the public any other records, reports, plans, or information obtained by the State or interstate agency pursuant to its participation in the NPDES.

(b) The Director shall protect any information (other than effluent data) contained in such NPDES form, or other records, reports, or plans as confidential upon a showing by any person that such information if made public would divulge methods of processes entitled to protection as trade secrets of such person. If, however, the information being considered for confidential treatment is contained in an NPDES form, the Director shall forward such information to the Regional Administrator for his concurrence in any determination of confidentiality. If the Regional Administrator does not agree that some or all of the information being considered for confidential treatment merits such protection, he shall request advice from the Office of General Counsel, stating the reasons for his disagreement with the determination of the Director. The Regional Administrator shall simultaneously provide a copy of such request to the person claiming trade secrecy. The General Counsel shall determine whether the information in question would, if revealed, divulge methods of processes entitled to protection as trade secrets. In making such determinations, he shall consider any additional information submitted to the Office of General Counsel within 30 days of receipt of the request from the Regional Administrator. If the General Counsel determines that the information being considered does not contain trade secrets, he shall so advise the Regional Administrator and shall notify the person claiming trade secrecy of such determination by certified mail. No sooner than 30 days following the mailing of such notice, the Regional Administrator shall communicate to the Director his decision not to concur in the withholding of such information, and the Director and the Regional Administrator shall then make available to the public, upon request, that information determined not to constitute trade secrets.

(c) Any information accorded confidential status, whether or not contained in an NPDES form, shall be disclosed, upon request, to the Regional Administrator, or his authorized representative, who shall maintain the disclosed information as confidential.

(d) The Director shall provide facilities for the inspection of information relating to NPDES forms and shall insure that State employees honor requests for such inspection promptly without undue requirements or restrictions. The Director shall either (1) insure that a machine or device for the copying of papers and documents is available for a reasonable fee, or (2) otherwise provide for or coordinate with copying facilities or services such that requests for copies of nonconfidential documents may be honored promptly.

(*Comment.* Although not required herein, the Director is encouraged to maintain facilities for inspection and copying in more than one location within the State or interstate area in order to increase citizen access to NPDES forms and activities.)

§ 124.36 Public hearings.

The Director shall provide an opportunity for the applicant, any affected State, any affected interstate agency, any affected country, the Regional Administrator, or any interested agency, person, or group of persons to request or petition for a public hearing with respect to NPDES applications. Any such request or petition for public hearing shall be filed within the 30-day period prescribed in § 124.32(b) and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted. The Director shall hold a hearing if there is a significant public interest (including the filing of requests or petitions for such hearing) in holding such a hearing. Instances of doubt should be resolved in favor of holding the hearing. Any hearing brought pursuant to this subsection shall be held in the geographical area of the proposed discharge or other appropriate area, in the discretion of the Director, and may, as appropriate, consider related groups of permit applications.

§ 124.37 Public notice of public hearings.

(a) Public notice of any hearing held pursuant to § 124.36 above shall be circulated at least as widely as was the notice of the NPDES application. Procedures for the circulation of public notice for hearings held under § 124.36 shall include at least the following:

(1) Notice shall be published in at least one newspaper of general circulation within the geographical area of the discharge;

(2) Notice shall be sent to all persons and Government agencies which received a copy of the notice or the fact sheet for the NPDES application;

(3) Notice shall be mailed to any person or group upon request; and

(4) Notice shall be effected pursuant to subparagraphs (1) and (3) of this paragraph at least thirty (30) days in advance of the hearing.

(b) The contents of public notice of any hearing held pursuant to § 124.36 shall include at least the following (see Appendix C to this part for a sample hearing) notice which meets the requirements of this section:

(1) Name, address, and phone number of agency holding the public hearing;

(2) Name and address of each applicant whose application will be considered at the hearing;

(3) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway;

(4) A brief reference to the public notice issued for each NPDES application, including identification number and date of issuance;

(5) Information regarding the time and location for the hearing;

(6) The purpose of the hearing;

(7) A concise statement of the issues raised by the persons requesting the hearing;

(8) Address and phone number of premises at which interested persons may obtain further information, request a copy of each draft NPDES permit prepared pursuant to § 124.31(b) above, request a copy of each fact sheet prepared pursuant to § 124.33, and inspect and copy NPDES forms and related documents; and,

(9) A brief description of the nature of the hearing, including the rules and procedures to be followed.

Subpart E—Terms and Conditions of NPDES Permits

§ 124.41 Prohibited discharges.

Any State or interstate agency participating in the NPDES shall insure that no permit shall be issued authorizing any of the following discharges:

(a) The discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste into navigable waters;

(b) Any discharge which the Secretary of the Army acting through the chief of engineers finds would substantially impair anchorage and navigation;

(c) Any discharge to which the Regional Administrator has objected in writing pursuant to any right to object provided the Administrator in section 402(d) of the Act; and

(d) Any discharge from a point source which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the Act.

§ 124.42 Application of effluent standards and limitations, water quality standards, and other requirements.

(a) Procedures for any State or interstate program participating in the NPDES must insure that the terms and conditions of each issued NPDES permit apply and insure compliance with all of the following, whenever applicable:

(1) Effluent limitations under sections 301 and 302 of the Act;

(2) Standards of performance for new sources under section 306 of the Act;

(3) Effluent standards, effluent prohibitions, and pretreatment standards under section 307 of the Act;

(4) Any more stringent limitation, including those (i) necessary to meet water quality standards, treatment standards, or schedules of compliance, established pursuant to any State law or regulation (under authority preserved by section 510), or (ii) necessary to meet any other Federal law or regulation, or (iii) required to implement any applicable water quality standards; such limitations to include any legally applicable requirements necessary to implement total maximum daily loads established pursuant to section 303(d) and incorporated in the continuing planning process approved under section 303(e) of the Act and any regulations and guidelines issued pursuant thereto;

(5) Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to section 208(b) of the Act; and

(6) Prior to promulgation by the Administrator of applicable effluent standards and limitations pursuant to sections 301, 302, 306, and 307, such conditions as the Director determines are necessary to carry out the provisions of the Act.

