S.C. § 1314 (Section 304(a)(4) of the Clean Water Act).

26. "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.
27. "Daily discharge" means the "discharge of a pollutant" measured during a calendar day or any 24-hour period that reasonable 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.
28. "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.
29. "Department" or "DEM" means the Rhode Island Department of Environmental Management.
30. "Designated area" means as used in this definition 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.
31. "Direct discharge" means the "discharge of a pollutant."
32. "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.
33. "Discharge" means the addition of any pollutant to waters from any point source.
34. "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.

35. "Discharge of a pollutant" means any addition of any "pollutant" or combination of pollutants to "waters of the State" from any "point sources".
36. "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.
37. "District engineer" means the chief administrative official of the New England Division, Corps of Engineers or an authorized representative.
38. "Draft permit" means a document prepared under § 1.38 of this Part 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 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 is not a "draft permit." A "proposed permit" is not a "draft permit".
39. "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:

- (AA) 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
 - (BB) 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.
- 40. "Effluent limitation guidelines" means a regulation published by the Administrator under 33 U.S.C. § 1314(b) (Section 304(b) of the Clean Water Act) to adopt or revise "effluent limitations."
- 41. "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.
- 42. "EPA" means the United States Environmental Protection Agency.
- 43. "Facility" means any point source or any other activity (including land or appurtenances thereto) that is subject to regulation under the RIPDES permit program.
- 44. "General permit" means a RIPDES permit issued under § 1.33 of this Part authorizing a category of discharges within a geographic area.
- 45. "Groundwater" means water below the land surface in a zone of saturation.
- 46. "Hazardous substance" means any substance designated under 40 C.F.R. § 116 pursuant to 33 U.S.C. § 1321 (Section 311 of the Clean Water Act (see § 1.66 of this Part)).
- 47. "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.
- 48. "Impaired waters" means for the purpose of § 1.32 of this Part, 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 Integrated Water Quality Monitoring and Assessment Report compiled by the Department.

49. "Incorporated place" means a city, town or other definable place that is incorporated under the laws of the State in which it is located.
50. "Indirect discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated under 33 U.S.C. § 1317(b), (c) or (d) (Section 307(b), (c) or (d) of the Clean Water Act).
51. "Interference" means 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
- 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
 - b. preventing the use or disposal of sludge produced by the publicly owned treatment works in accordance with 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 for Sewage Sludge Management, Part 3 of this Subchapter.
52. "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.
53. "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 Part); or
 - b. Located in the counties listed in § 1.73 of this Part, 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 Part 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 §§ 1.4(A)(54)(c)((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)(54)(c)((1)) of this Part;
- (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 §§ 1.4(A)(54)(c)((1)) through ((3)) of this Part.

54. "Log sorting" or "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. § 429 Subpart J, incorporated above at § 1.3(B) of this Part, including the effluent limitations guidelines).
55. "Major facility" means any facility or activity classified as such by the Regional Administrator in conjunction with the Director.
56. "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).

57. "Major outfall" means a "major municipal separate storm sewer outfall."
58. "Maximum daily discharge limitation" means the highest allowable "daily discharge."
59. "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 (§ 1.71 of this Part); or
 - b. Located in the counties listed in § 1.72 of this Part, 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)(60)((1)) and ((2)) of this Part 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 §§ 1.4(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)) of this Part;
 - (3) The quantity and nature of pollutants discharged to waters of the State;
 - (4) The nature of the receiving waters; or
 - d. Other relevant factors.
60. "Memorandum of 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).
61. "MGD" means million gallons per day.

62. "Minor facility" means any facility or activity not classified a "major facility" by the Regional Administrator or the Department.
63. "Monitoring report form" means the DEM standard form, including any subsequent additions, revisions or modifications for the reporting of self-monitoring results by permittees.
64. "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 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 § 1.4(A)(87) of this Part.
65. "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 §§ 1.4(A)(53), 1.4(A)(59), or 1.4(A)(105) of this Part.
66. "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 33 U.S.C. § 1288 (Section 208 of the Clean Water Act).
67. "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 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.

68. "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.
69. "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 33 U.S.C. § 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 33 U.S.C. § 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.
70. "Non-contact 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.

71. "Non-conventional pollutant" means any pollutant not defined as a conventional pollutant or a toxic pollutant (see § 1.65 of this Part).
72. "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.
73. "Outfall" means a point source as defined by § 1.4(A)(78) of this Part and includes storm water discharges at the point where a municipal separate storm sewer discharges to waters of the State. It 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.
74. "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.
75. "Owner" or "Operator" means the owner or operator of any facility or activity subject to these regulations.
76. "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."
77. "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, 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.
78. "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.

79. "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.
80. "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.
81. "Primary industry category" means any industry category listed in § 1.69 of this Part. Industries may be added to § 1.69 of this Part by the Director, as he deems appropriate.
82. "Priority pollutant" means those pollutants listed pursuant to 33 U.S.C. § 1317(a)(1) (Section 307(a)(1) of the Clean Water Act).
83. "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".
84. "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.
85. "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".
86. "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.
87. "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.

88. "Recommencing discharger" means a source which recommences discharge after terminating operations.
89. "Regional administrator" means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or an authorized representative of the Regional Administrator.
90. "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. 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.
91. "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 R.I. Gen. Laws Chapter 46-12 and the Clean Water Act.
92. "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap (see 40 C.F.R. § 436 Subpart B, incorporated above at § 1.3(B) of this Part, including the effluent limitation guidelines).
93. "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.
94. "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.
95. "Secondary industry category" means any industry category which is not a "primary industry category."
96. "Secretary" means the Secretary of the Army, acting through the Chief of Engineers.
97. "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.
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- 98. "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.
 - 99. "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 33 U.S.C. § 1322 (Section 312 of the Clean Water Act) or under Rhode Island law.
 - 100. "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.
 - 101. "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 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.
 - 102. "Significant spills" means, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under 40 C.F.R. § 110.10 and 40 C.F.R. § 117.21 or 40 C.F.R. § 302.4.
 - 103. "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.

104. "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.
105. "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 a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under 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 Part.
 - 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.
106. "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.
107. "State" means the State of Rhode Island.
108. "State/EPA agreement" 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.
109. "Storm sewer" means a sewer intended to carry only storm water.
110. "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.
111. "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. § 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. § 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 §§ 1.4(A)(111)(a) through (k) of this Part) include those facilities designated under the provisions of § 1.4(A)(112) of this Part. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

- a. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 C.F.R. Chapter I, Subchapter N, incorporated above at § 1.3(B) of this Part, (except facilities with toxic pollutant effluent standards which are exempted under § 1.4(A)(111)(k) of this Part;
- b. 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;
- c. 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);

- d. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;
- e. 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;
- f. 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;
- g. Steam electric power generating facilities, including coal handling sites;
- h. 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 §§ 1.4(A)(111)(a) through (g) or §§ 1.4(A)(111)(i) through (k) of this Part are associated with industrial activity;
- i. 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. § 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 33 U.S.C. § 1345 (Section 405 of the Clean Water Act).

- j. 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;
- k. 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)(b) through (j) of this Part;

112. "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)(g) and (h) of this Part.

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

114. "Thermal discharge" means that component of any discharge which is comprised of heat, and which shall be limited in accordance with 33 U.S.C. §§ 1311, 1316, 1326 (Sections 301, 306, and 316 of the Clean Water Act) or when determined necessary by the Department.
115. "Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 C.F.R. § 136, incorporated above at § 1.3(B) of this Part.
116. "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.
117. "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 33 U.S.C. § 1317 (Section 307 of the Clean Water Act) (see §§ 1.63 and 1.64 of this Part).
118. "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".
119. "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 Act, 42 U.S.C. § 6901 *et seq.*
120. "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.