(7) If the NPDES permit is for the discharge of pollutants into the navigable waters from a vessel or other floating craft, any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(b) In any case where an issued NPDES permit applies the effluent standards and limitations described in subparagraphs (1), (2), and (3) of paragraph (a) of this section, the Director must state that the discharge authorized by the permit will not violate applicable water quality standards and must have prepared some explicit verification of that statement. In any case where an issued NPDES permit applies any more stringent effluent limitation based upon applicable water quality standards, a waste load allocation must be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

§ 124.43 Effluent limitations in issued NPDES permits.

In the application of effluent standards and limitations, water quality standards, and other legally applicable requirements, pursuant to § 124.42, any State or interstate agency participating in the NPDES shall, for each issued NPDES permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The Director may, in his discretion, in addition to the specification of daily quantitative limitations by weight, specify other limitations, such as average or maximum concentration limits, for

(*Comment.* The manner in which effluent limitations are expressed will depend upon the nature of the discharge. Continuous discharges shall be limited by daily loading figures and, where appropriate, may be limited as to concentration or discharge rate (e.g., for toxic or highly variable continuous discharges). Batch discharges should be more particularly described and limited in terms of (i) frequency (e.g., to occur not more than once every 3 weeks), (ii) total weight (e.g., not to exceed 300 pounds per batch discharge), (iii) maximum rate of discharge of pollutants during the batch discharge (e.g., not to exceed 2 pounds per minute), and (iv) prohibition or limitation by weight, concentration, or other appropriate measure of specified pollutants (e.g., shall not contain at any time more than 0.1 p.p.m. zinc or more than one-fourth (¼) pound of zinc in any batch discharge). Other intermittent discharges such as recirculation blowdown should be particularly limited to comply with any applicable water quality standards and effluent standards and limitations.)

§ 124.44 Schedules of compliance in issued NPDES permits.

In addition to the application of the effluent standards and limitations, water quality standards, and other legally applicable requirements, pursuant to § 124.42, any State or interstate agency participating in the NPDES shall follow the following procedures in setting schedules in NPDES permit conditions to achieve compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements:

(a) With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in § 124.42 (d) and (e), the permittee shall be required to take specific steps to achieve compliance with the following:

(1) In accordance with any legally applicable schedule of compliance contained in:

(i) Applicable effluent standards and limitations;

(ii) If more stringent, water quality standards; or,

(iii) If more stringent, legally applicable requirements listed in § 124.42 (d) and (e); or,

(2) In the absence of any legally applicable schedule of compliance, in the shortest, reasonable period of time, such period to be consistent with the guidelines and requirements of the Act.

(b) In any case where the period of time for compliance specified in paragraph (a) of this section exceeds 9 months, a schedule of compliance shall be specified in the permit which will set forth interim requirements and the dates for their achievement; in no event shall more than 9 months elapse between interim dates. If the time necessary for completion of the interim requirement (such as the construction of a treatment facility) is more than 9 months and is not readily divided into stages for completion, interim dates shall be specified for the submission of reports of progress towards completion of the interim requirement. For each NPDES permit schedule of compliance, interim dates and the final date for compliance shall, to the extent practicable, fall on the last day of the months of March, June, September, and December.

(*Comment.* Certain interim requirements such as the submission of preliminary or final plans often require less than 9 months and thus a shorter interval should be specified. Other requirements such as the construction of treatment facilities may require several years for completion and may not readily subdivide into 9-month intervals. Long-term interim requirements should nonetheless be subdivided into intervals not longer than 9 months at which the permittee is required to report his progress to the Director pursuant to § 124.44(c)).

(c) Either before or up to fourteen (14) days following each interim date and the final date of compliance the permittee shall provide the Director with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

(d) On the last day of the months of February, May, August, and November the Director shall transmit to the Regional Administrator a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the Director of compliance or noncompliance with each interim or final requirement (as required pursuant to paragraph (b) of this section. Such list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

(1) Name and address of each noncomplying permittee;

(2) A short description of each instance of noncompliance (e.g., failure to submit preliminary plans, 2 week delay in commencement of construction of treatment facility; failure to notify Director of compliance with interim requirement to complete construction by June 30th, etc.);

(3) A short description of any actions or proposed actions by the permittee or the Director to comply or enforce compliance with the interim or final requirement; and

(4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objections from State Fish and Wildlife Agency

(e) If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit such noncompliance shall constitute a violation of the permit for which the Director may, pursuant to Subpart H of this part, modify, suspend or revoke the permit or take direct enforcement action.

§ 124.45 Other terms and conditions of issued NPDES permits.

In addition to the requirements of §§ 124.42, 124.43, and 124.44, procedures of any State or interstate agency participating in the NPDES must insure that the terms and conditions of each issued NPDES permit provide for and insure the following:

(a) That all discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the permit; that facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants must be reported by submission of a new NPDES application or, if such discharge does not violate effluent limitations specified in the NPDES permit, by submission to the Director of notice of such new or increased discharges of pollutants; that the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit;

(b) That the permit may be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:

(1) Violation of any terms or conditions of the permit;

(2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; and,

(3) A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

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(c) That the permittee shall permit the Director or his authorized representative, upon the presentation of his credentials:

(1) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit;

(2) To have access to and copy any records required to be kept under terms and conditions of the permit;

(3) To inspect any monitoring equipment or method required in the permit; or,

(4) To sample any discharge of pollutants.

(d) That, if the permit is for a discharge from a publicly owned treatment works, the permittee shall provide notice to the Director of the following:

(1) Any new introduction of pollutants into such treatment works from a source which would be a new source as defined in section 306 of the Act if such source were discharging pollutants;

(2) Except as to such categories and classes of point sources or discharges specified by the Director, any new introduction of pollutants into such treatment works from a source which would be subject to section 301 of the Act if such source were discharging pollutants; and,

(3) Any substantial change in volume or character of pollutants being introduced into such treatment works by a source introducing pollutants into such works at the time of issuance of the permit.

Such notice shall include information on (i) the quality and quantity of effluent to be introduced into such treatment works and (ii) any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works.

(e) That, if the permit is for a discharge from a publicly owned treatment works, the permittee shall require any industrial user of such treatment works to comply with the requirements of sections 204(b), 307, and 308 of the Act. As a means of insuring such compliance, the permittee shall require of each industrial user subject to the requirements of section 307 of the Act and shall forward a copy to the Director periodic notice (over intervals not to exceed 9 months) of progress towards full compliance with section 307 requirements.

(f) That the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control installed by the permittee to achieve compliance with the terms and conditions of the permit.

(g) That if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the Act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the NPDES permit, the Director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and so notify the permittee.

§ 124.46 Transmission to Regional Administrator of proposed NPDES permits.

Any State or interstate agency participating in the NPDES shall transmit to the Regional Administrator copies of NPDES permits proposed to be issued by such agency in such manner as the Director and Regional Administrator shall agree upon. Any agreement between the State or interstate agency and the Regional Administrator shall provide for at least the following:

(a) Except as waived pursuant to paragraph (d) of this section, the transmission by the Director of any and all terms, conditions, requirements, or documents which are a part of the proposed permit or which affect the authorization by the proposed permit of the discharge of pollutants;

(b) A period of time (up to 90 days) in which the Regional Administrator, pursuant to any right to object provided in section 402(d)(2) of the Act, may comment upon, object to, or make recommendations with respect to the proposed permit;

(c) Procedures for State acceptance or rejection of a written objection by the Regional Administrator; and

(d) Any written waiver by the Regional Administrator of his rights to receive, review, object to, or comment upon proposed NPDES permits for classes, types, or sizes within any category of point sources.

§ 124.47 Transmission to Regional Administrator of issued NPDES permits.

Each State or interstate agency participating in the NPDES shall transmit to the Regional Administrator a copy of every issued NPDES permit, immediately following issuance, along with any and all terms, conditions, requirements, or documents which are a part of such permit or which affect the authorization by the permit of the discharge of pollutants.

Subpart F—Duration and Review of NPDES Permits

§ 124.51 Duration of issued NPDES permits.

Any State or interstate agency participating in the NPDES shall provide that each issued NPDES permit shall have a fixed term not to exceed 5 years.

(*Comment.* The term of an NPDES permit may extend beyond the time for compliance specified pursuant to § 124.44. The time for compliance shall be that dictated by (i) effluent standards and limitations, or (ii) if more stringent, water quality standards, or (iii) if more stringent, other legally applicable requirements such as those listed in § 124.42 (d) and (e). The term of the NPDES permit may extend beyond the final deadline for compliance, except that the term may not exceed 5 years. Failure to comply with the permit schedule of compliance, including interim and final requirements, as provided in § 124.44(e), is a violation of the permit for which the Director may take Subpart H of this part enforcement action.)

§ 124.52 Reissuance of NPDES permits.

(a) Any State or interstate agency participating in the NPDES shall maintain procedures for the review of applications for reissuance of NPDES permits. Such review procedures shall require, and the Director shall so notify the permittee, that any permittee who wishes to continue to discharge after the expiration date of his NPDES permit must file for reissuance of his permit at least 180 days prior to its expiration. The filing requirements for reissuance shall be determined by the State or interstate agency and may range from a simple written request for reissuance to submission of all NPDES and State or interstate forms.

(b) The scope and manner of any review of an application for reissuance of an NPDES permit shall be within the discretion of the State or interstate agency but shall be sufficiently detailed as to insure the following:

(1) That the permittee is in compliance with or has substantially complied with all the terms, conditions, requirements, and schedules of compliance of the expired NPDES permit;

(2) That the Director has up-to-date information on the permittee's production levels, permittee's waste treatment practices, nature, contents, and frequency of permittee's discharge, either pursuant to the submission of new forms and applications or pursuant to monitoring records and reports submitted to the Director by the permittee; and,

(3) That the discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements listed in § 124.42, including any additions to, or revisions or modifications of such effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

(c) The State or interstate agency shall follow the notice and public participation procedures specified in Subpart D of this part in connection with each request for reissuance of an NPDES permit.

(d) Notwithstanding any other provision in this part, any point source the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which is so constructed as to meet all applicable standards of performance shall not be subject to any more stringent standard of performance during a 10-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954, whichever period ends first.

Subpart G—Monitoring, Recording, and Reporting

§ 124.61 Monitoring.

Procedures of any State or interstate agency participating in the NPDES for the monitoring of any discharge author-

ized by an NPDES permit shall be consistent with the following:

(a) Any discharge authorized by an NPDES permit may be subject to such monitoring requirements as may be reasonably required by the Director, including the installation, use, and maintenance of monitoring equipment or methods (including, where appropriate, biological monitoring methods).

(b) Any discharge authorized by an NPDES permit which (1) is not a minor discharge, (2) the Regional Administrator requests, in writing, be monitored, or (3) contains toxic pollutants for which an effluent standard has been established by the Administrator pursuant to section 307(a) of the Act, shall be monitored by the permittee for at least the following:

(i) Flow (in gallons per day); and,

(ii) All of the following pollutants:

(a) Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the permit;

(b) Pollutants which the Director finds, on the basis of information available to him, could have a significant impact on the quality of navigable waters;

(c) Pollutants specified by the Administrator, in regulations issued pursuant to the Act, as subject to monitoring; and,

(d) Any pollutants in addition to the above which the Regional Administrator requests, in writing, be monitored.