121. "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.
122. "Variance" means any mechanism or provision under 33 U.S.C. § 1311 or 1326 (Sections 301 or 316 of the Clean Water Act) or under 40 C.F.R. § 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 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).
123. "Waste load" means the amount of chemical, physical, or biological matter contained within a waste discharge.
124. "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" 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 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.
- 126. "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.
- 127. "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.
- 128. "Waters of the State" or "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.
- 129. "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.

1.5 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 R.I. Gen. Laws § 46-12-10.
- 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:
 - 1. When the conditions of the permit do not provide for compliance with the applicable requirements of the State and Federal Acts or regulations;
 - 2. For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;
 - 3. When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states;
 - 4. When the Regional Administrator has objected to the issue of the permit in accordance with the Memorandum of Agreement;
 - 5. When, in the judgement of the 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;
 - 6. For any discharge, inconsistent with a plan or plan amendment approved under 33 U.S.C. § 1288(b) (Section 208(b) of the Clean Water Act);
 - 7. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:
 - a. Before the promulgation of guidelines under 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
 - b. After promulgation of guidelines under 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.
- B. 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, 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. § 123.25(c), incorporated above at § 1.3(B) of this Part.

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, 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 § 1.13 of this Part and that the person must apply for a RIPDES permit in accordance with the schedule for submission of applications in § 1.10(A) 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 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. § 300 (The National Oil and Hazardous Substances Pollution Plan), incorporated above at § 1.3(B) of this Part, or 33 C.F.R. § 153.1 (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 § 1.33 of this Part except that the Director may, pursuant to § 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 Subchapter 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 scheduled 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) of this Part.
- 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 §§ 1.4(A)(111)(j) or 1.4(A)(112)(a) 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 § 1.9 of this Part. Any person who has a valid NPDES permit shall apply for a RIPDES permit in accordance with the schedule in § 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.
- 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.
- I. 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.
- J. 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.

1.12 Signatories to Permit Application and Reports

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.

1.13 Continuation of NPDES Permits and Expired RIPDES Permits

The conditions of an expired RIPDES permit shall be 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.

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 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. 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, 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 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. The permittee shall monitor:
 - a. The mass (or other measurement specified in the permit) for each pollutant limited in the permit;
 - b. The volume of effluent discharged from each outfall;
 - c. 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.
- 3. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- 4. All analyses shall be performed in accordance with the analytical test procedures approved under 40 C.F.R. § 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.
- L. 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.
- N. Monitoring results shall be reported on a Discharge Monitoring Report (DMR).
- 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.
- R. Reporting
1. 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 circumstance by calling DEM. 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.

2. The following shall be included as information which must be reported immediately
 - a. Any unanticipated bypass which exceeds any effluent limitation in the permit.
 - b. Any upset which exceeds any effluent limitation on the permit.
 - c. Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit.
 3. The Department may waive the written report in a case-by-case basis if the oral report has been received within 24 hours.
- S. Other noncompliance. The permittee shall report all instances of noncompliance not otherwise reported under §§ 1.14(Q) and (R) of this Part at the time monitoring reports are submitted. The reports shall contain the information required in § 1.14(R) of this Part.
- T. 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 §§ 1.14(T)(2) and (3) of this Part.
 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 § 1.14(R) of this Part (24-hour notice).
 3. Prohibition of bypass

- a. Bypass is prohibited, and the 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.
4. The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in § 1.14(T)(3) of this Part.

U. Upset

- 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 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 (24-hour notice); and
 - d. The permittee complied with any remedial measures required under § 1.14(E) 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.
- V. 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

- 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.
 - 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.
- B. 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.

1.16 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 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 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. § 125.3, incorporated above at § 1.3(B) of this Part.
 - 2. Monitoring waivers for certain guideline-listed pollutants.

- a. The 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 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. 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. 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. 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. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.
3. Other effluent limitations and standards under 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. §§ 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 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. Reopener clause: for any discharge within a primary industry category (see § 1.69 of this Part), requirements under 33 U.S.C. § 1317(a)(2) (Section 307(a)(2) of the Clean Water Act) as follows:
 - a. Any permit issued shall include effluent limitations and a compliance schedule to meet the requirements of 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 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.

- b. The Department shall promptly modify or revoke and reissue any permit to incorporate an applicable effluent standard or limitation under 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.

- 5. Water quality standards and State requirements: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under 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:

- a. Achieve water quality standards; established under 33 U.S.C. § 1313 (Section 303 of the Clean Water Act);
- b. Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the 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. 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. 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. 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. 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. 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) 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) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under 33 U.S.C. § 1314(a) (Section 304(a) of the Clean Water Act), supplemented where necessary by other relevant information; or
- (3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:
 - (AA) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;
 - (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) 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) 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. When developing water quality-based effluent limits under this paragraph the permitting authority shall ensure that:

- (1) 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
- (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.
- (3) Attain or maintain a specified water quality through water quality-related effluent limits established under 33 U.S.C. § 1312 (Section 302 of the Clean Water Act);

- (4) Conform to applicable water quality requirements under 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;
 - (5) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under Federal or State law or regulations in accordance with 33 U.S.C. § 1311(b)(1)(C) (Section 301(b)(1)(C) of the Clean Water Act) or R.I. Gen. Laws Chapter 46-12;
 - (6) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA and the Governor of Rhode Island under 33 U.S.C. § 1288(b) (Section 208(b) of the Clean Water Act);
 - (7) Incorporate Section 403(c) criteria under 40 C.F.R. § 125 Subpart M, incorporated above at § 1.3(B) of this Part for ocean discharges;
 - (8) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors", under 40 C.F.R. § 125 Subpart D, incorporated above at § 1.3(B) of this Part.
6. Toxic pollutants: limitations established under §§ 1.16(A)(1), 1.16(A)(3) and 1.16(A)(5) of this Part to control pollutants meeting the criteria listed in § 1.16(A)(6)(a) of this Part, shall be established in accordance with § 1.16(A)(6)(b) of this Part. An explanation of the development of these limitations shall be included in the fact sheet under § 1.40 of this Part.
- a. Limitations must control all toxic pollutants which:
 - (1) The Department determines (based on information reported in a permit application under § 1.11 of this Part or in a notification under § 1.17(A) of this Part 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. § 125.3(c), incorporated above at § 1.3(B) of this Part; or
 - (2) The discharger does or may use or manufacture as an intermediate or final product or byproduct.
 - b. The requirement that the limitations control the pollutants meeting the criteria of § 1.16(A)(6)(a) of this Part will be satisfied by:

- (1) Limitations on those pollutants; or
 - (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 to the levels required by 40 C.F.R. § 125.3(c), incorporated above at § 1.3(B) of this Part.
7. 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.
8. Best Management Practices: Adopt best management practices to control or abate the discharge of pollutants when:
 - a. Authorized under 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;
 - b. Authorized under 33 U.S.C. § 1342(p) (Section 402(p) of Clean Water Act) for the control of storm water discharges;
 - c. Numeric effluent limitations are infeasible, or
 - d. 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.
9. Notification Level: The requirement that the permit contain a "notification level" which may not exceed those levels provided in § 1.17(A) of this Part or the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 C.F.R. § 125.3(c), incorporated above at § 1.3(B) of this Part.
10. Qualifying State, or local programs. A qualifying local program is a local or State storm water management program that the Department determines, at a minimum, the relevant requirements in § 1.32(E)(3)(b) of this Part 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.
 - a. For storm water discharges associated with small construction activity identified in § 1.4 of this Part, the 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) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;
 - (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) 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) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.
- b. For storm water discharges from construction activity identified in § 1.4 of this Part, the 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 Part 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.