(c) Each effluent flow or pollutant required to be monitored pursuant to paragraph (b) of this section shall be monitored at intervals sufficiently frequent to yield data which reasonably characterizes the nature of the discharge of the monitored effluent flow or pollutant. Variable effluent flows and pollutant levels may be monitored at more frequent intervals than relatively constant effluent flows and pollutant levels which may be monitored at less frequent intervals.

§ 124.62 Recording of monitoring activities and results.

Any State or interstate agency participating in the NPDES shall specify the following recording requirements for any NPDES permit which requires monitoring of the authorized discharge:

(a) The permittee shall maintain records of all information resulting from any monitoring activities required of him in his NPDES permit;

(b) Any records of monitoring activities and results shall include for all samples: (1) The date, exact place, and time of sampling; (2) the dates analyses were performed; (3) who performed the analyses; (4) the analytical techniques/methods used; and, (5) the results of such analyses; and,

(c) The permittee shall be required to retain for a minimum of 3 years any records of monitoring activities and results including all original strip chart recording for continuous monitoring instrumentation and calibration and maintenance records. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Director or Regional Administrator.

§ 124.63 Reporting of monitoring results.

Any State or interstate agency participating in the NPDES shall require periodic reporting (at a frequency of not less than once per year) on the proper NPDES reporting form of monitoring results obtained by a permittee pursuant to monitoring requirements in an NPDES permit. In addition to the NPDES reporting form, the Director in his discretion may require submission of such other suits as he determines to be necessary. information regarding monitoring re-

(*Comment.* Reporting frequency, as with monitoring frequency, depends upon the nature and impact of the discharge. Annual report submission is sufficient for small cooling water discharges. Discharges for which more frequent, even monthly, reporting is desirable include variable discharges, major, including municipal, discharges, and discharges for which new treatment or control methods are being applied. Reporting frequency should correspond with administrative capability to evaluate the reports as they come in.)

§ 124.64 NPDES monitoring, recording, and reporting requirements.

Any State or interstate agency participating in the NPDES shall adopt procedures consistent with any national monitoring, recording, and reporting requirements specified by the Administrator in regulations issued pursuant to the Act.

Subpart H—Enforcement Provisions

§ 124.71 Receipt and followup of notifications and reports.

(a) Any State or interstate agency participating in the NPDES shall have the procedures and the capability for the receipt, evaluation, and investigatory followup for possible enforcement or remedial action of all notices and reports required of permittees including, but not limited to, the following:

(1) Reports from industrial users of progress towards compliance with the rquirements of section 307 of the Act, submitted pursuant to § 124.45(e);

(2) Notifications (or failure to notify) from permittees of compliance or noncompliance with interim requirements specified in NPDES permit schedules of compliance pursuant to § 124.44; and,

(3) Data submitted by permittees in NPDES reporting forms and other forms supplying monitoring data, pursuant to Subpart G of this part.

(b) Any such reports or notifications received by the Director pursuant to paragraph (a) of this section shall: (1) Constitute information available to the Director and (2) if forwarded to the Regional Administrator pursuant to the provisions of this part shall constitute information available to the Administrator within the meaning of section 309 of the Act.

(c) Any State or interstate agency participating in the NPDES shall have procedures and capability similar to paragraph (a) of this section for the receipt and evaluation of notices (relating to new introductions or changes in the volume or character of pollutants introduced into publicly owned treatment works) submitted by permittees which are publicly owned treatment works, pursuant to § 124.45(d), for possible violation of the terms and conditions of the NPDES permit. If the Director determines that any condition of the permit is violated, he shall notify the Regional Administrator and consider taking action under section 402(h) of the Act (relating to proceedings to restrict or prohibit the introduction of pollutants into treatment works).

§ 124.72 Modification, suspension, and revocation of NPDES permits.

(a) Any State or interstate agency participating in the NPDES shall provide procedures which insure that, after notice and opportunity for a public hearing, any permit issued under the NPDES can be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the causes listed in § 124.45(b) or for failure or refusal of the permittee to carry out the requirements of § 124.45(c).

(b) The Director may, upon request of the applicant, revise or modify a schedule of compliance in an issued NPDES permit if he determines good and valid cause (such as an Act of God, strike, flood, materials shortage, or other event over which the permittee has little or no control) exists for such revision and if within 30 days following receipt of notice from the Director, the Regional Administrator does not object in writing. All revisions or modifications made pursuant to this subsection during the period ending 30 days prior to the date of transmission of such list, shall be included in the list prepared by the Director pursuant to § 124.44(d).

§ 124.73 Enforcement.

Any State or interstate agency participating in the NPDES shall have such powers and procedures and such recourse to criminal, civil, and civil injunctive remedies as to insure the following ways and means are available to protect, maintain, and enhance water quality:

(a) Procedures which enable the Director to require compliance with (1) any effluent standards and limitations or water quality standards, (2) any NPDES permit or term or condition thereof, (3) any NPDES filing requirements, (4) any duty to permit or carry out inspection, entry, or monitoring activities, or (5) any rules or regulations issued by the Director either pursuant to orders issued by the Director, court actions, or both;

(b) Procedures which enable the Director to immediately and effectively halt or eliminate any imminent or substantial endangerments to the health or welfare of persons resulting from the discharge of pollutants (1) by an order or suit in the appropriate State court to immediately restrain any person causing or contributing to the discharge of pollutants or to take such other action as may be necessary, or (2) by a procedure for the immediate telephonic notice to the Regional Administrator of any actual

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or threatened endangerments to the health or welfare of persons resulting from the discharge of pollutants;

(c) Procedures which enable the Director to sue in courts of competent jurisdiction to enjoin any threatened or continuing violations of any NPDES permits or conditions thereof without the necessity of a prior revocation of the permit;

(d) Procedures which enable the Director to enter any premises in which an effluent source is located or in which records are required to be kept under terms or conditions of a permit and otherwise be able to investigate, inspect, or monitor any suspected violations of water quality standards or effluent standards and limitations or of NPDES permits or terms or conditions thereof;

(e) Procedures which enable the Director to assess or to sue to recover in court, such civil fines, penalties, and other civil relief as may be appropriate for the violation by any person of (1) any effluent standards and limitations or water quality standards, (2) any NPDES permit or term or condition thereof, (3) any NPDES filing requirements, (4) any duty to permit or carry out inspection, entry, or monitoring activities, (5) any order issued by the Director under paragraph (a) of this section, or (6) any rules, regulations, or orders issued by the Director;

(f) Procedures which enable the Director to seek criminal fines for the willful or negligent violation by such persons of (1) any effluent standards and limitations or water quality standards, (2) any NPDES permit or term or condition thereof, (3) any NPDES filing requirements;

(g) Procedures which enable the Director to seek criminal fines against any person who knowingly makes any false statement, representation, or certification in any NPDES form or any notice or report required by the term and conditions of any issued NPDES permit or knowingly renders inaccurate any monitoring device or method required to be maintained by the Director; and

(h) The maximum civil penalties and criminal fines recoverable by the Director pursuant to paragraphs (e) and (f) of this section shall (1) be comparable to similar maximum amounts recoverable by the Regional Administrator under section 309 or (2) represent an actual and substantial economic deterrent to the actions for which they are assessed or levied. Such civil penalties or criminal fines shall be assessable up to the maximum amounts for each violation specified in paragraphs (e) and (f) of this section, or, if the violation is a continuous discharge, assessable for each day the discharge occurs.

(*Comment.* It is understood that in many States the Director will be represented in State courts by the State attorney general or other appropriate legal officer. While the Director need not appear in court actions under this subpart, he should have the power to request that such actions be brought.

The following enforcement options, while not mandatory, are highly recommended as means not only for compelling compliance but also for providing additional funds to State or interstate program efforts:

(1) Procedures for assessment by the Director or by a State court of any violator for the costs of an investigation, inspection, or monitoring survey which led to the establishment of the violation;

(2) Procedures which enable the Director to assess or to sue any persons responsible for an unauthorized discharge of pollutants for any expenses incurred by the State in removing, correcting, or terminating any adverse effects upon water quality resulting from such unauthorized discharge of pollutants, whether or not accidental; and,

(3) Procedures which enable the Director to sue for compensation for any loss or destruction of wildlife, fish or aquatic life, and for any other actual damages caused by an unauthorized discharge of pollutants, either for the State, for any residents of the State who are directly aggrieved by the unauthorized discharge of pollutants, or both.)

Subpart I—Disposal of Pollutants Into Wells

§ 124.80 Control of disposal of pollutants into wells.

Any State or interstate agency participating in the NPDES shall have procedures which control the disposal of pollutants into wells. Any such disposal shall be sufficiently controlled to protect the public health and welfare and to prevent pollution of ground and surface water resources.

(a) If an applicant for an NPDES permit proposes to dispose of pollutants into wells as part of a program to meet the proposed terms and conditions of an NPDES permit, the Director shall specify additional terms and conditions in the final NPDES permit which shall (1) prohibit the proposed disposal, or (2) control the proposed disposal in order to prevent pollution of ground and surface water resources and to protect the public health and welfare.

(b) A State agency participating in the NPDES shall have procedures to prohibit or control through the issuance of permits all other proposed disposals of pollutants into wells. Following approval of the Administrator of a State program pursuant to section 402 of the Act, the Director shall permit no uncontrolled disposals of pollutants into wells within the State.

(c) Any permit issued for the disposal of pollutants into wells shall be issued in accordance with the procedures and requirements specified in this part.

(d) The Regional Administrator shall distribute to the Director and shall utilize in his review of any permits proposed to be issued by the Director for the disposal of pollutants into wells, any policies, technical information, or requirements specified by the Administrator in regulations issued pursuant to the Act or in directives issued to EPA regional offices.

Subpart J—Resources, Planning and Other Requirements

§ 124.91 Availability of resources.

(a) Any State or interstate agency participating in the NPDES shall, in submitting its program description pursuant to section 402(b) of the Act, provide information regarding funding and manpower appropriated for the use of the program proposed to be established and administered under State law or under an interstate compact. Such information shall include the following:

(1) A description of all full-time and part-time employees who will be engaged in carrying out the State permit program, including information on the qualifications and functions of such employees.

(2) A list of the proposed costs and expenses of establishing and administering the program described in the program description, including (i) wages and salaries of the personnel listed in (1) above, (ii) cost of administrative support (such as office space and supplies, computer time, vehicles, notice and hearing procedures, etc), and (iii) cost of technical support (such as laboratory space and supplies, vehicles, watercraft, etc.). Such estimate of costs and expenses shall include the cost and expense of carrying out the procedures and requirements contained in this part;

(3) A description of the funding available to the Director to meet the costs and expenses listed in subparagraph (2) of this paragraph including any restrictions or limitations upon such funding; and

(4) A list of categories and sizes of all point sources (e.g., major industrial, minor industrial, minor municipal, major feedlot, irrigation return flow, shopping centers and subdivisions, etc.) to which the Director proposes to issue permits under the Act. For each category, the following information shall be given:

(i) Estimated numbers of point sources within such category which are required to file for an NPDES permit; and

(ii) Number and percent of point sources within each category for which the State has already issued a State permit or equivalent document regulating the discharge of pollutants.