1.17 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, apply to all RIPDES permits within the categories specified below:
- B. 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 in the permit application;
 - d. The level established by the Department in accordance with § 1.18 of this Part.
 - 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 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 the quality and quantity of effluent introduced into the POTW, and 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 to POTWs under 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 R.I. Gen. Laws Chapter 46-12.
- 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 33 U.S.C. § 1317(b) (Section 307(b) of the Clean Water Act), 40 C.F.R. § 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. § 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 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. §

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. § 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 Department may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Department's 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, 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 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 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.
- I. Sewage Sludge. A permit may contain conditions governing the disposal of sewage sludge from publicly owned treatment works in accordance with 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 Department under § 1.32 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. Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with § 1.32(D)(2)(d) of this Part and
 - c. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under §§ 1.32(D)(2)(d) and 1.32(D)(2)(e) of this Part;
 - d. A summary of data, including monitoring data, that is accumulated throughout the reporting year;

- e. 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 § 1.32(A)(5)(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 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. Concentrated animal feeding operations (CAFOs). Any permit issued to a CAFO must include the following requirements:

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. § 412, incorporated above at § 1.3(B) of this Part. The nutrient management plan must, to the extent applicable:
 - a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
 - 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;
 - c. Ensure that clean water is diverted, as appropriate, from the production area;
 - d. Prevent direct contact of confined animals with waters of the United States;
 - 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;
 - 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;
 - g. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;
 - 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
 - i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described in this section.

2. Recordkeeping requirements. The permittee must create, maintain for five years, and make available to the Department, upon request, the following records:
 - a. All applicable records identified pursuant to this section;
 - b. In addition, all CAFOs subject to 40 C.F.R. § 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).
 - (1) A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the Department upon request.
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. § 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. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the Department. As of December 21, 2020 all annual reports submitted in compliance with this section must be submitted electronically by the permittee to the Department or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this section and 40 C.F.R. § 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 C.F.R. § 127 (incorporated above at § 1.3(B) of this Part. Section 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of 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:
 - 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);
 - b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);

- c. Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months (tons/gallons);
 - d. Total number of acres for land application covered by the nutrient management plan;
 - 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;
 - 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
 - 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
 - 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. 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 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 Department specifies that only one of these approaches may be used:

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

- (1) 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 Department, 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 § 1.17(K)(4)(h) of this Part); the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the Department 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.
- (2) 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 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.

- (3) For CAFOs using this approach, the following projections must be included in the nutrient management plan submitted to the 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.
 - (4) 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) 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 Department; and
 - (BB) 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. 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 Department:
 - a. The CAFO owner or operator must provide the Department with the most current version of the CAFO's nutrient management plan and identify changes from the previous version.

- b. The Department 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. § 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 Department 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.
- (1) If the Department determines that the changes to the terms of the nutrient management plan are not substantial, the Department 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.
 - (2) If the Department determines that the changes to the terms of the nutrient management plan are substantial, the Department 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 Department 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 Department must notify the owner or operator and inform the

public of the final decision concerning revisions to the terms and conditions of the permit.

- 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:
 - (1) 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;
 - (2) 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;
 - (3) 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
 - (4) 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.

1.18 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(G) of this Part (BMPs where limitations are infeasible) and § 1.18(K) of this Part (limitations on internal waste streams).
- B. Production-Based 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.

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 Department may establish a condition under § 1.18(B)(3) of this Part 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 Part, 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 Part:
 - 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 Part, 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.

- D. 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 specifies 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. § 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 R.I. Water Pollution Act, R.I. Gen. Laws Chapter 46-12 and 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).
- E. 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.
- F. 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).
- G. 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).

H. Mass Limitations

1. All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:
 - a. For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;
 - b. When applicable standards and limitations are expressed in terms of other units of measurement; or
 - c. If in establishing permit limitations on a case-by-case basis under 40 C.F.R. § 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.

I. Pollutants in 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, Subchapter 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.

J. 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:
 - a. 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
 - b. 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:
 - a. 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

- b. 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.

K. Internal Waste 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 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 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.
- L. 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.

- M. 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" as amended.
- N. The limitation assigned to the toxic substances shall be established such that the effluent standard for toxic discharges, as set forth in 40 C.F.R. § 125.3, incorporated above at § 1.3(B) of this Part, is not exceeded.
1. In-stream concentrations of discharged pollutants shall be determined by the following formulas, or other methods which may be found to be acceptable.

- a. 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

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

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

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, 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.)

3. 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 this section.

1.19 Calculating Adjusted RIPDES Permit Conditions for Certain Practices

- A. 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:
 1. 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.
 2. In all cases other than those described in § 1.19(A)(1) of this Part, 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. § 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.

- B. § 1.19(A) of this Part shall not apply to the extent that promulgated effluent limitations guidelines:
1. Control concentrations of pollutants discharged but not mass; or
 2. Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.
 3. § 1.19(A) of this Part does not alter a discharger's obligation to meet any more stringent requirements established under §§ 1.14, 1.15, 1.16 and 1.17 of this Part.

1.20 Duration of Permit

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.

1.21 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. 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. Interim dates. Except as provided in § 1.21(B)(2) of this Part, 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.
1. The time between interim dates shall not exceed one year.
 2. 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:
 - a. submit a complete step I construction grant (for POTWs);
 - b. get a contract for construction of required facilities;
 - c. commence construction of required facilities; and
 - d. complete construction of required facilities.
 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.
- D. Alternative schedules of compliance. A RIPDES permit application or permittee may cease conducting activities regulated by 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:
 - a. The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or
 - b. 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:
 - a. 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;
 - b. One schedule shall lead to timely compliance with applicable requirements and shall be no later than the statutory deadline in the Clean Water Act;
 - c. 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;
 - d. 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 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. § 403.8, incorporated above at § 1.3(B) of this Part, and the Rhode Island Pretreatment Regulations, whichever is more stringent.
- F. 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 § 1.14 of this Part.

1.22 Effect of a Permit

The 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.

1.23 Transfer of Permits

- A. Transfer by modification. Except as provided in § 1.23(B) of this Part, 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.
- B. Automatic transfers. As an alternative to transfers under § 1.23(A) of this Part, any RIPDES permit may be automatically transferred to a new permittee if:
1. The current permittee notifies the Department in writing by certified mail of the proposed transfer as follows:
 - 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) Name and address of current facility;
 - (2) Name and address of new owner;
 - (3) RIPDES permit number;
 - (4) Names of the new principal persons responsible;
 - (5) Names of persons upon whom legal process can be served; and
 - (6) 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.
 - b. 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 shall be submitted at least 180 days prior to a proposed transfer date.

2. 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.
3. 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. If such notice is not received, the transfer is effective on the date specified in the agreement mentioned in § 1.23(B)(2) of this Part.
4. 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.

1.24 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) 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, 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 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 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 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. The Department may also modify a permit:
 - a. 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.
 - b. When required to incorporate an applicable toxic effluent standard or prohibition under 33 U.S.C. § 1317(a) (Section 307(a) of the Clean Water Act).

- c. When required by the "reopener" conditions in a permit, which are established in the permit under § 1.16(A) of this Part (for toxic effluent limitations) or Rhode Island Pretreatment Regulations, [Part 2](#) of this Subchapter.
- d. Upon request of a permittee who qualifies for effluent limitations on a net basis.
- e. When a discharger is no longer eligible for net limitations.
- f. As necessary under 40 C.F.R. § 403.8(e), incorporated above at § 1.3(B) of this Part, or the Rhode Island Pretreatment Regulations [Part 2](#) of this Subchapter (compliance schedule for development of pretreatment program).
- g. Upon failure of the State to notify, as required by 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.
- h. 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. § 125.3(c), incorporated above at § 1.3(B) of this Part.
- i. 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.
- j. To establish a "notification level" as provided in §§ 1.16(A) and 1.17(A) of this Part.
- k. 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 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.
- l. 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 Management, [Part 3](#) of this Subchapter.

- m. 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 when:
 - (1) 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) The other entity fails to implement the measure(s) that satisfy the requirement(s).
- 6. When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under 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).
- 7. 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.
- 8. 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.
- C. Cause for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:
 - 1. Cause exists for termination under § 1.25 of this Part and the Department determines that modification or revocation and reissuance is appropriate.
 - 2. 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.

1.25 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;
 3. 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;
 4. 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. 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.