(b) The Regional Administrator and the Administrator shall review the information submitted by the Director pursuant to paragraph (a) of this section in order to determine whether the Director has resources available to him which will enable him to carry out the program described in the program description submitted pursuant to section 402(b) and the procedures contained in this part. Such a determination shall be based upon an examination of criteria which shall include the following:

(1) Whether there are a sufficient number of employees to process NPDES applications and issue NPDES permits in sufficient time to allow permittees to attain effluent limitations which will achieve the July 1, 1977 goal specified in section 301(b) of the Act;

(2) Whether the employees of the Director have sufficient expertise and experience for the proper specification of terms and conditions of NPDES permits pursuant to the requirements of subpart E of this part;

(3) Whether the employees of the Director have sufficient administrative and technical support and resources, including funding, to enable the Director to carry out his duties under this part and section 402 of the Act;

(4) The number, location, and kinds of point sources which constitute major sources of discharge of pollutants within the State or interstate area; and

(5) The quality of navigable waters within the State or subject to the authority of the interstate agency.

§ 124.92 Inspection and surveillance support for NPDES permits.

Any State or interstate agency participating in the NPDES shall have the funding, qualified personnel, and other resources necessary to support NPDES permits with inspection and surveillance procedures which will determine, independent of information supplied by applicants and permittees, compliance or noncompliance with applicable effluent standards and limitations, water quality standards, NPDES filing requirements, and issued NPDES permits or terms or conditions thereof. Such surveillance and inspection support procedures shall include the following:

(a) A supporting survey program with sufficient capability to make systematic, on-the-spot, comprehensive surveys of all waters subject to the Director's authority in order to identify and locate all point sources subject to NPDES filing requirements. Any compilation, index, or inventory of point sources shall be made available to the Regional Administrator or his authorized representative upon request;

(b) A supporting inspection program for the periodic inspection (to be performed not less than once every year for every discharge which is not a minor discharge) of discharges of pollutants from point sources and facilities for the treatment and control of such discharges of pollutants. Such inspections shall determine compliance or noncompliance with issued NPDES permits or terms or conditions thereof and, in particular, compliance or noncompliance with specific effluent limitations and schedules of compliance in such NPDES permits;

(c) A supporting surveillance program with sufficient capability for the random sampling and analysis of discharges for the purpose of identifying occasional and continuing violations of permit conditions or terms or conditions thereof and the accuracy of information submitted by permittees in NPDES reporting forms and other forms supplying monitoring data; and

(d) A supporting program for the purpose of following up evidence of violations of applicable effluent standards and limitations and water quality standards, NPDES filing requirements, or issued NPDES permits or terms or conditions thereof indicated by reports and notifications evaluated pursuant to § 124.71 above or by survey, inspection, and surveillance activities in paragraphs (a)–(c) of this section. The taking of samples and other information shall be performed with sufficient care as to produce evidence admissible in an enforcement proceeding or in court should the follow-up indicate a violation of applicable effluent standards and limitations and water quality standards or issued NPDES permits or terms or conditions thereof.

§ 124.93 Continuing planning process.

Any State or interstate program participating in the NPDES must have an approved continuing planning process pursuant to section 303(e) of the Act and must assure that its approved planning process is at all times consistent with the Act.

§ 124.94 Agency Board membership.

Each State or interstate agency participating in the NPDES shall insure that any board or body which approves NPDES permit applications or portions thereof shall not include as a member, any person who receives, or has during the previous 2 years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit.

(a) For the purposes of this section, the term "board or body" includes any individual, including the Director, who has or shares authority to approve permit applications or portions thereof either in the first instance or on appeal.

(b) For the purposes of this section, the term "significant portion of his income" shall mean 10 percent of gross personal income for a calendar year, except that it shall mean 50 percent of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving such portion pursuant to retirement, pension, or similar arrangement.

(c) For the purposes of this section, the term "permit holders or applicants for a permit" shall not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.

(d) For the purposes of this section, the term "income" includes retirement benefits, consultant fees, and stock dividends.

(e) For the purposes of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" where it is derived from mutual-fund payments, or from other diversified investments over which the recipient does not know the identity of the primary sources of income.

Subpart K—NPDES Application and Reporting Forms [Reserved]

(Reserved for NPDES application and reporting forms, along with guidelines and instructions for their use by applicants for NPDES permits and by State and interstate programs participating in the NPDES.)

Appendix A

SAMPLE PUBLIC NOTICE

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER QUALITY AND RESOURCES, 1616 COURT HOUSE DRIVE, CAPITAL CITY, STATE (ZIP) 307—445-8922

[Public Notice No. OPP-72-301; Application No. CIY-400-60-301]

August 12, 1973.

NOTICE—APPLICATION FOR NPDES PERMIT TO DISCHARGE TO STATE WATERS

Acme Paper Products, Inc., 11345 North Fremont Street, Cape Rockaway, State (ZIP) has applied for a Department of Environmental Protection permit to discharge pollutants into State waters.

Applicant is a manufacturer of bleached grades of paper from kraft pulp. Two existing discharges are described in the application: One of the utility waste water from applicant's steam generating plant and the other of process wastes from the manufacture of pulp and paper. Both discharges are presently to Martin Creek one-half-mile upstream from Whitehall Bay.

On the basis of preliminary staff review and application of lawful standards and regulations, the Division of Water Quality and Resources proposes to issue a permit to discharge subject to certain effluent limitations and special conditions. These proposed determinations are tentative. Persons wishing to comment upon or object to the proposed determinations are invited to submit same in writing to the above address no later than September 12, 1973. All comments or objections received prior to September 12, 1973, will be considered in the formulation of final determinations regarding the application. If no objections are received, the Director will issue his final determinations within 60 days of the date of this notice. A public hearing may be held if response to this notice indicates significant public interest.