1.26 Minor Modifications of Permits

The Department may make Minor Modifications to permits in accordance with the conditions in 40 C.F.R. § 122.63, incorporated above at § 1.3(B) of this Part.

1.27 Noncompliance and Program Reporting by the Department

The Department shall prepare quarterly and annual reports consistent with the reporting requirements from 40 C.F.R. § 122.45, incorporated above at § 1.3(B) of this Part.

1.28 Concentrated Animal Feeding Operations

- A. Permit requirement. "Concentrated animal feeding operations" (as defined in § 1.4 of this Part) 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 § 1.67 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.
- 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 RIDES 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.
- D. Land application discharges from a CAFO are subject to RIDES requirements. The discharge of manure, litter or process wastewater to waters of the State 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 RIDES 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. 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. 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 Department or Regional Administrator upon request.

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

1.29 Concentrated Aquatic Animal Production Facilities

"Concentrated aquatic animal production facilities" (as defined in § 1.4 of this Part) are point sources subject to the requirements of 40 C.F.R. § 122.24, incorporated above at § 1.3(B) of this Part.

1.30 Aquaculture Projects

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

1.31 Silvicultural Activities

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

1.32 Storm Water Discharges

A. Permit 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;

- 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;
 - f. A discharge associated with small construction activity;
 - g. A discharge which the Department, or in States with approved NPDES programs, either the 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(A)(2) of this Part or agricultural storm water runoff which is exempted from the definition of point source at § 1.4(A)(78) of this Part. The Department may designate discharges from municipal separate storm sewers on a system-wide basis. In making this determination the Department may consider the following factors:
 - (1) The location of the discharge with respect to waters of the State as defined in § 1.4 of this Part.
 - (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. A discharge for which the 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 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 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 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) 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 Part 1 of the application is due;
 - (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) Each of the operators of municipal separate storm sewers within the systems described in §§ 1.4(A)(53)(a), 1.4(A)(53)(b), and 1.4(A)(53)(c) of this Part, that are under the purview of the designated regional authority, shall comply with the application requirements of § 1.32(A)(4)(d) of this Part.
- 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 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 § 1.4 of this Part, unless a waiver is granted in accordance to § 1.32(G) of this Part. 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).
- (2) The small MS4, excluding systems operated by federal and State government, is located in a densely populated area as defined in § 1.4 of this Part, unless a waiver is granted in accordance to § 1.32(G) of this Part. 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).
- (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 or a densely populated area, as defined in § 1.4 of this Part, or serves a divided highway regardless of its location, only these portions are regulated (see § 1.73 of this Part).
- (5) The Department has determined that the system is contributing substantially to the pollutant loadings of a physically-interconnected regulated MS4.
- (6) The Department 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 § 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 § 1.32(G) of this Part.

- (8) The Department 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 § 1.32 of this Part.
 - (9) The Department 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 § 1.32 of this Part.
 - (10) The Department has designated the small MS4 based on a petition pursuant to § 1.32 of this Part.
- 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 to satisfy all of the permit obligations, including the obligation to file periodic reports required in § 1.17(J) of this Part, 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 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.

- (7) If the governmental entity identified in § 1.32(A)(5)(a)((6)) of this Part fails to implement a minimum control measure, the permit issued in accordance with § 1.32(E) of this Part may be reopened and modified in accordance with § 1.24 of this Part 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 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, 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 based on an approved total maximum daily load (TMDL) or equivalent analysis. The Department 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, 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. 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.
6. Discharges through large and medium municipal separate storm sewer systems. In addition to meeting the requirements of § 1.32(D) of this Part, 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 may issue permits for municipal separate storm sewers that are designated under §§ 1.32(A)(1)(g) and (h) of this Part 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, 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 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 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. § 35 Subpart I (incorporated above at § 1.3(B) of this Part).
- B. Definitions – See § 1.4 of this Part.
- 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 is evaluating for designation (see 40 C.F.R. § 124.52(c)) incorporated above at 1.3(B) of this Part, under §§ 1.32(A)(1)(g) and 1.32(A)(1)(h) of this Part and is not a municipal separate storm sewer, and which is not part of a group application described under § 1.32(C)(3) of this Part shall submit a RIPDES application in accordance with the requirements of § 1.11 of this Part 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) 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 §§ 1.32(C)(1)(b) through (d) of this Part, 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 § 1.11(B)(1)(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 §§ 1.11(B)(1)(n)((3)) and ((4)) 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 §§ 1.11(B)(1)(i) through 1.11(B)(1)(l), 1.11(B)(1)(n)((1)), 1.11(B)(1)(n)((2)), and 1.11(B)(1)(n)((5)) of this Part; and
 7. Operators of new sources or new discharges (as defined in § 1.4 of this Part) which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in § 1.32(C)(1)(a)((5)) 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(C)(1)(a)((5)) 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 §§ 1.11(B)(1)(i), 1.11(B)(1)(k), and 1.11(B)(1)(n) 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(A)(111)(j) of this Part (construction sites with five or more acres of land disturbance), associated with small construction activity solely under § 1.4(A)(112) of this Part, or any discharge of storm water associated with construction activity, which the

Department is evaluating for designation under §§ 1.32(A)(1)(g) and 1.32(A)(1)(h) of this Part, is exempt from the requirements of §§ 1.11 and 1.32(C)(1)(a) of this Part. 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(C)(1)(a) of this Part, 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 any 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 may reasonably require under § 1.11(B)(1)(t) of this Part to determine whether to issue a permit and may require any facility subject to §§ 1.32(C)(1)(b) and 1.32(C)(1)(a) of this Part.

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 § 1.32(C)(1) of this Part. Specific notice of intent requirements shall be specified in the general permit in accordance with § 1.33(B)(2)(b) of this Part. Portions of the Notice of Intent requirements may be waived, if the Department 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 R.I. Gen. Laws Chapter 2-4, in accordance with a community Soil Erosion and Sediment Control Ordinance, pursuant to R.I. Gen. Laws Chapter 45-46.
- 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 § 1.33(B)(2)(a) 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, Subchapter N, §§ 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 (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.

- D. 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 under §§ 1.32(A)(1)(g) and 1.32(A)(1)(h) of this Part 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 and required to apply under this section shall include:

1. Part 1 of the application shall consist of:

- a. General Information. The applicants' name, address, telephone number of contact person, ownership status and status as a state or local government entity.
- 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, 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.
- c. Source Identification
 - (1) 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.

- (2) 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:
 - (AA) The location of known municipal storm sewer system outfalls discharging to waters of the State;
 - (BB) 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) 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) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a RIPDES permit;
 - (EE) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and
 - (FF) The identification of publicly owned parks, recreational areas, and other open lands.

d. Discharge Characterization

- (1) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.
- (2) 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.
- (3) 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) Assessed and reported in the 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;
- (BB) Listed under 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;
- (CC) Listed in State Nonpoint Source Assessments required by 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);
- (DD) Identified and classified according to eutrophic condition of publicly owned lakes listed in State reports required under 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);
- (EE) Designated estuaries under the National Estuary Program under 33 U.S.C. § 1330 (Section 320 of the Clean Water Act);

- (FF) Recognized by the applicant as highly valued or sensitive waters;
- (GG) Defined by the State or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and
- (HH) Found to have pollutants in bottom sediments, fish tissue or bio-survey data.

(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. § 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:

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

- (BB) 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;
- (CC) Field screening points should be located downstream of any sources of suspected illegal or illicit activity;
- (DD) 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;
- (EE) 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) 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
- (GG) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in §§ 1.32(D)(1)(d)((4))((AA)) through ((FF)) of this Part, 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) Characterization Plan. Information and a proposed program to meet the requirements of § 1.32(D)(2)(c) of this Part. 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, 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) to the extent practicable.

e. Management Programs

- (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.
- (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. 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.

2. Part 2 of the application shall consist of:

- 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:
- (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;
 - (2) Prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;
 - (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;
 - (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;
 - (5) Require compliance with conditions in ordinances, permits, contracts or orders; and
 - (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.
- b. 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)) of this Part. 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;
- c. Characterization Data. When "quantitative data" for a pollutant are required under § 1.32(D)(2)(c)((1))((CC)) of this Part, the applicant must collect a sample of effluent in accordance with § 1.11(B)(1)(n) of this Part (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. § 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:

(1) Quantitative data from representative outfalls designated by the Department (based on information received in Part 1 of the application, the Department 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 shall designate all outfalls) developed as follows:

(AA) 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 (40 C.F.R. § 122.21(g)(7), incorporated above at § 1.3(B) of this Part) (the Department may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

(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;

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

(i) Total Suspended Solids (TSS)

(ii) Total Dissolved Solids (TDS)

(iii) Chemical Oxygen Demand (COD)

- (iv) Biochemical Oxygen Demand, 5-day (BOD5)
 - (v) Oil and Grease
 - (vi) Fecal Coliform
 - (vii) Fecal Streptococcus
 - (viii) pH
 - (ix) Total Kjeldahl Nitrogen
 - (x) Nitrate Plus Nitrite
 - (xi) Dissolved Phosphorus
 - (xii) Total Ammonia Plus Organic Nitrogen
 - (xiii) Total Phosphorus
- (DD) Additional limited quantitative data required by the Department for determining permit conditions (the Department 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);
- (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;
- (3) A proposed schedule to provide estimates for each major outfall identified in either §§ 1.32(D)(1)(c)((3))((AA)) or 1.32(D)(2)(b) of this Part 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; and

- (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. 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 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) 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:

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

- (BB) A description of planning procedures including a 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;

- (CC) 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;
 - (DD) 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;
 - (EE) 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); and
 - (FF) 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 rights-of-way and at municipal facilities.
- (2) 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:
- (AA) 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);

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

- (EE) 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;
 - (FF) 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) A description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;
- (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) Identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;
 - (BB) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in § 1.32(D)(2)(d)((3)) of this Part, 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 (40 C.F.R. § 122.21(g)(7) (iii) and (iv), incorporated above at § 1.3(B) of this Part).
- (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) A description of procedures for site planning which incorporate consideration of potential water quality impacts;
 - (BB) A description of requirements for nonstructural and structural best management practices;
 - (CC) 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) A description of appropriate educational and training measures for construction site operators.
- e. 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.
- f. 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. 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. 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. Where requirements under §§ 1.32(D)(1)(d)((5)), (D)(2)(b), (D)(2)(c)((2)), and (D)(2)(d) of this Part are not practicable or are not applicable, the Department 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 from such requirements. The Department shall not exclude the operator of a discharge from a municipal separate storm sewer identified in the RIPDES Regulations, §§ 1.71, 1.72 or

1.73 of this Part, from any of the permit application requirements under this paragraph except where authorized under this section.

E. 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:

1. 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 § 1.32(E)(3) 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.
 - 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 § 1.32(E)(3) of this Part. Specific notice of intent requirements shall be specified in the general permit in accordance with § 1.32 of this Part.
 - 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. 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.
2. Individual Permit Application. The operator of a regulated small MS4 and another regulated entity may jointly apply under either §§ 1.32(E)(2)(a) or (b) of this Part to be co-permittees under an individual permit. The Department may require the operator of a small MS4 designated under §§ 1.32(A)(1)(g) or (h) 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:
 - a. Operators of small MS4s seeking authorization to implement a program under § 1.32(E)(3) of this Part, must submit an application that includes the following:

- (1) Information required under §§ 1.32(D)(1)(a) through (d) and § 1.32(E)(3) of this Part.
 - (2) An estimate of the square mileage served by the small MS4; and
 - (3) Any additional information that the Department requests.
 - b. Operators of small MS4s seeking authorization to implement a program that is different from the program under and § 1.32(E)(3) of this Part must comply with the permit application requirements of § 1.32(D) of this Part. The operator of the MS4 must submit both Parts of the application requirements in §§ 1.32(D)(1) and (D)(2) of this Part by March 10, 2003. The applicant is exempt from submitting information required by §§ 1.32(D)(1)(b) and (D)(2)(a) 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, the application required by § 1.32(D) of this Part must document coverage for all such discharges.
3. Storm Water Management Program Requirements. Unless seeking coverage in accordance to § 1.32(E)(2)(b) of this Part, 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, the Storm Water Management Program Plan required by § 1.32(E)(3)(a) of this Part must document coverage for all such discharges.
 - a. Storm Water Management Program Plan. At a minimum the storm water management program plan must include all of the following:
 - (1) Information of the Best Management Practices (BMPs) that will be implemented for each of the minimum control measures identified in § 1.32(E)(3)(b) of this Part;

- (2) Information of the Measurable Goals for each of the BMPs, including as appropriate:
 - (AA) Months and years in which the operator will undertake required actions,
 - (BB) Interim milestones, and
 - (CC) Frequency of action(s);
 - (DD) The person(s) responsible for implementing or coordinating the storm water management program plan.

b. Minimum Control Measures.

- (1) 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.
- (2) Public Involvement/Participation: The operator must, at a minimum, comply with State and local public notice requirements when implementing a public involvement/participation program.
- (3) 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 small MS4 that includes the following:
 - (AA) Development of a storm sewer map showing the location of all outfalls and names and locations of all receiving State waters;
 - (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;
 - (CC) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to the MS4;

- (DD) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste to the MS4.
 - (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).
- (4) 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) 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) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;
 - (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;

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

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

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

(5) 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:

(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;

(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;

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

(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.

- (6) 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.
- 4. Waiver applications. An operator of a regulated small MS4 seeking a waiver must submit an application, by the deadlines established in § 1.32 of this Part, which meets the following requirements:
 - a. An operator of a small MS4 seeking a waiver under § 1.32(G)(5)(a) of this Part must submit the following:
 - (1) 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.
 - (2) Any other additional information that the Department deems is necessary to make a determination.
 - b. An operator of a small MS4 seeking a waiver under § 1.32(G)(5)(b) of this Part must submit the following:
 - (1) 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.
 - (2) A table which identifies the following information for each outfall:
 - (AA) Any waters designated as impaired on the latest Rhode Island 303(d) list of impaired waters that receive a discharge from the outfall;
 - (BB) Any EPA approved or established TMDLs completed for impaired water bodies that receive a discharge from the outfall;
 - (CC) The pollutant(s) of concern addressed by the EPA approved or established TMDL;

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

- (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.
- (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 § 1.32(E)(4)(b)(3) of this Part, for which TMDLs have not been completed for all pollutants of concern; and
- (5) Any other additional information that the Department Director deems is necessary to make a determination.

c. An operator of a small MS4 seeking a waiver under § 1.32(G)(5)(c) of this Part must submit the following:

- (1) Documentation of the extent that the Storm Water Management Program Plan required under § 1.32(E)(3) of this Part provides permit coverage for all discharges to Special Resource Protection Waters (SRPWs), Outstanding National Resource Waters (ONRWs), and impaired water bodies; or
- (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
- (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
- (4) Any other additional information that the Department deems is necessary to make a determination.

F. Application Deadlines. Any operator of a point source required to obtain a permit under § 1.32 of this Part, 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. Storm Water Discharges Associated with Industrial Activity.
 - a. Except as provided in §§ 1.32(F)(1)(b) and 1.32(F)(5) of this Part, for any storm water discharge associated with industrial activity identified in §§ 1.4(A)(111)(a) through (k) of this Part, that is not part of a group application as described in § 1.32(C)(3) of this Part or which is not authorized by a general permit, a permit application shall be submitted to the Department by April 19, 1993. However, facilities that meet the definition of light industry in accordance to § 1.4(A)(111)(k) of this Part, 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 or a permit application in accordance to § 1.32(C) of this Part.
 - 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 by March 10, 2003.
2. Group Permit Applications. Any group application submitted in accordance with § 1.32(C)(3) of this Part shall comply with all Federal requirements.
 - a. Except as provided in § 1.32(F)(2)(b) of this Part 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. 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. For any discharge from a medium municipal separate storm sewer system;
 - a. Part 1 of the application shall be submitted to the Department by April 19, 1993.