The application, proposed permit including proposed effluent limitations and special conditions, fact sheets, comments received, and other information is on file and may be inspected and copied in Room 814, 1616 Court House Drive, Capital City, State (ZIP), at any time between 8:15 a.m. and 4:45 p.m., Monday through Friday. Fact sheets and further information may be obtained by writing to the above address or by calling the Office of Permit Processing at 307—445-8922.

Appendix B

SAMPLE FACT SHEET FOR MAILING TO INTERESTED AND POTENTIALLY INTERESTED PERSONS AND GOVERNMENT AGENCIES

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DIVISION OF WATER QUALITY AND RESOURCES, 1616 COURT HOUSE DRIVE, CAPITAL CITY, STATE (ZIP) 307—445-8922

[Public Notice No. OPP-72-301; Application No. CIY-400-60-301]

FACT SHEET—APPLICATION FOR NPDES PERMIT TO DISCHARGE TO STATE WATERS

Acme Paper Products, Inc., 11345 North Fremont Street, Cape Rockaway, State (ZIP), has applied for a Department of Environmental Protection permit to discharge pollutants into State waters.

Applicant is a manufacturer of bleached grades of paper from kraft pulp. Two discharges are described in the application: One of utility waste water from applicant's steam generating plant and the other of process wastes from the manufacture of pulp and paper. Both discharges are to Martin Creek one-half-mile upstream from Whitehall Bay. The receiving waters are classified for industrial and navigation use, contact recreation, and propagation of fish and wildlife. A more complete description of the discharges and a sketch of their location follow below.

The application, proposed permit including proposed effluent limitations and special conditions, comments received, and other information is on file and may be inspected and copied in Room 814, 1616 Court House Drive, Capital City, State (ZIP), at any time between 8:15 a.m. and 4:45 p.m., Monday through Friday.

The proposed staff determinations are tentative. Persons wishing to comment upon or object to the proposed determinations are invited to submit same in writing to the above address no later than September 12, 1973. All comments or objections received prior to September 12, 1973, will be considered in the formulation of final determinations regarding the application. If no objections

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'o received, the Director will issue his final determinations within 60 days of the date of public notice. As described more fully below, a public hearing may be held if response to public notice indicates significant public interest.

Description of proposed discharges.—Discharge 001. Utility waste water from steam generating plant.

AVERAGE FLOW: 500,000 GALLONS PER OPERATING DAY

Average temperatures:	Intake	Discharge
Summer	85° F.	95° F.
Winter	38° F.	55° F.

Discharge 002. Process wastes from manufacture of pulp and paper.

AVERAGE FLOW: 24,300,000 GALLONS PER OPERATING DAY

Constituents	Milligrams per liter	Pounds per day
BOD	90	18,000
Suspended solids	110	22,000
Phenols	0.5	100
Mercury	0.0025	0.5

Proposed determinations. The Division of Water Quality and Resources has examined the above application. On the basis of applicable effluent limitations and water quality standards, the State Water Quality and Resources Act of 1971, as amended, and regulations issued thereunder, the Division proposes to issue the applicant a permit to discharge subject to effluent limitations and certain other conditions. The following is a brief description of the proposed effluent limitations and special conditions:

(1) *Proposed effluent limitations.*

Discharge 001. none

Discharge 002. visible foam and visible floating solids prohibited. The following discharge constituents shall be limited as follows:

Constituents	Milligrams per liter	Pounds per day
BOD	27.5	5,500
Suspended solids	25	5,000
Phenols	0.10	20
Mercury	0.0005	0.10

(2) *Proposed schedule for compliance.* The applicant shall achieve the effluent levels described in subsection (1) above in accordance with the following schedule:

Submission of final plans to Director by: November 15, 1973.

Commencement of construction by: January 15, 1974.

Completion of construction by: September 15, 1974.

Operational level attained by: November 1, 1974.

(3) *Proposed special conditions.* The applicant is required to operate his treatment facilities at maximum efficiency at all times. The applicant is required to monitor his discharges on a regular basis and report the results every 3 months. The monitoring results will be available to the public. The applicant is required to conduct studies of possible adverse effects of his heated water discharge 001 upon free floating marine life and shellfish in Martin Creek and Whitehall Bay. If applicant's study or independent information supplied to the Director indicate an adverse effect, the applicant will be required to take additional measures to minimize the adverse impact.

Applicable effluent limitations and water quality standards. The following are the effluent limitations and water quality standards which were applied to applicant's discharge in the formulation of the above proposed determinations:

(1) All effluent limitations except mercury are based upon effluent guidelines for the pulp and paper industry, manufacture of bleached paper grades from kraft pulp. See 40 CFR 128.74, 128.89, and 128.91(c).

(2) The mercury limitation is based upon effluent limitations for toxic substances. See 40 CFR 136.22 (b) and (c).

(3) For water quality standards for Martin Creek and Whitehall Bay. See 40 CFR 42.66 et. seq. Both are classified for the following uses: Industrial use, navigational use, contact recreation, and propagation of fish and wildlife.

Written comments. Interested persons are invited to submit written comments upon the proposed discharge and the Director's proposed determinations. Comments should be submitted by September 12, 1973, either in person or by mail to:

Director, Division of Water Quality and Resources, Attention: Office of Permit Processing, 1616 Courthouse Drive, Capital City, State (ZIP).

The application number should appear next to the above address on the envelope and on the first page of any submitted comments. All comments received by September 12, 1973, will be considered in the formulation of final determinations. If no written objections are received, the Director will issue his final determinations no later than 60 days following the date of this notice.