- b. Based on information received in the Part 1 application the Department will approve or deny a sampling plan under § 1.32(D)(1)(d)((5)) of this Part within ninety (90) days after receiving the Part 1 application.
 - c. Part 2 of the application shall be submitted to the Department by May 17, 1993.
- 4. For the storm water discharges defined below, a permit application shall be submitted to the 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 Department (see 40 C.F.R. § 124.52(c), incorporated above at § 1.3(B) of this Part):
 - a. A storm water discharge which the 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) or is designated in accordance with § 1.32(A)(1)(h) of this Part;
 - b. A storm water discharge subject to § 1.32(C)(1)(e) of this Part.
- 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, (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.
- 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, 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. 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, a permit application must be

submitted to the Department by March 10, 2003, unless designated for coverage before then.

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 must be submitted to the Department by:
 - a. March 10, 2003 if subject to §§ 1.32(A)(5)(a)((1)) through ((4)) of this Part;
 - b. March 10, 2008 if subject to § 1.32(A)(5)(a)((7)) of this Part;
 - 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.
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 must submit an application for a waiver in accordance with § 1.32(E)(4) of this Part by June 19, 2002.
 - b. An operator of a small MS4 seeking a waiver under § 1.32(G)(5)(c) of this Part must submit an application for a waiver in accordance with § 1.32(E)(4) of this Part by March 10, 2007.

G. Petitions

1. Any operator of a municipal separate storm sewer system may petition the Department to require a separate RIPDES permit for any discharge or category of discharges into the municipal separate storm sewer system.
2. Any person may petition the 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. The owner or operator of a municipal separate storm sewer system may petition the 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. Any person may petition the 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. Final determination on any petition will be made in accordance to § 1.32(G)(8) of this Part.
5. The Department may waive the requirement to obtain a permit for small municipal separate storm sewer systems under the following circumstances:
 - 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 of this Part), and the MS4 meets the following criteria:
 - (1) The small MS4 is not contributing substantially to the pollutant loadings of a physically interconnected regulated MS4;
 - (2) The small MS4 does not discharge to an impaired water body, within the urbanized area or densely populated area;
 - (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;
 - (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.
 - 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), and the MS4 meets all of the following criteria:

- (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;
 - (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;
 - (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
 - (4) The operator of the MS4 has demonstrated to the satisfaction of the Department 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.
- 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), or previously waived in accordance with §§ 1.32(G)(5)(a) and 1.32(G)(5)(b) of this Part 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 Department by meeting the following criteria:
- (1) The operator has documented that the Storm Water Management Program Plan as defined in § 1.32(E) 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
 - (2) 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

- (3) If the small MS4 was previously waived in accordance to §§ 1.32(G)(5)(a) and 1.32(G)(5)(b) of this Part the Department must determine that those criteria for granting the waiver continue to be met.
 6. Any person may petition the Department to review a waiver when the petitioner provides evidence that the information required for granting the waiver have changed.
 7. The Department will periodically review any waivers granted in accordance to § 1.32(G)(5) 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. The 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 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 Department has designated, a permit application shall be submitted to the Department within one hundred eighty (180) days of notice.
- 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) of this Part. “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.
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) a certification, in accordance to § 1.32(H)(4) of this Part 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) of this Part;
 - c. Submit the signed certification to the Department once every five years;
 - d. Allow the Department to inspect the facility to determine compliance with the “no exposure” conditions;
 - e. Allow the 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. 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. Limitations.
- a. Storm water discharges from construction activities identified in as defined in §§ 1.4(A)(111)(j) 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 Department retains the authority to require permit authorization (and deny this exclusion) on a case-by-case basis, based on the information provided in § 1.32(H)(4) of this Part or upon making a determination that the materials or activities listed in § 1.32(H)(4)(c) of this Part are or have been exposed to precipitation.
- 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);
 - 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): “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) of this Part. 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 Department deems is necessary to make a determination.

1.33 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, 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 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 § 1.4 of this Part 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, 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. § 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.
 - a. Except as provided in §§ 1.33(B)(2)(e) and 1.33(B)(2)(f) of this Part, 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,

contains a provision that a notice of intent is not required or the Department notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with § 1.33(B)(2)(f) of this Part. 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 Part.

- b. 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 Department may reasonably require under § 1.11 of this Part. 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 Part.
- c. 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;
- d. 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 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 Department. Coverage may be terminated or revoked in accordance with § 1.33(C) of this Part.
- e. 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 Department, be authorized to discharge under a general permit without submitting a notice of intent where the Department finds that a notice of intent requirement would be inappropriate. In making such a finding, the 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 Department shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

- f. The 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.
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 § 1.32 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. 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 for individual small MS4 operators.
 - (1) 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.
 - (2) 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. 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. The Department must respond to significant comments received during the comment period as provided in § 1.48 of this Part.

- (3) 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 § 1.32 of this Part;
 - 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 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, 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.

1.34 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. § 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. § 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. § 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. § 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. § 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. § 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. § 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. § 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. § 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. § 133, incorporated above at § 1.3(B) of this Part.

1.35 Procedures for Issuing a RIPDES Permit

- A. The permit issuance process involves the following seven major procedural stages:
 - 1. An application is made in proper form.

2. The Department prepares a tentative decision to issue or deny a draft RIPDES permit. This decision shall be made available for public comment.
3. 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.
4. 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.
5. 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.
6. The Department shall make all final decisions concerning the permit.
7. 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.

1.36 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.

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.

1.37 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 §§ 1.24 or 1.26 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 § 1.24 of this Part, a draft permit shall be prepared under § 1.38 of this Part 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 § 1.26 of this Part are not subject to the requirements of this section.
- C. If the Department tentatively decides to terminate a permit under § 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.
- 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 § 1.41 of this Part.

1.38 Draft Permits

- A. All draft permits shall be issued in accordance with this section.
- B. Once an application is complete the Department shall tentatively decide whether to prepare a draft permit, or deny the application.
- C. 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.
- D. 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.

- E. 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 §§ 1.14, 1.15, 1.16, and 1.17 of this Part.
 3. All monitoring requirements under §§ 1.15, 1.16, and 1.17 of this Part.
 4. All variances under §§ 1.57 through 1.60 of this Part.
 5. All effluent limitations, standards, prohibitions and conditions under 40 C.F.R. § 122.44, incorporated above at § 1.3(B) of this Part and the Rhode Island Pretreatment Regulations, [Part 2](#) of this Subchapter.
- F. 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 § 1.50 of this Part.

1.39 Statement of Basis

The Department shall prepare a statement of basis for every draft permit for which a fact sheet under § 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.

1.40 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), 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.
3. 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 § 1.41 of this Part.
4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;
5. 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 § 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.
6. 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 § 1.17 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. § 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 Department's decision on regulation of users under § 1.17(E) of this Part.

1.41 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 § 1.38 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, 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.

1.42 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 § 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 § 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 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 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 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 § 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 §§ 1.43 and 1.44 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 § 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 33 U.S.C. § 1326(a) (Section 316(a) of the Clean Water Act) has been filed under § 1.60 of this Part, the public notice shall include:
 - (1) A statement that the thermal component of the discharge is subject to effluent limitations under 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 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 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. § 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, the public notice of a hearing under § 1.44 of this Part 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 § 1.42(D)(1) of this Part, all persons identified in § 1.42(C) of this Part shall be mailed a copy of the fact sheet or statement of basis, the permit application (if any), and the draft permit (if any).

1.43 Public Comment and Request for Public Hearings

During the public comment period provided under § 1.42 of this Part, 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 § 1.48 of this Part.

1.44 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 § 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 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.

1.45 Obligation to Raise Issues and Provide Information During the Public Comment Period

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. 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 to the extent they appear necessary.)

1.46 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 § 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 § 1.38 of this Part;
 - 2. Prepare a revised statement of basis under § 1.39 of this Part, a fact sheet or revised fact sheet under § 1.40 of this Part and reopen the comment period; or
 - 3. Reopen or extend the comment period under § 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 § 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 § 1.42 of this Part.

1.47 Issuance and Effective Date of Permit

- A. After the close of the public comment period under § 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) of this Part unless:
 - 1. A later effective date is specified in the decision; or
 - 2. An adjudicatory hearing is requested under § 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.

1.48 Response to Comments

- A. At the time that any final permit is issued, pursuant to § 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.

1.49 Administrative Record for Final Permit

- A. The Department shall base final draft permit and final permit decisions under § 1.47 of this Part 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 § 1.42 of this Part (including any extension or reopening under § 1.46 of this Part);
 - 2. The tape or transcript of any hearing(s) held under § 1.44 of this Part;
 - 3. Any written materials submitted at such hearing;
 - 4. The response to comments required under § 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 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 § 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.

1.50 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 § 1.47 of this Part, any interested person may submit a request to the Department under § 1.50(B) of this Part 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, Departments, employees, consultants and agents of the requester and the persons represented by the requester.
 - 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.

1.51 Stays of Contested Permit Conditions

- A. If a request for an adjudicatory hearing of a permit under § 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 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 § 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 Department in accordance with §§ 1.51(A) and 1.51(B) of this Part.
- 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 § 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:
 - a. it is likely to prevail on the merits;
 - b. irreparable harm to the environment will not result pending final agency action if it is allowed to commence operations before final agency action; and
 - c. 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.

1.52 Decision on Request for Hearing

- A. Following the expiration of the time allowed by § 1.50 of this Part 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 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. The Department shall specify these conditions in writing and serve notice in accordance with § 1.53 of this Part. 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.
- 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.

1.53 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.

1.54 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.

1.55 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 (§ 1.28 of this Part), Concentrated Aquatic Animal Production Facilities (§ 1.29 of this Part), Separate Storm Sewers (§ 1.32 of this Part) and certain other facilities covered by a General Permit (§ 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.

1.56 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. § 124.59, incorporated above at § 1.3(B) of this Part.
- 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.

1.57 Variances Under the State and Federal Acts

- A. An applicant for a renewal of a RIPDES permit may apply for the following variances:
 - 1. 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:
 - a. 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. The request shall explain how the requirements of § 1.45 of this Part and 40 C.F.R. § 125 Subpart D, incorporated above at § 1.3(B) of this Part, have been met.
 - b. Non-conventional pollutants. A request for a variance from the BAT requirements for 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) 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) September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline, promulgated before December 27, 1977; or
 - (BB) 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977; and
 - (2) Submitting a completed request no later than the close of the public comment period under § 1.42 of this Part demonstrating that the requirements of § 1.45 of this Part and the applicable requirements of 40 C.F.R. § 125, incorporated above at § 1.3(B) of this Part, have been met.
 - (3) Requests for variance from effluent limitations not based on effluent limitation guidelines, need only comply with § 1.57(A)(2)(b) of this Part and need not be preceded by an initial request under § 1.57(A)(2)(a) of this Part.
- c. Delay in construction of POTW. An extension under 33 U.S.C. § 1311(i)(2) (Section 301(i)(2) of the Clean Water Act), of the statutory deadlines in 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, 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. § 125 Subpart J, incorporated above at § 1.3(B) of this Part, have been met.
- d. Innovative technology. An extension under 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 for the discharger's initial permit requiring compliance with 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 and 40 C.F.R. § 125, Subpart C, incorporated above at § 1.3(B) of this Part, have been met.

- e. Water quality related effluent limitations. A modification under 33 U.S.C. § 1312(b)(2) (Section 302(b)(2) of the Clean Water Act), of requirements under 33 U.S.C. § 1312(a) (Section 302(a) of the Clean Water Act), for achieving water quality related effluent limitations may be requested no later than the close of the public comment under § 1.42 of this Part on the permit from which the modification is sought.
 - f. Thermal discharges. A variance under 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 § 1.42 of this Part. A copy of the request as required under 40 C.F.R. § 125 Subpart H, shall be sent simultaneously to the Department as required under 40 C.F.R. § 125, incorporated above at § 1.3(B) of this Part).
2. 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:
- a. Dischargers into marine waters. A preliminary request for a modification under the 33 U.S.C. § 1326(a) (Section 301(h) of the Clean Water Act) of requirements of the 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. § 125 Subpart G, and shall demonstrate that all the requirements of 40 C.F.R. § 125 Subpart G, incorporated above at § 1.3(B) of this Part, have been met.
 - b. Delay in construction. An extension under the 33 U.S.C. § 1311(i)(1) (Section 301(i)(1) of the Clean Water Act), of the statutory deadlines in 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.

- c. Water quality based effluent limitation. A modification under 33 U.S.C. § 1312(b)(2) (Section 302(b)(2) of the Clean Water Act), of the requirements under 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 § 1.42 of this Part on the permit from which the modification is sought.
- 3. Expedited variance procedures and time extensions.
 - a. Notwithstanding the time requirements in §§ 1.57(A) and 1.57(B) of this Part, the Department may notify a permit applicant before a draft permit is issued under § 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. § 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.
 - b. A discharger who cannot file a complete request required under §§ 1.57(A)(2)(a) or 1.57(A)(2)(b) of this Part 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.
- 4. 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 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 § 1.42 of this Part.

1.58 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 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 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 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 33 U.S.C. § 1311(c) (Section 301(c) of the Clean Water Act).
 3. A variance based upon certain water quality factors under 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 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 which is forwarded by the Department with a recommendation for approval, to the EPA Office of Water.
- D. The EPA Office of Water may approve or deny any variance request submitted under § 1.58(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.

1.59 Procedures for Variances

- A. When a request for a variance is filed as required under § 1.57 of this Part, the request shall be processed as follows:
1. If at the time that a request for a variance is submitted the Department has received an application for issuance or renewal of 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 § 1.42 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, and the processing of the permit shall proceed without delay.

2. If at the time that a request for a variance is filed the Department has given notice under § 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 § 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, and the administrative disposition of the existing draft permit shall proceed without delay.
3. 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) and 1.59(B) of this Part, the Department may prepare a new draft permit and give notice of it under § 1.42 of this Part. This draft permit shall be accompanied by the fact sheet required by § 1.40 of this Part except that the only matters considered shall relate to the requested variance.

1.60 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. § 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 §§ 1.47 and 1.56 of this Part are whether alternative effluent limitations would be justified under 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 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 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 § 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. § 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 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 shall be publicly noticed as required by § 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 33 U.S.C. § 1326(a) (Section 316(a) of the Clean Water Act) any decision under 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.

1.62 Table 1 - Testing Requirements for Organic Toxic Pollutants Industry 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.

1.63 Table II - Organic Toxic Pollutants in Each of Four (4) Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (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.

1.64 Table III - Other Toxic Pollutants, Metals, Cyanide, and Total 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.

1.65 Table IV - Conventional and Non-Conventional Pollutants Required to be Tested by Existing Dischargers if Expected to 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.

1.66 Table V - Toxic Pollutants and Hazardous Substances Required to be Identified 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.

1.67 Criteria for Determining A Concentrated Animal Feeding Operation

An animal feeding operation is a concentrated animal feeding operation for purposes of § 1.28 of this Part if the criteria from 40 C.F.R. §§ 122.23(b)(4) – (6), incorporated above at § 1.3(B) of this Part, are met.