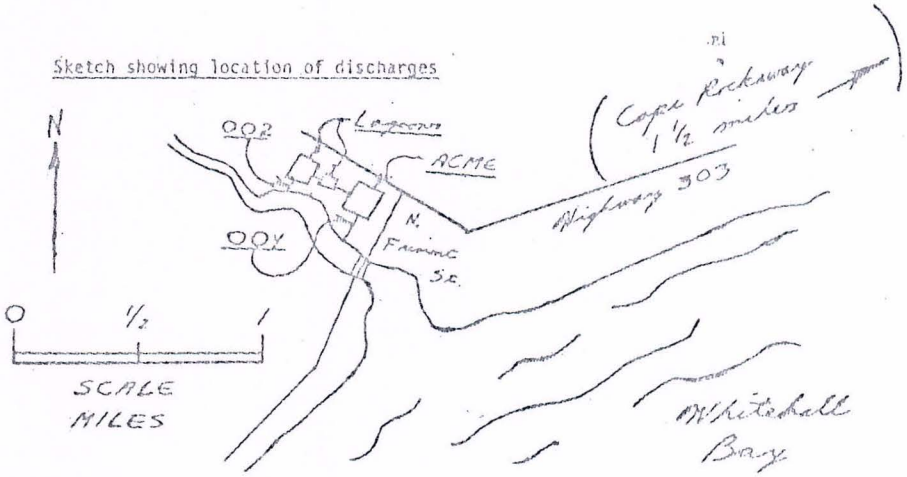
Information and copying. Persons wishing further information may write to the above address or call the Office of Permit Processing at 307 445-8922. Copies of the application, proposed permit including proposed effluent limitations and special conditions, comments received, and other documents (other than those which the Director maintains as confidential) are available at the Office of Permit Processing for inspection and copying. A copying machine is available for public use at a charge of $0.15 per copy sheet.

Register of interested persons. Any person interested in a particular application of group of applications may leave his name, address, and phone number as part of the file for an application. The list of names will be maintained as a means for persons with an interest in an application to contact others with similar interests.

Public hearings. If submitted comments indicate a significant public interest in the application or if he believes useful information may be produced thereby, the Director, in his discretion, may hold a public hearing on the application. Any person may request the Director to hold a public hearing on the application.

Public notice of a hearing will be circulated at least 30 days in advance of the hearing. The hearing will be held in the vicinity of the discharge. Thereafter, the Director will formulate his final determinations within 60 days. Further information regarding the conduct and nature of public hearings concerning discharge permits may be obtained by writing or visiting the Office of Permit Processing, 1616 Courthouse Drive, Capital City, State (zip).

Sketch showing location of discharges



APPENDIX C

SAMPLE PUBLIC NOTICE FOR PUBLIC HEARINGS HELD IN REGARD TO NPDES APPLICATIONS

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DIVISION OF WATER QUALITY AND RESOURCES, 1616 COURTHOUSE DRIVE, CAPITAL CITY, STATE (ZIP) 307-445-8922

[Public Notice No. OPP-72-301-PH-24; Application No. CIY-400-60-301]

NOTICE—ANNOUNCEMENT OF PUBLIC HEARING ON APPLICATION OF ACME PAPER PRODUCTS TO DISCHARGE POLLUTANTS INTO MARTIN CREEK NEAR WHITEHALL BAY, CAPE ROCKAWAY, EDWARDS COUNTY, STATE

Acme Paper Products, Inc., 11345 North Fremont Street, Cape Rockaway, State (ZIP), has applied for a Department of Environmental Protection permit to discharge pollutants into Martin Creek one-half mile upstream from Whitehall Bay. The discharge and the Department's proposed determinations have been previously described in Public Notice No. OPP-72-301, dated August 12, 1973. Due to numerous comments received concerning the application, the filing of several petitions requesting a hearing, and the likelihood that information may be presented which will assist the Department in the formulation of final determinations regarding the application, the Director of the Department of Environmental Protection will hold a public hearing at the time and place stated below:

Hearing to be held at 7 p.m., on September 30, 1973, in Center High School Gymnasium, 2171 Furlong Avenue, Cape Rockaway, State (ZIP)

Some of the issues to be considered at the hearing are as follows:

(1) Do the Department's proposed effluent limitations for the applicant's discharge No. 002 represent a proper application of industrial effluent guidelines to the applicant's industrial processes.

(2) Do related water quality or environmental factors require the specification of stricter effluent limitations, additional requirements, or particular methods of treatment or control. In particular,

(a) Will the Department's proposed effluent limitations, if met, restore uncontaminated shellfish populations in Whitehall Bay (water quality standards classify Whitehall Bay for propagation of fish and shellfish).

(b) Does contamination of subsurface wells and water supplies of adjacent home and cottage owners result from leaks in applicant's treatment lagoons. If so, does the Department have the authority to require the applicant (i) to repair the leaks, and (ii) to compensate the adjacent home and cottage owners for damages resulting from the contamination of the subsurface wells and water supplies.

(c) Does the Department have the authority to control the manner in which the applicant utilizes adjoining marshes and wetlands as additional treatment lagoons in order to meet the Department's proposed effluent limitations. If so, what measures can be taken by the applicant to minimize any harmful effects to adjoining wetlands and fish and wildlife habitats therein.

All interested parties are invited to be present or to be represented to express their views on these and other issues relating to the above application. Parties making presentations are urged to address their statements to the above stated issues. Oral statements will be heard, but, for the accuracy of the record, all important testimony should be submitted in writing. Oral statements should summarize any extensive written material so there will be time for all interested parties to be heard.

The application, related documents, the Department's proposed limitations, and all comments and petitions received are on file and may be inspected and copied in Room 814, 1616 Court House Drive, Capital City, State (ZIP), at any time between 8:15 a.m. and 4:45 p.m., Monday through Friday. Copies of public notice OPP-72-301 are available at the above address or by calling the Office of Permit Processing at 307—445-8922.

Please bring the foregoing to the attention of persons whom you know would be interested in this matter.

[FR Doc.72-21987 Filed 12-21-72;8:45 am]

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