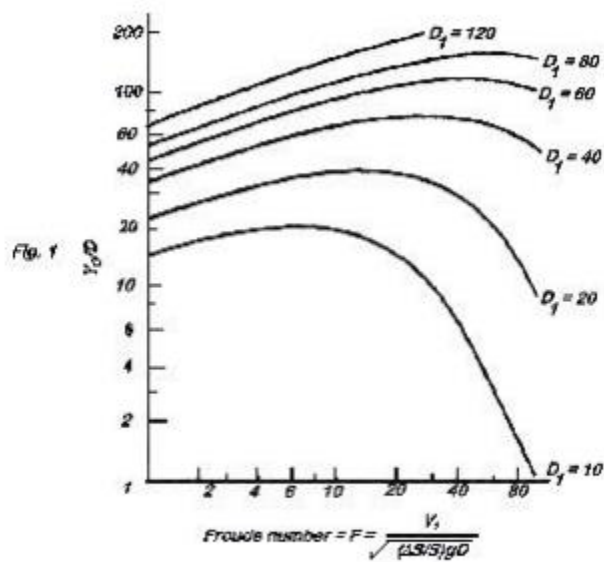
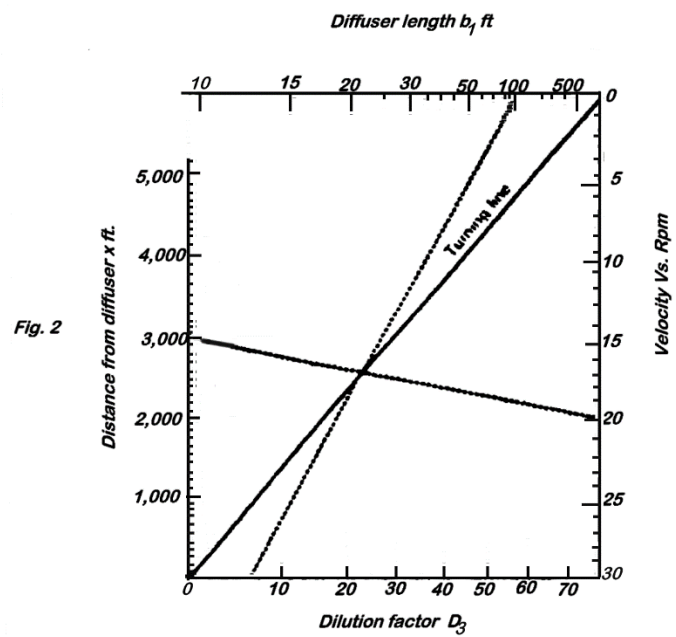
1.68 Criteria for Determining a Concentrated Aquatic Animal Production Facility - A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of § 1.29 of this Part if it contains, grows, or holds aquatic animals in either of the following categories.

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.

1.69 Primary Industry Categories

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.

1.70 Nomographs for Calculating Froude Numbers and Dilution Factor



1.71 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)

| State | Incorporated Place |
|--------------|--------------------|
| Rhode Island | Providence |

1.72 Incorporated Places in Rhode Island Located Fully or Partially within an Urbanized Area and Densely Populated 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. 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 § 1.74 of this Part. 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 for the definition of a small MS4 and 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 |

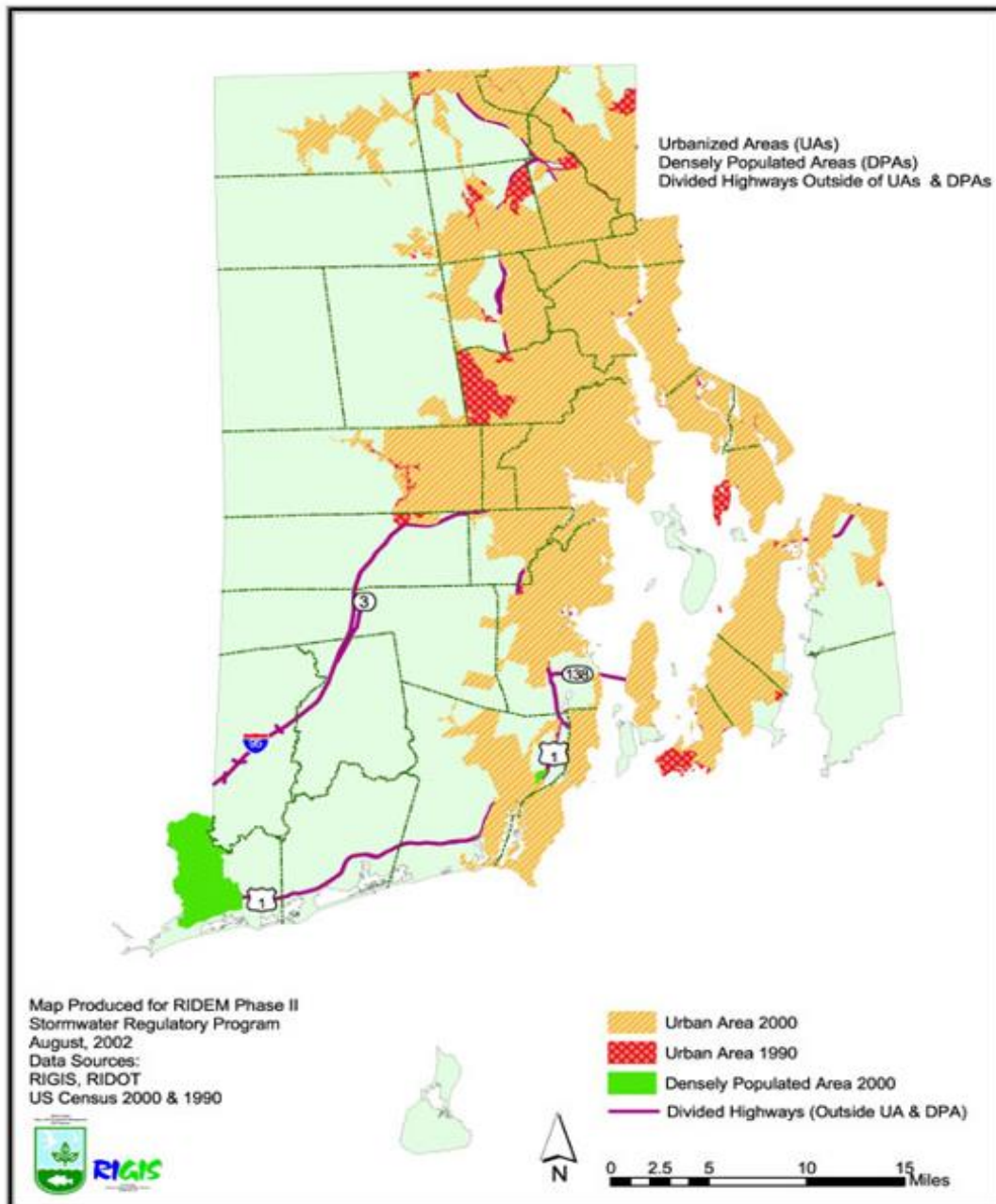
| | |
|--|---------------------|
| Warren (Town) | 11,103 |
| Warwick (City) | 85,922 |
| West Greenwich (Town) | 997 |
| West Warwick (Town) | 29,509 |
| Westerly (Town) | 16,612 ³ |
| Woonsocket (City) | 43,224 |
| ¹ Regulated Area includes both 1990 and 2000 Bureau of Census UA and as indicated, the 2000 DPA | |
| ² Population includes both 1990 and 2000 Bureau of Census UA and 2000 DPA | |
| ³ Population of 2000 DPA | |

1.73 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) 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 Part. See § 1.4 of this Part for the definition of a small MS4 and 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 |

1.74



250-RICR-150-10-1

TITLE 250 - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

CHAPTER 150 - WATER RESOURCES

SUBCHAPTER 10 - WASTEWATER & STORM WATER

**PART 1 - REGULATIONS FOR THE RHODE ISLAND POLLUTANT DISCHARGE
ELIMINATION SYSTEM**

Type of Filing: Refile Capabilities

Department of State

Regulation Effective Date

Original Signing Date

Department of State Initials

Department of State Date